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OFFICE WEST VIRGINIA
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# WEST VIRGINIA LEGISLATURE

Regular Session, 2005

# ENROLLED

Committee Substitute for Committee Substitute for

**SENATE BILL NO.** 147

**(By Senators** Tomblin, Mr. President and Sprouse **)**
By Request of the Executive)

**PASSED** April 9, 2005

**In Effect** 90 days from **Passage**

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

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FOR

# Senate Bill No. 147

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-212 of said code; to amend and reenact §60A-3-308 of said code; to amend and reenact §60A-4-401 and §60A-4-409 of said code; to amend and reenact §60A-9-4 and §60A-9-5 of said code; and to amend said code by adding thereto a new article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15, all relating to limiting the purchase of substances used in the production of methamphetamine; providing that certain substances containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers are

Schedule V substances; excepting Schedule V penalties from penalties of this act; providing legislative findings; defining terms; limiting access to such substances; providing procedures for purchasing such substances from pharmacists or pharmacy technicians; providing for the registration of every wholesaler, manufacturer or distributor of certain drug products containing such substances; providing for a supplemental list of drug products used in methamphetamine production; authorizing promulgation of rules; adding ephedrine, pseudoephedrine and phenylopropanolamine to controlled substances subject to controlled substances monitoring; requiring certain persons to report methamphetamine-related injuries; criminalizing exposure of children to methamphetamine production; criminalizing exposure and harm to first responders; creating offense of improper storage of anhydrous ammonia; allowing the State Police to leverage grant funds; requiring reporting by the State Police to the Legislative Oversight Commission on Health and Human Resources; and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-212 of said code be amended and reenacted; that §60A-3-308 of said code be amended and reenacted; that §60A-4-401 and §60A-4-409 of said code be amended and reenacted; that §60A-9-4 and §60A-9-5 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15, all to read as follows:

**ARTICLE 1. DEFINITIONS.**

**§60A-1-101. Definitions.**

As used in this act:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice" or its successor agency.

(d) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of article two.

(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(f) "Imitation controlled substance" means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or

priced so as to cause a reasonable person to believe that it is a controlled substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there is an agency relationship; (2) a counterfeit substance; or (3) an imitation controlled substance.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means: (1) Substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary", or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(m) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the State Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which

is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(o) "Marijuana" means all parts of the plant "Cannabis sativa L.", whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of

chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species "Papaver somniferum L.", except its seeds.

(s) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(t) "Placebo" means an inert medicament or preparation administered or dispensed for its psychological effect, to

satisfy a patient or research subject or to act as a control in experimental series.

(u) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(v) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

(y) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

**ARTICLE 2. STANDARDS AND SCHEDULES.**

## §60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) *Narcotic drugs.* – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Buprenorphine.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) *Stimulants.* – Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant

effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

(e) Any compound, mixture or preparation containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve.

## ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

### §60A-3-308. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the said appropriate department, board or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the requirements of section three hundred six of this article. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under appropriate state or federal statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) (1) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medicinal purpose: *Provided,* That buprenorphine shall be dispensed only by prescription pursuant to subsections (a), (b) and (c) of this section: *Provided, however*, That the controlled substances included in subsection (e), section two hundred twelve, article two of this chapter shall be dispensed, sold or distributed only by a physician, in a pharmacy by a pharmacist or pharmacy technician, or healthcare professional.

(2) If the substance described in subsection (e), section two hundred twelve, article two of this chapter is dispensed, sold or distributed in a pharmacy:

(A) The substance shall be dispensed, sold or distributed only by a pharmacist or a pharmacy technician; and

(B) Any person purchasing, receiving or otherwise acquiring any such substance shall produce a photographic identification issued by a state or federal governmental entity reflecting his or her date of birth.

**ARTICLE 4. OFFENSES AND PENALTIES.**

## §60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may

be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: *Provided,* That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: *Provided,* That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: *Provided,* That notwithstanding any other provision of this act to the contrary, any first offense for possession of less than 15 grams of marijuana shall be disposed of under said section.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in

jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more who violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

**§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties.**

(a) Except as otherwise authorized by the provisions of this code, it shall be unlawful for any person to transport into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction, may be imprisoned in the

state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: *Provided,* That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in article ten of this chapter apply.

(c) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

**ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

## §60A-9-4. Required information.

(a) Whenever a medical services provider dispenses a controlled substance listed in the provisions of section two hundred six, article two of this chapter or whenever a prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the Board of Pharmacy under this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy;

(2) The name, address and birth date of the person for whom the prescription is written;

(3) The name, address and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III and IV controlled substance dispensed;

(5) The quantity and dosage of the Schedule II, III and IV controlled substance dispensed;

(6) The date the prescription was filled; and

(7) The number of refills, if any, authorized by the prescription.

(b) The Board of Pharmacy may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II, III and IV substance if, in the determination of the Board, the administration of the requirements of this section would be facilitated.

(c) Products regulated by the provisions of article ten of this chapter shall be subject to reporting pursuant to the provisions of this article to the extent set forth in article ten of this chapter.

(d) Reporting required by this section is not required for a drug administered directly to a patient or a drug dispensed by a practitioner at a facility licensed by the state: *Provided*, That the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two 72-hour cycles in any fifteen-day period of time.

**§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.**

The information required by this article to be kept by the State Board of Pharmacy is confidential and is open to inspection only by inspectors and agents of the State Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the

West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as a member of a drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services and the Workers' Compensation Commission, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or regulatory agency administrative subpoena: *Provided,* That all information released by the State Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient. The Board shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article.

## ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

### §60A-10-1. Short title.

The provisions of this article shall be known and referred to as the Methamphetamine Laboratory Eradication Act.

**§60A-10-2. Purpose; findings.**

The Legislature finds:

(a) That the illegal production and distribution of methamphetamine is an increasing problem nationwide and particularly prevalent in rural states such as West Virginia.

(b) That methamphetamine is a highly addictive drug that can be manufactured in small and portable laboratories. These laboratories are operated by individuals who manufacture the drug in a clandestine and unsafe manner, often resulting in explosions and fires that can injure not only the individuals involved, but their families, neighbors, law-enforcement officers and firemen.

(c) That use of methamphetamine can result in fatal kidney and lung disorders, brain damage, liver damage, blood clots, chronic depression, hallucinations, violent and aggressive behavior, malnutrition, disturbed personality development, deficient immune system and psychosis. Children born to mothers who are abusers of methamphetamine can be born addicted and suffer birth defects, low birth weight, tremors, excessive crying, attention deficit disorder and behavior disorders.

(d) That in addition to the physical consequences to an individual who uses methamphetamine, usage of the drug also produces an increase in automobile accidents, explosions and fires, increased criminal activity, increased medical costs due to emergency room visits, increases in domestic violence, increased spread of infectious diseases and a loss in worker productivity.

(e) That environmental damage is another consequence of the methamphetamine epidemic. Each pound of methamphetamine produced leaves behind five to six pounds of toxic waste. Chemicals and byproducts that result from the manufacture of methamphetamine are often poured into plumbing systems, storm drains or

directly onto the ground. Clean up of methamphetamine laboratories is extremely resource-intensive, with an average remediation cost of five thousand dollars.

(f) That it is in the best interest of every West Virginian to develop a viable solution to address the growing methamphetamine problem in the State of West Virginia. The Legislature finds that restricting access to over-the-counter drugs used to facilitate production of methamphetamine is necessary to protect the public safety of all West Virginians.

(g) That it is further in the best interests of every West Virginian to create impediments to the manufacture of methamphetamine by requiring persons purchasing chemicals necessary to the process to provide identification.

**§60A-10-3. Definitions.**

In this article:

(a) "Board of Pharmacy" or "Board" means the West Virginia Board of Pharmacy established by the provisions of article five, chapter thirty of this code.

(b) "Designated precursor" means any drug product made subject to the requirements of this article by the provisions of section seven of this article.

(c) "Distributor" means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product;

(d) "Drug product" means a pharmaceutical product that contains as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided for in section seven of this article which may be sold without a prescription and which is labeled for use by a consumer in accor-

dance with the requirements of the laws and rules of this state and the federal government.

(e) "Ephedrine" means ephedrine, its salts or optical isomers or salts of optical isomers.

(f) "Manufacturer" means any person within this state who produces, compounds packages or in any manner initially prepares for sale or use any drug product or any such person in another state if they cause the products to be compounded, packaged or transported into this state.

(g) "Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

(h) "Pseudoephedrine" means pseudoephedrine, its salts, optical isomers and salts of optical isomers.

(i) "Precursor" means any substance which may be used along with other substances as a component in the production and distribution of illegal methamphetamine.

(j) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care as defined in subsection (t), section one-b, article fifty, chapter thirty of this code.

(k) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or display for sale at retail and pharmaceutical care is provided outside of this state where drugs are dispensed and pharmaceutical care is provided to residents of this state.

(l) "Pharmacy counter" means an area in the pharmacy restricted to the public where controlled substances are stored and housed and where controlled substances may only be sold, transferred or dispensed by a pharmacist or pharmacy technician.

(m) "Pharmacy technician" means a registered technician who meets the requirements for registration as set forth in article five, chapter thirty of this code.

(n) "Retail establishment" means any entity or person within this state who sells, transfers or distributes goods, including over-the-counter drug products, to an ultimate consumer.

(o) "Schedule V" means the schedule of controlled substances set out in section two hundred twelve, section two of this chapter.

(p) "Single active ingredient" means those ingredients listed on a drug product package as the only active ingredient in over-the-counter medication or identified on the Schedule maintained by the Board of Pharmacy as being primarily used in the illegal production and distribution of methamphetamine.

(q) "Superintendent of the State Police" or "Superintendent" means the Superintendent of the West Virginia State Police as set forth in section five, article two, chapter fifteen of this code.

(r) "Wholesaler" means any person within this state or another state, other than a manufacturer, who sells, transfers or in any manner furnishes a drug product to any other person in this state for the purpose of being resold.

**§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.**

(a) Any person who within any thirty-day period knowingly purchases, receives or otherwise possesses more than three packages of a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine in any form shall be guilty of a misdemeanor and, upon conviction, shall be confined in a jail for not more than one year, fined not more than one thousand dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of the provisions of said subsection or a statute or ordinance of the United States or another state which contains the same essential elements shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than twenty-five thousand dollars, or both.

(c) The provisions of subsection (a) of this section shall not apply to:

(1) Drug products which are for pediatric use primarily intended for administration to children under the age of twelve;

(2) Drug products which have been determined by the Board of Pharmacy to be in a form which is unamenable to being used for the manufacture of methamphetamine;

(3) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharmacists, pharmacy technicians, health care professionals or persons possessing such drug products pursuant to a valid prescription;

(d) Notwithstanding any provision of this code to the contrary, any person who knowingly possesses any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated precursor with the intent to use it in the manufacture of methamphetamine or who knowingly possesses a substance containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts, optical isomers or salts of optical isomers in a state or form which is, or has been altered or converted from the state or form in which these chemicals are, or were, commercially distributed shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two nor more than ten years, fined not more than twenty-five thousand dollars, or both.

(e) (1) Any pharmacy, wholesaler, manufacturer or distributor of drug products containing as their single active ingredient ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers or salts of optical isomers or other designated precursor shall obtain a registration annually from the State Board of Pharmacy as described in section six of this article. Any such pharmacy, wholesaler, manufacturer or distributor shall keep complete records of all sales and transactions as provided in section eight of this article. The records shall be gathered and maintained pursuant to legislative rule promulgated by the Board of Pharmacy.

(2) Any drug products possessed without a registration as provided in this section are subject to forfeiture upon conviction for a violation of this section.

(3) In addition to any administrative penalties provided by law, any violation of this subsection is a misdemeanor, punishable upon conviction by a fine in an amount not more than ten thousand dollars.

**§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.**

(a) No pharmacy or individual may display, offer for sale or place a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or other designated precursor where the public may freely access the drug product. All such drug products or designated precursors shall be placed behind a pharmacy counter where access is restricted to a pharmacist, a pharmacy technician or other pharmacy employee.

(b) All storage of drug products regulated by the provisions of this section shall be in a controlled and locked access location that is not accessible by the general public and shall maintain strict inventory control standards and complete records of quantity of the product maintained in bulk form.

(c) No pharmacy shall sell, deliver or provide any drug product regulated by the provisions of this section to any person who is under the age of eighteen.

(d) If a drug product regulated by the provisions of this section is transferred, sold or delivered, the individual, pharmacy or retail establishment transferring, selling or delivering the drug product shall require the person purchasing, receiving or otherwise acquiring the drug product to:

(1) Produce a government-issued photo identification showing his or her date of birth; and

(2) Sign a form containing the information set forth in subsection (b), section eight of this article and attesting to the validity of such information. Any person who knowingly makes a false representation or statement pursuant to the requirements of this section shall be guilty of a misdemeanor and, upon conviction, be confined in a jail for not more than six months, fined not more than five thousand dollars, or both.

(e) This section does not apply to drug products that are dispensed pursuant to a prescription, are pediatric products primarily intended for administration, according to label instructions, to children under twelve years of age.

(f) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in an amount not more than ten thousand dollars.

**§60A-10-6. Registration to sell, manufacture or distribute products; rule-making authority.**

The State Board of Pharmacy shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to require that every wholesaler, manufacturer or distributor of any drug product containing as their single active ingredient ephedrine or pseudoephedrine or a substance identified on

the supplemental list provided for in section seven of this article shall obtain a registration and permit issued by the State Board of Pharmacy to sell, distribute or transfer the product containing as their single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine.

**§60A-10-7. Restricted products; rule-making authority.**

(a) On or before the first day of July, two thousand five, the Board of Pharmacy shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement a program wherein the Board of Pharmacy shall consult with the Superintendent of the State Police in identifying drug products which are a designated precursor, in addition to those that contain as their single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, that are commonly being used in the production and distribution of methamphetamine. Those drug products which the Superintendent of the State Police have demonstrated by empirical evidence are commonly used in the manufacture of methamphetamine shall be added to a supplemental list of controlled substances listed in subsection (e), section two hundred twelve, article two of this chapter and shall be subject to all of the restrictions of this article. These rules established pursuant to this section shall include:

(1) A process whereby pharmacies are made aware of all drug products that contain as their single active ingredient ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a Schedule V substance and must be sold, transferred or dispensed from behind a pharmacy counter;

(2) A process whereby pharmacies and retail establishments are made aware additional drug products added to Schedule V that are required to be placed behind the pharmacy counter for sale, transfer or distribution can be periodically reviewed and updated.

(b) At any time after the first day of July, two thousand five, the Board of Pharmacy, upon the recommendation of the Superintendent of the State Police, shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement an updated supplemental list of products containing the controlled substances ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient or any other drug used as a precursor in the manufacture of methamphetamine, which the Superintendent of the State Police has demonstrated by empirical evidence is being used in the manufacture of methamphetamine. This listing process shall comport with the requirements of subsection (a) of this section.

**§60A-10-8. Reporting requirements; confidentiality.**

(a) Whenever there is a sale, retail, transfer or distribution of any drug product referred to in subsection (e), section two-hundred twelve, article two of this chapter or another designated precursor, the pharmacist or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in the central repository established pursuant to article nine of this chapter:

(1) The date of the transaction;

(2) The name, address and driver's license or state-issued identification number of the person; and

(3) The name, the quantity of packages and total gram weight of the product or products purchased, received or otherwise acquired.

(b) The information required by this section shall be the property of the state and a pharmacy shall have no duty to retain a copy of the information in any format once the information has been reported to the Board of Pharmacy as required by this section.

**§60A-10-9. Persons mandated to report suspected injuries related to methamphetamine production; failure to report; penalty.**

(a) When any medical, dental or mental health professional, Christian Science practitioner, religious healer or emergency medical services personnel has reason to believe that an injury is the direct result of exposure to the production of methamphetamine such person shall immediately, and not more than forty-eight hours after such suspicion arises, report the circumstances or cause a report to be made to a state, county or local law-enforcement agency.

(b) Any person required by this section to report a suspected methamphetamine-related injury who knowingly and intentionally fails to do so or knowingly and intentionally prevents another person acting reasonably from doing so shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in jail not more than ten days, or both fined and imprisoned.

**§60A-10-10. Authority of the Superintendent of the State Police to leverage grant funds.**

The Superintendent of the State Police is encouraged to leverage available grant funds from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions, make and sign any agreement to and perform any act that may be necessary to effectuate these grants. The grant funds shall be dedicated toward a drug court, to provide training programs to state and local prosecutors and law-enforcement agents for the investigation and prosecution of methamphetamine offenses and to enhance funding available to jails.

**§60A-10-11. Reporting to the Legislative Oversight Commission on Health and Human Resources Accountability.**

On or before the first day of December, two thousand five, the Superintendent of the West Virginia State Police shall submit a report including findings, conclusions and recommendations, together with drafts of any legislation necessary, to improve the effectiveness of a reduction in illegal methamphetamine production and distribution to the Legislative Oversight Commission on Health and Human Resources Accountability for consideration.

**§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.**

(a) Any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than ten thousand dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, the penalty for a violation of said subsection when the child suffers serious bodily injury as such is defined in the provisions of section one, chapter eight-b of this code shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than twenty-five thousand dollars, or both.

**§60A-10-13. Exposure of first responders to manufacture methamphetamine; penalties.**

Any person who, as a result of or in the course of unlawfully and intentionally manufacturing methamphetamine, causes a police officer, probation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, division of forestry employee, county correctional employee or state correctional employee acting in his or her official capacity to ingest, inhale or be

dermally exposed to a chemical, product, by-product, residue or substance involved in the manufacture or attempted manufacture of such controlled substance, without prior knowledge of such, and thereby causes bodily injury to such persons, shall be guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred nor more than five thousand dollars and confined in a correctional facility for not less than one year nor more than five years. A violation of this section shall constitute a separate offense from the manufacture or attempt to manufacture methamphetamine.

**§60A-10-14. Illegal storage of anhydrous ammonia; exceptions.**

(a) Any person who stores or conveys anhydrous ammonia in a container that:

(1) Is not approved by the United States Department of Transportation to hold anhydrous ammonia; or

(2) Was not constructed to meet state and federal industrial health and safety standards for holding anhydrous ammonia is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for a determinate period not to exceed five years, fined not more than ten thousand dollars, or both.

(b) The provisions of this section shall not apply to persons authorized by federal or state law, rule or regulation to handle and dispose of hazardous waste or toxic substances while engaged in such conduct.

(c) Any damages arising out of the unlawful possession of, storage of or tampering with anhydrous ammonia equipment shall be the sole responsibility of the person or persons unlawfully possessing, storing or tampering with anhydrous ammonia. In no case shall liability for damages arising out of the unlawful possession of, storage of or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor or seller of

the anhydrous ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor or seller that constitute negligent misconduct to abide by the laws regarding anhydrous ammonia possession and storage.

**§60A-10-15. Iodine solution greater than 1.5 percent; prescription or permit required; offenses; penalties.**

(a) A person may offer to sell, sell or distribute an iodine matrix only:

(1) As a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or

(2) To a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in section eight, article one, chapter four of this code.

(b) Prescriptions issued under this section:

(1) Shall provide for a specified number of refills;

(2) May be issued by any means authorized by the Board of Pharmacy; and

(3) May be filled by a person other than the veterinarian or physician issuing the prescription.

(c) A person offering iodine matrix for sale:

(1) Shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;

(2) Shall keep a record, which may consist of sales receipts of each person purchasing iodine matrix; and

(3) Shall, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.

(d) A person engaging in a regulated transaction pursuant to the provisions of subsection (a) of this section is guilty of a misdemeanor if he or she offers to sell, sells or distributes an iodine matrix to a person who:

(1) Does not present a prescription or is not engaged in animal husbandry, as required under subsection (a) of this section; or

(2) Is not excepted under subsection (g) of this section.

(e) A person is guilty of a misdemeanor who:

(1) Possesses an iodine matrix without proof of obtaining the solution in compliance with subsection (a) of this section; or

(2) Offers to sell, sells or distributes an iodine matrix in violation of said subsection.

(f) The provisions of subdivision (1), subsection (e) of this section do not apply to:

(1) A chemistry or chemistry-related laboratory maintained by:

(A) A public or private regularly established secondary school; or

(B) A public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education:

(2) A veterinarian licensed to practice pursuant to the provisions of article ten, chapter thirty of this code;

(3) A health care facility; or

(4) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier, or an agent of any of these persons who possesses

an iodine matrix in the regular course of lawful business activities.

(g) As used in this section, "iodine matrix" means iodine at a concentration greater than 1.5 percent, by weight, in a matrix or solution.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
*Chairman Senate Committee*

.....
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

.....
*Speaker House of Delegates*

The within is approved this the 2nd

Day of May, 2005.

.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 10:05 am