

H. B. 4606

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(By Delegates Skaff, Stowers, Pasdon, Hall, Andes,
Reynolds, Staggers, Marcum and R. Phillips)

[Introduced February 17, 2012; referred to the
Committee on Health and Human Resources then Judiciary.]

10 A BILL to amend and reenact §60A-10-3, §60A-10-4, §60A-10-5, §60A-
11 10-7 and §60A-10-8, all relating to the Methamphetamine
12 Laboratory Eradication Act; defining and removing definitions
13 in the Methamphetamine Laboratory Eradication Act; including
14 definition for the National Association of Drug Diversion
15 Investigators" or "NADDI" and "Multi-State Real-Time Tracking
16 System" or "MSRTTS"; establishing restrictions on the sale,
17 transfer, or dispensing of ephedrine, pseudoephedrine and
18 phenylpropanolamine by pharmacies; establishing criminal
19 penalties for purchasing, receiving, or possessing certain
20 quantities of ephedrine, pseudoephedrine and
21 phenylpropanolamine; establishing criminal penalties for
22 pharmacies, wholesalers or other entities which sell, transfer
23 or dispense a product under certain circumstances; amending
24 the restrictions on the sale, transfer or delivery of certain
25 designated precursors to the manufacture of methamphetamine or

1 other controlled substances; and requiring certain processing
2 requirements of pharmacists, pharmacy interns, and pharmacy
3 technicians; establishing use and requirements of the Multi-
4 State Real-Time Tracking System; requiring pharmacies and
5 retail establishments to electronically submit certain
6 information to the Multi-State Real-Time Tracking System;
7 requiring pharmacies and retail establishments to stop pending
8 sales under certain circumstances; limiting liability of
9 retailers utilizing the Multi-State Real-Time Tracking System
10 under certain circumstances; requiring pharmacies or retail
11 establishments to maintain written logs or electronic record
12 keeping databases under certain circumstances; providing
13 supersession and preemption of all local laws, ordinances, and
14 regulations pertaining to the sale of certain substances;
15 amending reporting requirements and requiring real time
16 electronic reporting of certain information; requiring that
17 reported information is subject to random and warrantless
18 inspection by certain persons; and requiring the National
19 Association of Drug Diversion Investigators to forward certain
20 records to the West Virginia State Police and provide real-
21 time access to the Multi-State Real-Time Tracking System.

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

23 That §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-7 and §60A-10-8
24 of the Code of West Virginia, 1931, as amended, be amended and re-

1 enacted, all to read as follows:

2 **ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

3 **§60A-10-3. Definitions.**

4 In this article:

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

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

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

15 (d) "Drug product" means a pharmaceutical product that
16 contains ~~as its single active ingredient~~ ephedrine, pseudoephedrine
17 or phenylpropanolamine or a substance identified on the
18 supplemental list provided ~~for~~ in section seven of this article
19 which may be sold without a prescription and which is labeled for
20 use by a consumer in accordance with the requirements of the laws
21 and rules of this state and the federal government.

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

24 (f) "Manufacturer" means any person within this state who

1 produces, compounds, packages or in any manner initially prepares
2 for sale or use any drug product or any such person in another
3 state if they cause the products to be compounded, packaged or
4 transported into this state.

5 (g) "National Association of Drug Diversion Investigators" or
6 "NADDI" means the nonprofit 501(c)(3) organization established in
7 1989, made up of members who are responsible for investigating and
8 prosecuting pharmaceutical drug diversion, and that facilitates
9 cooperation between law enforcement, healthcare professionals,
10 state regulatory agencies, and pharmaceutical manufacturers in the
11 investigation and prevention of prescription drug abuse and
12 diversion.

13 (h) "Multi-State Real-Time Tracking System" or "MSRTTS" means
14 the real-time electronic logging system provided by NADDI at no
15 cost to states that have legislation requiring real-time electronic
16 monitoring of precursor purchases, and agree to use the system.
17 MSRTTS is used by pharmacies and law enforcement to track sales of
18 over-the-counter (OTC) cold and allergy medications containing
19 precursors to the illegal drug, methamphetamine.

20 ~~(g)~~ (i) "Phenylpropanolamine" means phenylpropanolamine, its
21 salts, optical isomers and salts of optical isomers.

22 ~~(h)~~ (j) "Pseudoephedrine" means pseudoephedrine, its salts,
23 optical isomers and salts of optical isomers.

24 ~~(i)~~ (k) "Precursor" means any substance which may be used

1 along with other substances as a component in the production and
2 distribution of illegal methamphetamine.

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

7 ~~(k)~~ (m) "Pharmacy intern" has the same meaning as the term
8 "intern" as set forth in section one-b, article five, chapter
9 thirty of this code.

10 ~~(l)~~ (n) "Pharmacy" means any drugstore, apothecary or place
11 within this state where drugs are dispensed and sold at retail or
12 display for sale at retail and pharmaceutical care is provided
13 outside of this state where drugs are dispensed and pharmaceutical
14 care is provided to residents of this state.

15 ~~(m)~~ (o) "Pharmacy counter" means an area in the pharmacy
16 restricted to the public where controlled substances are stored and
17 housed and where controlled substances may only be sold,
18 transferred or dispensed by a pharmacist, pharmacy intern or
19 pharmacy technician.

20 ~~(n)~~ (p) "Pharmacy technician" means a registered technician
21 who meets the requirements for registration as set forth in article
22 five, chapter thirty of this code.

23 ~~(o)~~ (q) "Retail establishment" means any entity or person
24 within this state who sells, transfers or distributes goods,

1 including over-the-counter drug products, to an ultimate consumer.

2 ~~(p)~~ (r) "Schedule V" means the schedule of controlled
3 substances set out in section two hundred twelve, section two of
4 this chapter.

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

10 ~~(r)~~ (s) "Superintendent of the State Police" or
11 "Superintendent" means the Superintendent of the West Virginia
12 State Police as set forth in section five, article two, chapter
13 fifteen of this code.

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

18 **§60A-10-4. Purchase, receipt, acquisition and possession of**
19 **substances to be used as precursor to manufacture**
20 **of methamphetamine or another controlled**
21 **substance; offenses; exceptions; penalties.**

22 (a) A pharmacy may not sell, transfer or dispense to the same
23 person, and a person may not purchase, more than three and six-

1 tenths grams per day or more than seven and five-tenths grams per
2 thirty-day period of ephedrine, pseudoephedrine or
3 phenylpropanolamine. The limits apply to the total amount of
4 ephedrine, pseudoephedrine and phenylpropanolamine contained in the
5 products, and not the overall weight of the products.

6 (1) Any person who knowingly purchases, receives, or otherwise
7 possesses more than three and six-tenths grams per day within any
8 thirty day period knowingly purchases, receives or otherwise
9 possesses more than three packages of a drug product containing as
10 its single active ingredient ephedrine, pseudoephedrine or
11 phenylpropanolamine or more than ~~nine~~ seven and five-tenths grams
12 per thirty-day period of ephedrine, pseudoephedrine or
13 phenylpropanolamine in any form ~~shall be~~ is guilty of a misdemeanor
14 and, upon conviction, shall be confined in a jail for not more than
15 one year, fined not more than \$1,000, or both fined and confined.

16 (2) Any pharmacy, wholesaler or other entity operating the
17 retail establishment which sells, transfers or dispenses a product
18 in violation of this section is guilty of a misdemeanor and, upon
19 conviction, shall be fined not more than \$1,000 for the first
20 offense, or more than \$10,000 for each subsequent offense.

21 (b) Notwithstanding the provisions of subsection (a) (1) of
22 this section, any person convicted of a second or subsequent
23 violation of the provisions of said subsection or a statute or
24 ordinance of the United States or another state which contains the

1 same essential elements ~~shall be~~ is guilty of a felony and, upon
2 conviction, shall be ~~confined~~ imprisoned in a state correctional
3 facility for not less than one nor more than five years, fined not
4 more than \$25,000, or both imprisoned and fined.

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

7 (1) Products dispensed pursuant to a valid prescription;

8 ~~(1)~~ (2) Drug products which are for pediatric use primarily
9 intended for administration to children under the age of twelve;

10 ~~(2)~~ (3) Drug products which have been determined by the Board
11 of Pharmacy to be in a form which is ~~unamenable~~ not amenable to
12 being used for the manufacture of methamphetamine; or

13 ~~(3)~~ (4) Persons lawfully possessing drug products in their
14 capacities as distributors, wholesalers, manufacturers,
15 pharmacists, pharmacy interns, pharmacy technicians, or health care
16 professionals. ~~or persons possessing such drug products pursuant to~~
17 ~~a valid prescription~~

18 (d) Notwithstanding any provision of this code to the
19 contrary, any person who knowingly possesses any amount of
20 ephedrine, pseudoephedrine, phenylpropanolamine or other designated
21 precursor with the intent to use it in the manufacture of
22 methamphetamine or who knowingly possesses a substance containing
23 ephedrine, pseudoephedrine or phenylpropanolamine or their salts,
24 optical isomers or salts of optical isomers in a state or form

1 which is, or has been altered or converted from the state or form
2 in which these chemicals are, or were, commercially distributed
3 ~~shall be~~ is guilty of a felony and, upon conviction, shall be
4 ~~confined~~ imprisoned in a state correctional facility for not less
5 than two nor more than ten years, fined not more than \$25,000, or
6 both imprisoned and fined.

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

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

21 (3) In addition to any administrative penalties provided by
22 law, any violation of this subsection is a misdemeanor, punishable
23 upon conviction by a fine in an amount not more than \$10,000.

24 **§60A-10-5. Restrictions on the sale, transfer or delivery of**

1 **certain drug products; penalties.**

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

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

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

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

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

1 (2) Sign a ~~form~~ logbook containing the information set forth
2 in subsection (b), section eight of this article and attesting to
3 the validity of ~~such~~ the information.

4 (e) Any person who knowingly makes a false representation or
5 statement pursuant to the requirements of this section ~~shall be~~ is
6 guilty of a misdemeanor and, upon conviction, be confined in a jail
7 for not more than six months, fined not more than \$5,000, or both
8 fined and confined.

9 (f) (1) The pharmacist, pharmacy intern or pharmacy technician
10 processing the transaction shall determine that the name entered in
11 the logbook corresponds to the name provided on the identification.

12 (2) Beginning January 1, 2013, a pharmacy or retail
13 establishment shall, before completing a sale under this section,
14 electronically submit the information required by section eight of
15 this article to the Multi-State Real-Time Tracking System (MSRTTS)
16 administered by the National Association of Drug Diversion
17 Investigators (NADDI): *Provided*, That the system is available to
18 retailers in the state without a charge for accessing the system.
19 This system shall be capable of generating a stop sale alert, which
20 shall be a notification that completion of the sale would result in
21 the seller or purchaser violating the quantity limits set forth in
22 this section. The seller may not complete the sale if the system
23 generates a stop sale alert. The system shall contain an override
24 function that may be used by a dispenser of a drug product who has

1 a reasonable fear of imminent bodily harm if he or she does not
2 complete a sale. Each instance in which the override function is
3 utilized shall be logged by the system. Absent negligence,
4 wantonness, recklessness or deliberate misconduct, any retailer
5 utilizing the Multi-State Real-Time Tracking System in accordance
6 with this subdivision may not be civilly liable as a result of any
7 act or omission in carrying out the duties required by this
8 subsection and is immune from liability to any third party unless
9 the retailer has violated any provision of this subsection in
10 relation to a claim brought for the violation.

11 (3) If a pharmacy or retail establishment selling a
12 nonprescription product containing pseudoephedrine or ephedrine
13 experiences mechanical or electronic failure of the Multi-State
14 Real-Time Tracking System and is unable to comply with the
15 electronic sales tracking requirement, the pharmacy or retail
16 establishment shall maintain a written log or an alternative
17 electronic record keeping mechanism until such time as the pharmacy
18 or retail establishment is able to comply with the electronic sales
19 tracking requirement.

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

24 ~~(f)~~ (h) Any violation of this section is a misdemeanor,

1 punishable upon conviction by a fine in an amount not more than
2 \$10,000.

3 (i) The provisions of this section supersede and preempt all
4 local laws, ordinances, rules and regulations pertaining to the
5 sale of any compounds, mixtures, or preparations containing
6 ephedrine, pseudoephedrine or phenylpropanolamine.

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

8 (a) On or before July 1, 2005, the Board of Pharmacy shall
9 promulgate emergency and legislative rules pursuant to the
10 provision of article three, chapter twenty-nine-a of this code to
11 implement a program wherein the Board of Pharmacy shall consult
12 with the Superintendent of the State Police in identifying drug
13 products which are a designated precursor, in addition to those
14 that contain ~~as their single active ingredient~~ ephedrine,
15 pseudoephedrine or phenylpropanolamine, that are commonly being
16 used in the production and distribution of methamphetamine. Those
17 drug products which the Superintendent of the State Police have
18 demonstrated by empirical evidence and are commonly used in the
19 manufacture of methamphetamine shall be added to a supplemental
20 list and shall be subject to all of the restrictions of this
21 article. These rules established pursuant to this section shall
22 include:

23 (1) A process whereby pharmacies are made aware of all drug
24 products that contain ~~as their single active ingredient~~ ephedrine,

1 pseudoephedrine and phenylpropanolamine that will be listed as a
2 Schedule V substance and must be sold, transferred or dispensed
3 from behind a pharmacy counter;

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

8 (b) At any time after July 1, 2005, the Board of Pharmacy,
9 upon the recommendation of the Superintendent of the State Police,
10 shall promulgate emergency and legislative rules pursuant to the
11 provision of article three, chapter twenty-nine-a of this code to
12 implement an updated supplemental list of products containing the
13 controlled substances ephedrine, pseudoephedrine or
14 phenylpropanolamine as an active ingredient or any other drug used
15 as a precursor in the manufacture of methamphetamine, which the
16 Superintendent of the State Police has demonstrated by empirical
17 evidence is being used in the manufacture of methamphetamine. This
18 listing process shall comport with the requirements of subsection
19 (a) of this section.

20 **§60A-10-8. Reporting requirements; confidentiality.**

21 (a) ~~Whenever~~ Until January 1, 2013, upon each ~~there is a~~ sale,
22 retail, transfer or distribution of any drug product referred to in
23 section seven of this article or another designated precursor, the
24 pharmacist, pharmacy intern, or pharmacy technician making the

1 sale, transfer or distribution shall report the following
2 information for inclusion in ~~a~~ the central repository established
3 and maintained by the Board of Pharmacy:

4 (1) The date of the transaction;

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

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

9 (b) The information required to be reported by this section
10 shall be reported by paper log maintained at the point of sale:

11 Provided, That, beginning on January 1, 2007, reporting shall be by
12 electronic transmission to the Board of Pharmacy no more frequently
13 than once a week. Beginning on January 1, 2013, the electronic
14 transmission of the information required to be reported in
15 subsection (a) of this section shall be reported to the MSRTTS, and
16 shall be made in real time at the time of the transaction.

17 (c) The information required by this section shall be the
18 property of the state, and is subject to random and warrantless
19 inspection by city, county, or state law-enforcement officers, or
20 members of the federal Drug Enforcement Administration ~~and a~~
21 ~~pharmacy shall have no duty to retain a copy of the information in~~
22 ~~any format once the information has been reported to the Board of~~
23 ~~Pharmacy as required by this section.~~ NADDI shall forward state
24 transaction records in the MSRTTS to the West Virginia State Police

1 weekly, and provide real-time access to MSRTTS information through
2 the MSRTTS online portal to authorized agents of the federal Drug
3 Enforcement Administration and certified law enforcement in this
4 and other states for use in the detection of violations of this
5 article or of federal laws designed to prevent the illegal use,
6 production, or distribution of methamphetamine.

NOTE: The purpose of this bill is to define and remove definitions in the Methamphetamine Laboratory Eradication Act. This includes a definition for the National Association of Drug Diversion Investigators" or "NADDI" and "Multi-State Real-Time Tracking System" or "MSRTTS". The bill establishes restrictions on the sale, transfer, or dispensing of ephedrine, pseudoephedrine and phenylpropanolamine by pharmacies, with criminal penalties for purchasing, receiving or possessing certain quantities of ephedrine, pseudoephedrine and phenylpropanolamine. It establishes criminal penalties for pharmacies, wholesalers or other entities which sell, transfer or dispense a product under certain circumstances. The bill amends the restrictions on the sale, transfer or delivery of certain designated precursors to the manufacture of methamphetamine or other controlled substances. The bill requires certain processing requirements of pharmacists, pharmacy interns, and pharmacy technicians and establishes the use and requirements of the Multi-State Real-Time Tracking System. It requires pharmacies and retail establishments to electronically submit certain information to the Multi-State Real-Time Tracking System. It requires pharmacies and retail establishments to stop pending sales under certain circumstances; limits liability of retailers utilizing the Multi-State Real-Time Tracking System under certain circumstances. The bill requires pharmacies or retail establishments to maintain written logs or electronic record keeping databases under certain circumstances, amends reporting requirements and requires real time electronic reporting of certain information, including the requirement that reported information is subject to random and warrantless inspection by certain persons. And, the bill requires the National Association of Drug Diversion Investigators to forward certain records to the West Virginia State Police and provide real-time access to the Multi-State Real-Time Tracking System.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.