WEST VIRGINIA CODE: §60a-10-5

§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 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 intern, 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 may 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 offer to have a pharmacist provide patient counseling, as defined by article five, chapter thirty of this code and the rules of the Board of Pharmacy, to the person purchasing, receiving or acquiring the drug product in order to improve the proper use of the drug product and to discuss contraindications.

(e) 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 valid government-issued photo identification showing his or her date of birth; and

(2) Sign a logbook, in either paper or electronic format, containing the information set forth in subsection (b), section eight of this article and attesting to the validity of the information.

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

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

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(2) Beginning January 1, 2013, a pharmacy or retail establishment shall, before completing a sale under this section, electronically submit the information required by section eight of this article to the Multi-State Real-Time Tracking System (MSRTTS) administered by the National Association of Drug Diversion Investigators (NADDI): Provided, That the system is available to retailers in the state without a charge for accessing the system. This system shall be capable of generating a stop-sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in this article. The seller may not complete the sale if the system generates a stop-sale alert. The system shall contain an override function that may be used by a dispenser of a drug product who has a reasonable fear of imminent bodily harm if he or she does not complete a sale. Each instance in which the override function is utilized shall be logged by the system. Absent negligence, wantonness, recklessness or deliberate misconduct, any retailer utilizing the Multi-State Real-Time Tracking System in accordance with this subdivision may not be civilly liable as a result of any act or omission in carrying out the duties required by this subdivision and is immune from liability to any third party unless the retailer has violated any provision of this subdivision in relation to a claim brought for the violation.

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

(h) 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.

(i) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in an amount not more than $10,000.

(j) The provisions of this section supersede and preempt all local laws, ordinances, rules and regulations pertaining to the sale of any compounds, mixtures or preparation containing ephedrine, pseudoephedrine or phenylpropanolamine.

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