WEST VIRGINIA CODE CHAPTER 60a

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§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 or her presence, by his or her 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) “Analogue” means a substance that, in relation to a controlled substance, has a substantially similar chemical structure.

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

(e) “Controlled substance” means a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(f) “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.

(g) “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.

(h) “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.

(i) “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.

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(j) “Dispenser” means a practitioner who dispenses.

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

(l) “Distributor” means a person who distributes.

(m) “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 subdivision (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(n) “Fentanyl analog or derivative” means any substance which has a chemical structure which is substantially similar to the chemical structure of fentanyl, including any of its salts, isomers, or salts of isomers, including any chemical compound or mixture. For purposes of this chapter, the term “fentanyl derivative or analog” includes any fentanyl analog that is not otherwise scheduled in this chapter.

(o) “Immediate derivative” means a substance which is the principal compound or any analogue of the parent compound manufactured from a known controlled substance primarily for use and which has equal or similar pharmacologic activity as the parent compound which is necessary to prevent, curtail or limit manufacture.

(p) “Immediate precursor” means a substance which is 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.

(q) “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 or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

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

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(r) “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, immediate 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, immediate 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.

(s) “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, immediate derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, immediate 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, immediate derivative or preparation of coca leaves and any salt, compound, isomer, immediate 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.

(t) “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.

(u) “Opium poppy” means the plant of the species “Papaver somniferum L.”, except its seeds.

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

(w) “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.

(x) “Poppy straw” means all parts, except the seeds, of the opium poppy after mowing.

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(y) “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.

(z) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(aa) “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.

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

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§60A-2-201. Authority of Board of Pharmacy; recommendations to Legislature.

(a) The Board of Pharmacy shall administer the provisions of this chapter. It shall also, on the first day of each regular legislative session, recommend to the Legislature which substances should be added to or deleted from the schedules of controlled substances contained in this article or reschedule therein. The Board of Pharmacy shall also have the authority between regular legislative sessions, on an emergency basis, to add to or delete from the schedules of controlled substances contained in this article or reschedule such substances based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall report such actions on the first day of the regular legislative session immediately following said actions.

In making any such recommendation regarding a substance, the Board of Pharmacy shall consider the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) The potential of the substance to produce psychic or physiological dependence liability; and

(7) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a) of this section, the Board of Pharmacy shall make findings with respect to the substance under consideration. If it finds that any substance not already controlled under any schedule has a potential for abuse, it shall recommend to the Legislature that the substance be added to the appropriate schedule. If it finds that any substance already controlled under any schedule should be rescheduled or deleted, it shall so recommend to the Legislature.

(c) If the Board of Pharmacy designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal laws and notice thereof is given to the Board of Pharmacy, the board shall recommend similar control of such substance to the Legislature, specifically stating that such recommendation is based on federal action and the reasons why the federal

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government deemed such action necessary and proper.

(e) The authority vested in the board by subsection (a) of this section shall not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the Federal Food, Drug and Cosmetic Act and the law of this state lawfully be sold over the counter without a prescription.

(f) Notwithstanding any provision of this chapter to the contrary, the sale, wholesale, distribution, or prescribing of a cannabidiol or nabiximols in a product approved by the Food and Drug Administration is permitted and shall be placed on the schedule or descheduled as provided for by the Drug Enforcement Administration.

(g) Notwithstanding §60A-2-204(d) of this code, if a drug that contains, an organic psilocybin substance or the pharmaceutical composition of crystalline polymorph psilocybin, is approved by the United States Food and Drug Administration and rescheduled by the United States Drug Enforcement Administration it shall be lawful to prescribe, distribute, and market based upon the recommendations of the United States Food and Drug Administration.

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§60A-2-202. Nomenclature.

The controlled substances listed in the schedules in this article are included by whatever official, common, usual, chemical or trade name designated.

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§60A-2-203. Schedule I criteria.

The state Board of Pharmacy shall recommend to the Legislature that a substance be included in Schedule I if it finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

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§60A-2-204. Schedule I.

(a) Schedule I 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 including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) Opiates.

Acetyl-alpha-methylfentanyl(N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-phenylacetamide);

Acetylmethadol;

Allylprodine;

Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

Alphameprodine;

Alphamethadol;

Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-((propanilido) piperidine);

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-phenylpropanamide);

Benzethidine;

Betacetylmethadol;

Beta-hydroxyfentanyl(N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

Betameprodine;

Betamethadol;

Betaprodine;

Brorphine (1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one);

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Dextromoramide;

Diampromide;

Diethylthiambutene;

Difenoxin;

Dimenoxadol;

Dimepheptanol;

Dimethylthiambutene;

Dioxaphetyl butyrate;

Dipipanone;

Ethylmethylthiambutene;

Etonitazene;

Etoxeridine;

Fentanyl analog or derivative, as that term is defined in article one of this chapter: *Provided*, That fentanyl and carfentanil remains a Schedule II substance, as set forth in §60A-2-206 of this code;

Furethidine;

Hydroxypethidine;

Ketobemidone;

Levomoramide;

Levophenacylmorphan;

3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-phenylpropanamide);

Morpheridine;

N-Methylnorfentanyl (N-(1-Methyl-4-piperidinyl)-N-phenyl-propanamide, monohydrochloride);

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MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

Noracymethadol;

Norlevorphanol;

Normethadone;

Norpipanone;

Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

Phenadoxone;

Phenampromide;

Phenomorphan;

Phenoperidine;

Piritramide;

Proheptazine;

Properidine;

Propiram;

Racemoramide;

Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

Tilidine;

Trimeperidine.

(c) Opium derivatives.

Acetorphine;

Acetyldihydrocodeine;

Benzylmorphine;

Codeine methylbromide;

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Codeine-N-Oxide;

Cyprenorphine;

Desomorphine;

Dihydromorphine;

Drotebanol;

Etorphine (except HCl Salt);

Heroin;

Hydromorphinol;

Methyldesorphine;

Methyldihydromorphine;

Morphine methylbromide;

Morphine methylsulfonate;

Morphine-N-Oxide;

Myrophine;

Nicocodeine;

Nicomorphine;

Normorphine;

Pholcodine;

Thebacon.

(d) Hallucinogenic substances.

Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine; 3-(2- aminobutyl) indole; alpha-ET; and AET;

1-(4-methoxyphenyl)-N-methylpropan-2-amine (other names: para-methoxymethamphetamine, PMMA);

4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-

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alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe;

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe);

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe);

2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

3-Hydoxy-phencyclidine (other name hydroxy PCP);

5-methoxy-3, 4-methylenedioxy-amphetamine;

4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

3,4-methylenedioxy amphetamine;

3,4-methylenedioxymethamphetamine (MDMA);

3,4-methylenedioxy-N-ethylamphetamine (also known as (ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

N-hydroxy-3,4-methylenedioxyamphetamine (also known as (hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and (hydroxy MDA);

3,4,5-trimethoxy amphetamine;

5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

Alpha-methyltryptamine (other name: AMT);

Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine;

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mappine;

Diethyltryptamine; sometrade and other names: N, N-Diethyltryptamine; DET;

Dimethyltryptamine; some trade or other names: DMT;

5-Methoxy-N,N-disopropyltryptamine (5-MeO-DIPT);

Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

Lysergic acid diethylamide;

Marihuana; Marijuana (Cannabis, sp.);

Mescaline;

Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

Peyote; meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture, or preparation of such plant, its seeds or extracts;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Psilocybin; except as provided for in §60A-2-201(g) of this code;

Psilocyn;

Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity including, but not limited to the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

delta-8 Cis or trans tetrahydrocannabinol and its optical isomers; and

delta-10 Cis or trans tetrahydrocannabinol and its optical isomers;

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(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

Delta-8-tetrahydrocannabinol-O (delta-8-THC-0), Delta-9-tetrahydrocannabinol (delta-9-THC-0) and Synthetic and non-naturally occurring cannabinoids.

The provisions of this section related to tetrahydrocannabinols are inapplicable to products or substances lawfully manufactured, distributed, or possessed under the provisions of §19-12E-1 *et seq*. and chapter 16H of this code.

Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

1[1-(2-thienyl)cyclohexyl]pyrroldine; some other names: TCPy;

4-methylmethcathinone (Mephedrone);

3,4-methylenedioxypyrovalerone (MDPV);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

3,4-Methylenedioxy-N-methylcathinone (Methylone);

2,5-dimethoxy-4-(n)-propyltghiophenethylamine (2C-T-7, itsoptical isomers, salts and salts of

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isomers;

5-methoxy-N,N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT);

Alpha-methyltryptamine (other name: AMT);

5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT);

Synthetic Cannabinoids as follows:

2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) { also known as CP 47,497 and homologues} ;

rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl)phenol { also known as CP 47,497-C8 homolog} ;

[(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol)] { also known as HU-210} ;

(dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzol[c]chromen-1-ol) { also known as HU-211} ;

1-Pentyl-3-(1-naphthoyl)indole { also known as JWH-018} ;

1-Butyl-3-(1-naphthoyl)indole { also known as JWH-073} ;

(2-methyl-1-propyl-1H-indol-3-yl)-1-napthalenyl-methanone { also known as JWH-015} ;

(1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone { also known as JWH-019} ;

[1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone { also known as JWH-200} ;

1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone { also known as JWH-250} ;

2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxtpropyl)cyclohexyl) -5-(2-methyloctan-2-yl)phenol {also known as CP 55,940} ;

(4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl)-methanone { also known as JWH-122};

(4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl)-methanone { also known as JWH-398;

(4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone { also known as RCS-4} ;

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1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone { also known as RCS-8} ;

1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201); and

1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

Synthetic cannabinoids:

CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-YL)phenol);

HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL)];

HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo[C]chromen-1-OL);

JWH-018, 1-pentyl-3-(1-naphthoyl)indole;

JWH-019, 1-hexyl-3-(1-naphthoyl)indole;

JWH-073, 1-butyl-3-(1-naphthoyl)indole;

JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)- Naphthalen-1-ylmethanone;

JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]

Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (5F-ADB);

Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (5F-AMB);

Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (FUB-AMB);

N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (5F-APINACA);

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (ADB-FUBINACA);

Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (MDMB-CHMICA);

Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (MDMB-FUBINACA);

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Tetrahydrocannabinols:

DELTA-1 CIS OR trans tetrahydrocannabinol and their optical isomers.

DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.

DELTA-3,4 CIS or their trans tetrahydrocannabinol and their optical isomers.

Synthetic Phenethylamines

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-NBOMe);

Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

furanyl fentanyl;

3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

N-[1-[2-hydroxy-2-(thiophen-2-yl)ethylpiperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl);

N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryl fentanyl);

N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (isobutyryl fentanyl);

N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (cyclopropyl fentanyl);

2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide (also known as U-48800);

Trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methyl-benzamide (also known as U-49900);

Trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzeneacetamide (also known

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as U-51754);

2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (butonitazene);

2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (etodesnitazene);

N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (flunitazene);

N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (metodesnitazene);

N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (metonitaze);

2-(4-ethoxybenzyl)5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1 H-benzimidazole (N-pyrrolidino etonitazene, etonitazepyne);

N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (protonitazene);

N-pyrrolidino etonitazene;

Etodesnitazene;

Isotonitazene;

Protonitazene;

Metonitazene;

Butonitazene;

Metodesnitazene;

Flunitazene;

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2-Methyl AP-237 (1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one)

AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl]benzamide).

Naphthoylindoles or any compound containing a 3-(-1-Napthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

JWH 015;

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JWH 018;

JWH 019;

JWH 073;

JWH 081;

JWH 122;

JWH 200;

JWH 210;

JWH 398;

AM 2201; and

WIN 55,212.

Naphylmethylindoles or any compound containing a 1hindol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

Naphthoylpyrroles or any compound containing a 3-(1- Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3- Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

Phenylacetylindoles or any compound containing a 3- Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

RCS-8, SR-18 OR BTM-8;

JWH 250;

JWH 203;

JWH 251; and

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JWH 302.

Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

CP 47,497 and its homologues and analogs;

Cannabicyclohexanol; and

CP 55,940.

Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogren atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

AM 694;

Pravadoline WIN 48,098;

RCS 4; and

AM 679.

[2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-napthalenymethanone. This shall include WIN 55,212-2.

Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051, and JWH 133.

Adamantoylindoles or any compound containing a 3-(-1-Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

Any other synthetic chemical compound that is a cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III,

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IV, and V, not federal Food and Drug Administration-approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

Tryptamines:

5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT);

4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT);

4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT);

4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET);

4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT);

5-methoxy-α-methyltryptamine (5-MeO-AMT);

4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT);

4-hydroxy Diethyltryptamine (4-HO-DET);

5-methoxy-N,N-diallyltryptamine (5-MeO-DALT);

4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT);

4-hydroxy Diethyltryptamine (4-HO-DET);

FDU-PB-22 (1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate);

FUB-PB-22 (Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate);

5-Fluoro-MN-24 (1-(5-Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide);

MN-24 (N-(naphthalen-1-yl)-1-pentyl-1H-indole-3-carboxamide);

SDB-005 (Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate);

SDB-006 (1-Pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide);

Methyl-Ethylaminopentiophenone;

FUB-AMB (Methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

5-Fluoro-SDB-005 Indole (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate);

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5F-AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide);

MMB-CHMICA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoat);

MN-24 (N-(naphthalen-1-yl)-1-pentyl-1H-indole-3-carboxamide);

SDB-005 (Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate);

SDB-006 (1-Pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide);

Ethcathinone (2-(ethylamino)-1-phenyl-1-propanone, monohydrochloride);

Methyl-Ethylaminopentiophenone;

FUB-AMB (Methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

5-Fluoro-SDB-005 Indole (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate);

5F-AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide);

MMB-CHMICA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoat);

Bromazolam (8-bromo-1-methyl-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Clonazolam (6-(2-chlorophenyl)-1-methyl-8-nitro-4 H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Cloniprazepam (5-(2-chlorophenyl)-1-(cyclopropylmethyl)-1,3-dihydro-7-nitro-2H-1,4-benzodiazepin-2-one);

Etizolam (4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f] [1,2,4]triazolo[4,3-a][1,4]diazepine);

Flualprazolam (8-chloro-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flubromazepam (7-bromo-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one);

Flubromazolam (8-bromo-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flunitrazolam (6-(2-fluorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine);

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Nifoxipam (5-(2-fluorophenyl)-1,3-dihydro-3-hydroxy-7-nitro-2H-1,4-benzodiazepin-2-one) ;

Nitrazolam (1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine); and

Pyrazolam (8-bromo-1-methyl-6-(2-pyridinyl)-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine).

(e) Depressants.

4-CN-CUMYL-BUTINACA (1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide);

Alpha-Phenylacetoacetonitrile (3-Oxo-2-phenylbutanenitrile);

2-Fluoro Deschloroketamine (2-(2-Fluorophenyl)-2-(methylamino)-cyclohexanone, monohydrochloride);

4-MEAP (2-(Ethylamino)-1-(4-methylphenyl)pentan-1-one);

Mecloqualone;

Methaqualone;

Bromazolam (8-bromo-1-methyl-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Clonazolam (6-(2-chlorophenyl)-1-methyl-8-nitro-4 H-[1,2,4]triazolo[4,3 a][1,4]benzodiazepine);

Cloniprazepam (5-(2-chlorophenyl)-1-(cyclopropylmethyl)-1,3-dihydro-7-nitro-2H-1,4-benzodiazepin-2-one);

Etizolam (4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f] [1,2,4]triazolo[4,3-a][1,4]diazepine);

Flualprazolam (8-chloro-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flubromazepam (7-bromo-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one);

Flubromazolam (8-bromo-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flunitrazolam (6-(2-fluorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine);

gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

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Nifoxipam (5-(2-fluorophenyl)-1,3-dihydro-3-hydroxy-7-nitro-2H-1,4-benzodiazepin-2-one);

Nitrazolam (1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Pyrazolam (8-bromo-1-methyl-6-(2-pyridinyl)-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Diclazepam (7-Chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-1,4-benzodiazepin-2-one); and

Deschloroetizolam (2-Ethyl-9-methyl-4-phenyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine);

(f) Stimulants.

Aminorex; some other names: aminoxaphen; 2-amino-5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

4,4'-Dimethylaminorex (4,4′-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine);

Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

Ethylphenidate (ethyl 2-phenyl-2-(piperidin-2-yl)acetate);

Fenethylline;

Mesocarb (N-phenyl-N ′-(3-(1-phenylpropan-2-yl)-1,2,3-oxadiazol-3-ium-5-yl)carbamimidate);

Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-

(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypyrovalerone and/or mephedrone;3,4-methylenedioxypyrovalerone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

(-) cis-4-methylaminorex; ((-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

N-ethylamphetamine;

N,N-dimethylamphetemine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine;

Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers;

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Substituted amphetamines:

2-Fluoroamphetamine;

3-Fluoroamphetamine;

4-Fluoroamphetamine;

2-chloroamphetamine;

3-chloroamphetamine;

4-chloroamphetamine;

2-Fluoromethamphetamine;

3-Fluoromethamphetamine;

4-Fluoromethamphetamine;

4-chloromethamphetamine;

Ethcathinone (2-(ethylamino)-1-phenyl-1-propanone, monohydrochloride);

Alpha-PHP (1-Phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

MPHP (1-(4-Methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

PV8 (1-Phenyl-2-(pyrrolidin-1-yl)heptan-1-one);

4-Chloro-Alpha-PVP (1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one);

N-Ethylhexedrone (2-(Ethylamino)-1-phenylhexan-1-one);

Methoxetamine (2-(Ethylamino)-2-(3-methoxyphenyl)-cyclohexanone); and

3-Fluorophenmetrazine (2-(3-Fluorophenyl)-3-methylmorpholine);

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers;

N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers.

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N-benzylpiperazine, also known as BZP;

Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide);

4-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]-butyramide);

Isobutyryl fentanyl (2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-propanamide);

Methoxyacetyl fentanyl (2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-acetamide);

3-methylbutyryl fentanyl (N-[3-methyl-1-(2-phenylethyl)piperidin-4-yl]-N-phenylbutyramide);

4-methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide);

Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)piperidin-4-yl]-acetamide);

Tetrahydrofuran fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide); and

Valeryl fentanyl (N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide).

(h) The following controlled substances are included in Schedule I:

Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2-Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

By substitution in the ring system to any extent with Alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents whether or not further substituted in the ring system by one or more other univalent substituents;

By substitution at the 3-position with an acyclic alkyl substituent;

By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups;

By inclusion of the 2-amino nitrogen atom in a cyclic structure; or

Any other synthetic chemical compound that is a cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV, and V, not federal Food and Drug Administration-approved drug or used within legitimate, approved medical research.

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§60A-2-205. Schedule II criteria.

The state Board of Pharmacy shall recommend to the Legislature that a substance be placed in Schedule II if it finds that:

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions;

(3) Abuse of the substance may lead to severe psychic or physical dependence.

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§60A-2-206. Schedule II.

(a) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) Substances, vegetable origin or chemical synthesis. — Unless specifically excepted or unless listed in another schedule, any of the following substances 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:

Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

Raw opium;

Opium extracts;

Opium fluid;

Powdered opium;

Granulated opium;

Tincture of opium;

Codeine;

Dihydroetorphine;

Ethylmorphine;

Etorphine hydrochloride;

Hydrocodone;

Hydromorphone;

Metopon;

Morphine;

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Oripavine;

Oxycodone;

Oxymorphone; and

Thebaine;

Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

Opium poppy and poppy straw;

Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates.

Alfentanil;

Alphaprodine;

Anileridine;

Bezitramide;

Bulk dextropropoxyphene (nondosage forms);

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl;

Isomethadone;

Levo-alphacetylmethadol; some other names: levo-alpha-acetylmethadol, levomethadyl

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acetate, LAAM;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

Moramide-Intermediate, 2-methyl-3-morpholino-1;

Norfentanyl;

Oliceridine;

1-diphenylpropane-carboxylic acid;

Pethidine; (meperidine);

Pethidine-Intermediate-A, 4-cyano-1-methyl-4- phenylpiperidine;

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Remifentanil;

Sufentanil;

Tapentadol; and

Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

(d) Stimulants.

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Amphetamine, its salts, optical isomers, and salts of its optical isomers;

Methamphetamine, its salts, isomers, and salts of its isomers;

Methylphenidate;

Phenmetrazine and its salts; and

Lisdexamfetamine.

(e) Depressants.

Amobarbital;

Glutethimide;

Pentobarbital;

Phencyclidine; and

Secobarbital.

(f) Hallucinogenic substances:

Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] if in an FDA approved oral solution; and

Nabilone: [Another name for nabilone: (-)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

Immediate precursor to amphetamine and methamphetamine:

Phenylacetone;

Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

Immediate precursors to phencyclidine (PCP):

1-phenylcyclohexylamine; and

1-piperidinocyclohexanecarbonitrile (PCC).

Immediate precursor to fentanyl:

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4-anilino-N-phenethyl-4-piperidine (ANPP).

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§60A-2-207. Schedule III criteria.

The state Board of Pharmacy shall recommend to the Legislature that a substance be placed in Schedule III if it finds that:

(1) The substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

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§60A-2-208. Schedule III.

(a) Schedule III consists 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) Stimulants. — Unless specifically excepted 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 (whether optical, position or geometric) and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under 21 C.F.R. §1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

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(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) Aprobarbital;

(5) Butabarbital (secbutabarbital);

(6) Butalbital (including, but not limited to, Fioricet);

(7) Butobarbital (butethal);

(8) Chlorhexadol;

(9) Embutramide;

(10) Gamma Hydroxybutryic Acid preparations;

(11) Ketamine, its salts, isomers and salts of isomers [Some other names for ketamine: (-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone];

(12) Lysergic acid;

(13) Lysergic acid amide;

(14) Methyprylon;

(15) Perampanel, and its salts, isomers, and salts of isomers;

(16) Sulfondiethylmethane;

(17) Sulfonethylmethane;

(18) Sulfonmethane;

(19) Thiamylal;

(20) Thiopental;

(21)Tiletamine and zolazepam or any salt of tiletamine and zolazepam; some trade or other names for a tiletamine-zolazepam combination product: Telazol; some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; some trade or other names for zolazepam: 4-(2-flurophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon; and

(22) Vinbarbital.

(d) Nalorphine.

WV Legislature

(e) Narcotic drugs. — Unless specifically excepted or unless listed in another schedule:

(1) Any material, 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:

(A) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(D) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) Any material, compound, mixture or preparation containing buprenorphine or its salts (including, but not limited to, Suboxone).

(f) Anabolic steroids. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of anabolic steroids, including its salts, isomers and salts of isomers whenever the existence of the salts of isomers is possible within the specific chemical designation.

(g) Human growth hormones.

(h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(i) Human chorionic gonadotropin, except when used for injection or implantation in cattle or any other nonhuman species and when that use is approved by the Food and Drug Administration.

WV Legislature

§60A-2-209. Schedule IV criteria.

The state Board of Pharmacy shall recommend to the Legislature that a substance be placed in Schedule IV if it finds that:

(1) The substance has a low potential for abuse relative to substances in Schedule III;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

WV Legislature

§60A-2-210. Schedule IV.

(a) Schedule IV 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. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(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, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

Dextropropoxyphene (alpha-( )-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants.

Alfaxalone;

Alprazolam;

Barbital;

Bromazepam;

Camazepam;

Carisoprodol;

Chloral betaine;

Chloral hydrate;

Chlordiazepoxide;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

WV Legislature

Cloxazolam;

Daridorexant;

Delorazepam;

Diazepam;

Dichloralphenazone;

Estazolam;

Ethchlorvynol;

Ethinamate;

Ethyl loflazepate;

Fludiazepam;

Flunitrazepam;

Flurazepam;

Fospropofol;

Halazepam;

Haloxazolam;

Ketazolam;

Lemborexant.

Loprazolam;

Lorazepam;

Lormetazepam;

Mebutamate;

Medazepam;

Meprobamate;

Methohexital;

WV Legislature

Methylphenobarbital (mephobarbital);

Midazolam;

Nimetazepam;

Nitrazepam;

Nordiazepam;

Oxazepam;

Oxazolam;

Paraldehyde;

Petrichloral;

Phenobarbital;

Pinazepam;

Prazepam;

Quazepam;

Remimazolam.

Temazepam;

Tetrazepam;

Triazolam;

Xylazine;

Zaleplon;

Zolpidem;

Zopiclone; and

Suvorexant ([(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-triazol-2-yl)phenyl]methanone).

Zuranolone;

(d) Any material, compound, mixture, or preparation which contains any quantity of

WV Legislature

Fenfluramine and Dexfenfluramine.

(e) Stimulants.

Cathine (( )-norpseudoephedrine);

Diethylpropion;

Fencamfamin;

Fenproporex;

Mazindol;

Mefenorex;

Modafinil;

Pemoline (including organometallic complexes and chelates thereof);

Phentermine;

Pipradrol;

Serdexmethylphenidate;

Sibutramine;

SPA ((-)-1-dimethylamino-1,2-diphenylethane); and

Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl [(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid);

(f) Other substances.

Lorcaserin;

Pentazocine;

Butorphanol;

Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol); and

Amyl nitrite, butyl nitrite, isobutyl nitrite, and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought, or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

WV Legislature

§60A-2-211. Schedule V criteria.

The state Board of Pharmacy shall recommend to the Legislature that a substance be placed in Schedule V if it finds that:

(1) The substance has a low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

WV Legislature

§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. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation.

(b) 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.

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

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

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

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

Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

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

(c) Stimulants:

Pyrovalerone.

(d) 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 12: *Provided*, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

(e) Depressants:

Ezogabine [N-[2-amino-4-94-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

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Ganaxolone (3α-hydroxy-3β-methyl-5α-pregnan-20-one);

Lacosamide [(R)-2-acetoamido- N -benzyl-3-methoxy-propionamide]; and

Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact).

(f) Other substances:

Gabapentin;

Pregabalin;

Cenobamate; and

Lasmiditan.

WV Legislature

§60A-2-213. Review and printing of schedules by board; public information.

The state Board of Pharmacy shall annually review and cause to be printed the schedules contained in this article, which printed schedules shall be made available to the public.

WV Legislature

§60A-3-301. Rules; fees.

The state Board of Pharmacy shall promulgate rules and charge fees relating to the registration and control of the manufacture and distribution of controlled substances within this state, and each department, board, or agency of this state which licenses or registers practitioners authorized to dispense any controlled substance shall promulgate rules and charge fees relating to the registration and control of the dispensing of controlled substances within this state by those practitioners licensed or registered by such department, board, or agency.

The state Board of Pharmacy or the department, board or agency shall collect the following annual registration fees from persons who manufacture, distribute, dispense or conduct research with controlled substances: For registration of a manufacturer, $50; for registration of a wholesaler, $50; for registration of a retailer, $15; for registration of a hospital or clinic, $15; and for registration of a research institution, $5.

WV Legislature

§60A-3-302. Registration required; effect of registration; exemptions; waiver; inspections.

(a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state Board of Pharmacy or the appropriate department, board, or agency, as the case may be, as specified in section three hundred one, in accordance with its rules.

(b) Persons registered by said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, under this act to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) (1) The following persons need not register and may lawfully possess, deliver, or transport into this state controlled substances under this act:

(A) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession, delivery, or transportation into this state of any controlled substance is in the usual course of a lawful business or employment;

(2) The following persons need not register and may lawfully possess or transport into this state controlled substances under this act: An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, may inspect the establishment of a registrant or applicant for registration in accordance with the rule of said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be.

WV Legislature

§60A-3-303. What applicants to be registered; determination of public interest; rights of registrants.

(a) The state Board of Pharmacy shall register an applicant to manufacture or distribute controlled substances included in Schedules I, II, III, IV and V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state Board of Pharmacy shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this act;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The appropriate department, board, or agency, as specified in section 301, need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the appropriate department, board, or agency evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

WV Legislature

§60A-3-304. Suspension or revocation of registration generally.

(a) A registration under section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this act;

(2) Has been convicted of a felony under any state or federal law relating to any controlled substance; or

(3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, may limit suspension or revocation of a registration to the particular controlled substance with respect to which grounds for suspension or revocation exist.

(c) If the said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

WV Legislature

§60A-3-305. Order to show cause before denying, suspending, etc., registration; proceedings thereon; when order not required.

(a) Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, shall serve upon the applicant or registrant an order to show cause why registration should not be denied, suspended, or revoked, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with article five, chapter twenty-nine-a of this code without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, or dissolved by a court of competent jurisdiction.

WV Legislature

§60A-3-306. Records of registrants.

Persons registered to manufacture, distribute, or dispense controlled substances under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the said state Board of Pharmacy or said appropriate department, board, or agency, as the case may be, issues.

WV Legislature

§60A-3-307. Order forms.

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

WV Legislature

§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 lawful 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 lawful 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 health care 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.

WV Legislature

§60A-4-401. Prohibited acts; 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 or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned: *Provided*, That any person who violates this section when the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than $50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

(ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and imprisoned;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined: *Provided,* That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq*. of this code, 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, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned;

(ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and imprisoned;

WV Legislature

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined: *Provided,* That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, 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 or her 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 §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than $1,000, or both fined and confined: *Provided,* That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

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

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

(2) To create, possess, sell, or otherwise transfer any equipment with the intent that the 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 thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined. Any person 18 years old or more who violates subdivision (1) of this subsection and distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who

wv Legislature

administers or dispenses a placebo.

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

(1) To adulterate another controlled substance using fentanyl as an adulterant;

(2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

(3) To cause the adulteration or counterfeiting or imitation of another controlled substance using fentanyl.

(4) Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years, or fined not more than $50,000, or both fined and imprisoned.

(5) For purposes of this section:

(i) A controlled substance has been adulterated if fentanyl has been mixed or packed with it; and

(ii) Counterfeit substances and imitation controlled substances are further defined in §60A-1-101 of this code.

WV Legislature

§60A-4-402. Prohibited acts B; penalties.

(a) It is unlawful for any person:

(1) Who is subject to article 3 to distribute or dispense a controlled substance in violation of section 308;

(2) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this act;

(4) To refuse any entry into any premises for any inspection authorized by this act; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this act for the purpose of using these substances, or which is used for keeping or selling them in violation of this act.

(b) Any person who violates this section is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than $25,000, or both.

(c) Notwithstanding any other provision of this act to the contrary, any first offense for distributing less than 15 grams of marihuana without any remuneration shall be disposed of under section 407.

WV Legislature

§60A-4-403. Prohibited acts C; penalties.

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

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by section 307 of this act;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, suspended, revoked, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, theft, deception, or subterfuge;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act; or

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a felony and, upon conviction, may be imprisoned in a correctional facility for not less than one year nor more than four years, or fined not more than $30,000, or both.

WV Legislature

§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.

[Repealed.]

WV Legislature

§60A-4-404. Penalties under other laws.

Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

WV Legislature

§60A-4-405. Bar to prosecution.

If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

WV Legislature

§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21; distribution by persons 18 or over in, on, or within 1,000 feet of, school or college; distribution by persons 18 or over in, on, or within 200 feet of a public library; increasing mandatory period of incarceration prior to parole eligibility.

(a) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of three years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution;

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(b) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of two years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(ii) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution;

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(c) The existence of any fact which would make any person subject to the provisions of this section may not be considered unless the fact is clearly stated and included in the indictment

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or presentment by which the person is charged and is either:

(1) Found by the court upon a plea of guilty or nolo contendere;

(2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a special interrogatory for such purpose; or

(3) Found by the court, if the matter be tried by the court without a jury.

(d) Nothing in this section limits the sentencing alternatives made available to circuit court judges under other provisions of this code.

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§60A-4-407. Conditional discharge for first offense of possession.

(a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 408. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

(b) After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this chapter, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this section has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(c) Notwithstanding any provision of this code to the contrary, any person prosecuted pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of section 401(c) of this article. Payment of such costs may be made a condition of probation.

The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four, article twenty-nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two of this code.

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§60A-4-407a. Authorizing additional requirements to obtain a final order of discharge and dismissal for persons charged with possession of controlled substances.

(a) Notwithstanding any provision of this code to the contrary, when a person pleads guilty or is found guilty of a violation of §60A-4-401(c) of this code, or a municipal ordinance containing the same elements where the controlled substance possessed is listed in §60A-2-204 of this code, other than marijuana, or is a controlled substance listed in §60A-2-206, §60A-2-208, or §60A-2-210 of this code, the court may, as an additional condition for the entry of a final order of discharge or dismissal under §60A-4-407 of this code or a municipal ordinance containing the same or substantially the same provision, require the defendant to be:

(1) Evaluated for admission into a drug court program; or

(2) Participate in a drug treatment program.

(b) If a defendant is determined to be an appropriate candidate for admission to drug court or a drug treatment program, the court may make successful completion of a drug court or a drug treatment program a requirement for obtaining a final order of discharge and dismissal.

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§60A-4-408. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both. When a term of imprisonment is doubled under section 406, such term of imprisonment shall not be further increased for such offense under this subsection (a), even though such term of imprisonment is for a second or subsequent offense.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under section 401(c).

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

(a) Except as otherwise authorized by the provisions of this code, it is unlawful for any person to transport or cause to be transported 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, is guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than five years nor more than 20 years, or fined not more than $50,000, or both fined and imprisoned.

(2) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than 10 years, or fined not more than $15,000, or both: *Provided*, That for the substance marijuana, as scheduled in §60A-2-204(d)(24) of this code, the penalty, upon conviction of a violation of this subsection, is the penalty set forth in subdivision (3) of this subsection.

(3) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than $10,000, or both fined and imprisoned;

(4) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and imprisoned: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq*. of this code, the penalties established in that article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving one kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or five or more grams of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 15 years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or

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cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than seven years nor more than 20 years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than 10 grams nor more than 100 grams of heroin, not less than 10 grams nor more than 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than one gram nor more than five grams of methamphetamine, or less than one gram of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five years nor more than 20 years.

(f) The offenses established by this section are in addition to and a separate and distinct offense from any other offense set forth in this code.

(g) For purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(h) Under this section, where the transportation into the state involves two or more controlled substances, the transportation into the state of each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

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§60A-4-410. Prohibited acts -- Withholding information from practitioner; additional controlled substances; penalties.

(a) It is unlawful for a patient, in an attempt to obtain a prescription for a controlled substance, to knowingly withhold from a practitioner, that the patient has obtained a prescription for a controlled substance of the same or similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not more than nine months, or fined not more than $2,500, or both fined and confined.

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

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§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

(a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two years nor more than ten years or fined not less than $5,000 nor more than $25,000, or both.

(b) Any person who operates or attempts to operate a clandestine drug laboratory and who as a result of, or in the course of doing so, causes to be burned any dwelling, outbuilding, building or structure of any class or character is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(c) For purposes of this section, a “clandestine drug laboratory” means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof for the purpose of manufacturing methamphetamine, methylenedioxymethamphetamine or lysergic acid diethylamide in violation of the provisions of section four hundred one of this article.

(d) The offenses in subsections (a) and (b) of this section are separate and distinct offenses and subsection (a) of this section shall not be construed to be a lesser included offense of subsection (b) of this section.

(e) For purposes of section one, article two of this chapter, both subsection (a) and (b) of this section shall be deemed qualifying felony offenses of manufacturing and delivery of a controlled substance.

(f) Any person convicted of a violation of subsection (a) or (b) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory.

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§60A-4-412. Defeating drug and alcohol screening tests; penalties.

(a) Any person who:

(1) Knowingly sells, gives away, distributes or markets any substance or product in this state or transports such a substance or product into this state with the intent that the substance or product will be used to defeat a drug or alcohol screening test;

(2) Attempts to defeat a drug or alcohol screening test by the substitution of a false sample;

(3) Knowingly advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;

(4) Adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test;

(5) Knowingly possesses adulterants for the purpose of defeating a drug or alcohol screening test; or

(6) Knowingly sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test.

(b) A person who violates a provision of subsection (a) of this section:

(1) For a first offense is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000;

(2) For a second offense is guilty of a misdemeanor and, upon conviction, be fined not more than $5,000; and

(3) For a third or subsequent offense is guilty of a misdemeanor and, upon conviction, be fined not more than $10,000 or confined in the regional jail for not more than one year, or both.

(c) As used in this section, "adulterate" means a substance that is not expected to be in human fluids but that is a concentration so high that it is not consistent with human bodily fluids, including, but not limited to:

(1) Bleach;

(2) Chromium;

(3) Creatinine;

(4) Detergent;

(5) Glutaraldehyde;

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(6) Glutaraldehyde/squalene;

(7) Hydrochloric acid;

(8) Hydroiodic acid;

(9) Iodine;

(10) Nitrite;

(11) Peroxidase;

(12) Potassium dichromate;

(13) Potassium nitrate;

(14) Pyridinium chlorochromate; and

(15) Sodium nitrite.

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§60A-4-413. Unlawful production, manufacture or possession of Salvia divinorum.

(a) For purposes of this section, "Salvia divinorum" means an herb belonging to the Lamiaceae family, genus of Salvia, species of divinorum, with common names including, but not limited to, "Salvia," "Ska Pastora," "Shepherdess's Herb," "Maria Pastora," "yerba de Maria," "Purple Sticky" and "Sally-D."

(b) It is unlawful for any person to knowingly or intentionally manufacture or possess an extract, compound, concentrate, or other processed substance intended for human consumption which contains Salvia divinorum, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a licensed physician or dispensed by a pharmacist for a recommended or medically necessary therapeutic use. 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 more than six months, or fined not more than $1,000, or both. Notwithstanding any other provision of this code to the contrary, any first offense for possession of Salvia divinorum shall be disposed of under section four hundred seven of this article.

(c) The provisions of this section shall not apply to licensed physicians, pharmacists, and accredited hospitals and teaching facilities engaged in the research or study of Salvia divinorum, and shall not include any person participating in clinical trials involving the use of Salvia divinorum.

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§60A-4-414. Conspiracy.

(a) Any person who willfully conspires with one or more persons to commit a felony violation of §60A-4-401 of this code, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 10 years: *Provided,* That the provisions of this subsection are inapplicable to felony violations of §60A-4-401 of this code prohibiting the manufacture, delivery or possession with intent to manufacture or deliver marijuana.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver or possess with intent to manufacture or deliver one kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine, or five grams or more of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(c) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, or possess with intent to manufacture or deliver not less than 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than three years nor more than 20 years.

(d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, possess with intent to manufacture or deliver not less than 10 grams nor more than 100 grams of heroin, not less than 10 grams nor more than 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less one gram nor more than five grams of methamphetamine, or less than one gram of fentanyl, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than two years nor more than 15 years.

(e) The trier of fact shall determine the quantity of the controlled substance attributable to

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the defendant beyond a reasonable doubt based on evidence adduced at trial.

(f) The determination of the trier of fact as to the quantity of controlled substance attributable to the defendant in a charge under this section may include all of the controlled substances manufactured, delivered, or possessed with intent to deliver or manufacture by other participants or members of the conspiracy.

(g) For purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(h) Under this section, where the conspiracy involves two or more controlled substances, each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

(i) Offenses in this section proscribing conduct involving lesser quantities are lesser included offenses of offenses proscribing conduct involving larger quantities.

(j) A person may be charged under the provisions of §61-10-31 of this code for conduct that is charged under this section.

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§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.

[Repealed.]

WV Legislature

§60A-4-416. Drug delivery resulting in death; failure to render aid.

(a)(1) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance, without receiving or accepting money or any other thing of value, in violation of the provisions of §60A-4-401 of this code for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 15 years.

(2) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance in exchange for money or any other thing of value in violation of the provisions of §60A-4-401 of this code for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than ten nor more than 40 years. A person imprisoned pursuant to the provisions of this subdivision is not eligible for parole prior to having served a minimum of 10 years of his or her sentence.

(b) Any person who, while engaged in the illegal use of a controlled substance with another, knowingly fails to seek medical assistance for the other person when the other person suffers an overdose of the controlled substance or suffers a significant adverse physical reaction to the controlled substance and the overdose or adverse physical reaction proximately causes the death of the other person, is guilty of a felony and, upon conviction thereof, shall be imprisoned for a determinate sentence of not less than two years nor more than 10 years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of two years of his or her sentence.

(c) The sentence provided in subdivision (2), subsection (a) of this section is mandatory. A person convicted of an offense set forth in subdivision (2), subsection (a) of this section is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(d) As used in this section:

(1) The phrase “engaged in illegal use of a controlled substance with another person” means being in the physical presence of a person engaged in illegal drug use and participating with him or her in illegal drug use, or while in the presence of a person engaged in illegal drug use knowingly facilitating illegal drug use by the other person so engaged.

(2) “Seek medical assistance” means contacting the 9-1-1 emergency system, a poison control facility, any type of first responder, a medical facility or medical professional capable

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of treating an overdose, and in the case of an opioid overdose, to administer or cause the administration of a commercially produced medically recognized opioid antagonist.

(e) The revisions to subsections (a), (b), (c), and (d) of this section enacted during the 2025 regular legislative session shall be known as Lauren's Law.

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§60A-4-417. Sale of dextromethorphan.

(a) As used in this section, "finished drug product" means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) that is in finished dosage form.

(b) A person may not knowingly or willfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person under 18 years of age.

(c) A person under 18 years of age, unless an emancipated minor, may not purchase a finished drug product containing any quantity of dextromethorphan.

(d) A person making a retail sale of a finished drug product containing any quantity of dextromethorphan shall require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser’s outward appearance the person making the sale would reasonably presume the purchaser to be at least 25 years of age.

(e) This section does not apply to a medication containing dextromethorphan that is sold pursuant to a valid prescription.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and shall be fined not less than $100 nor more than $250.

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§60A-4-418. Use of a minor to commit a felony drug offense; penalties.

Any person over the age of 21 who knowingly and intentionally causes, aids, abets, or encourages a person under the age of 18 to distribute, dispense, manufacture, or possess with the intent to distribute a controlled substance in violation or the provisions of this chapter is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for not more than five years, or both fined and imprisoned.

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§60A-4-419. Drug kingpin.

(a) For purposes of this section, "drug kingpin" means an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State of West Virginia a controlled dangerous substance.

(b)(1) Notwithstanding the provisions of §60A-4-414 of this code, a drug kingpin who conspires to manufacture, distribute, dispense, transport in, or bring into the State of West Virginia a controlled dangerous substance in an amount listed in §60A-4-414(b) of this code is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 10 nor more than 40 years and fined not more than $100,000.

(2) The sentence provided in this section is mandatory. A person convicted of an offense set forth in this section is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

(c) It is not a defense to a prosecution under this section that the controlled substance was brought into or transported in the State of West Virginia solely for ultimate distribution or dispensing in another jurisdiction.

(d) The offenses set forth in this section are in addition to and separate and distinct from any other offenses set forth in this code.

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§60A-5-501. Powers of enforcement personnel.

(a) Any member of the State Police, any sheriff, any deputy sheriff, any municipal police officer and any campus police officer may in the enforcement of the provisions of this act:

(1) Carry firearms;

(2) Execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;

(3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony;

(4) Make seizures of property pursuant to this act; or

(5) Perform such other law-enforcement duties as said state Board of Pharmacy or said appropriate department, board or agency, as specified in section 301, designates.

(b) All officers, agents, inspectors, and representatives of the said state Board of Pharmacy and of the said appropriate department, board, or agency, as specified in section 301, and members of the State Police may execute and serve administrative warrants issued incident to the enforcement of the provisions of this act. Any such officer, agent, inspector, and representative of the said state Board of Pharmacy and of the said appropriate department, board, or agency, as specified in said section 301, may:

(1) Execute and serve subpoenas and summonses issued under the authority of this state;

(2) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony; or

(3) Make seizures of property pursuant to this act.

(c) All prosecuting attorneys and the Attorney General, or any of their assistants, shall assist in the enforcement of all provisions of this act and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

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§60A-5-502. Administrative inspections and warrants.

(a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of any court of record in this state having criminal jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(ii) Be directed to a person authorized by section 501 to execute it;

(iii) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(iv) Identify the item or types of property to be seized, if any;

(v) Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all

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papers returnable in connection therewith and file them with the clerk of the court.

(b) Administrative inspections of controlled premises shall be made in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(i) Places where persons registered or exempted from registration requirements under this act are required to keep records; and

(ii) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a), any person authorized in subsection (b), section 501 of this article to execute and serve the same, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, any such person may:

(i) Inspect and copy records required by this act to be kept;

(ii) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and

(iii) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with any pertinent provision of this code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(i) If the owner, operator, or agent in charge of the controlled premises consents;

(ii) In situations presenting imminent danger to health or safety;

(iii) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

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(v) In all other situations in which a warrant is not Constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

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§60A-5-503. Injunctions.

(a) The courts of record of this state have and may exercise jurisdiction to restrain or enjoin violations of this act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

WV Legislature

§60A-5-504. Cooperative arrangements; confidentiality; treatment of minor without knowledge or consent of parent or guardian.

(a) The state Board of Pharmacy and the appropriate departments, boards, and agencies, as specified in section 301, shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes. They shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the state Board of Pharmacy in the exercise of its regulatory functions under this chapter.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the state Board of Pharmacy or to the appropriate department, board, or agency by which he is licensed or registered, as specified in section 301, nor may he be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(d) No mental health organization or hospital shall be compelled in any state or local civil, criminal, administrative, legislative or other proceeding to furnish the name or identity of any person voluntarily requesting treatment for or rehabilitation from addiction to or dependency upon the use of a controlled substance as defined in article one of this chapter.

(e) Notwithstanding any other provision of law, any licensed physician or competent medically trained person under his direction may examine, diagnose, and treat any minor at his or her request for any addiction to or dependency upon the use of a controlled substance as defined in article one of this chapter without the knowledge or consent of the minor's parent or guardian. Such physician and such other persons shall not incur any civil or

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criminal liability in connection therewith except for negligence or willful injury.

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§60A-5-505.

Repealed

Acts, 1988 Reg. Sess., Ch. 23.

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§60A-5-506. Burden of proof; liability of officers.

(a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this act, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this act upon any authorized state, county, or municipal officer, engaged in the lawful performance of his duties.

WV Legislature

§60A-5-507. Judicial review.

All final determinations, findings, and conclusions of the said state Board of Pharmacy or the appropriate department, board, or agency, as specified in section 301, made under this act after hearing are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to the provisions of articles five and six, chapter twenty-nine-a of this code.

WV Legislature

§60A-5-508. Education and research.

(a) The said state Board of Pharmacy and the appropriate departments, boards, and agencies, as specified in section 301, and the division on alcoholism and drug abuse in the department of mental health (all hereinafter in this section referred to as "such agencies"), shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they may:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) Assist in the education and training of state and local law-enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) Such agencies shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, such agencies may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Makes studies and undertake programs of research to:

(i) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this act;

(ii) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and,

(3) Enter into contracts with public agencies, institutions of higher education, and private

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organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) Such agencies may enter into contracts for educational and research activities without performance bonds.

(d) Such agencies may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) Such agencies may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

WV Legislature

§60A-5-509. Unlawful retaliation against health care providers.

(a) A health care provider has the right to exercise his or her professional judgment to decline to administer, dispense, or prescribe narcotics without being subject to actual or threatened acts of reprisal.

(b) It shall be unlawful for any person or entity to engage in any form of threats or reprisal, or to engage in, or hire, or conspire with, others to commit acts or activities of any nature, the purpose of which is to punish, embarrass, deny, or reduce privileges or compensation, or cause economic loss or to aid, abet, incite, compel, or coerce any person to engage in such threats or reprisal, against a health care provider as a result of, or in retaliation for, the refusal of that health care provider to administer, dispense, or prescribe narcotics.

(c) Any person or entity who violates the foregoing shall be subject to a private right of action by the affected health care provider and shall be liable in the amount of three times the economic loss sustained as a direct and proximate result of the reprisal.

(d) A health care provider that prevails in an action brought pursuant to this section shall be entitled to an award of costs and attorney fees.

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§60A-6-601. Pending proceedings.

(a) The provisions of this act shall govern and control as to any offenses committed in violation thereof on and after the effective date of this act, and the provisions of articles eight, eight-a and eight-b, chapter sixteen of this code shall govern and control as to any offenses committed in violation of said articles, or any of them, prior to the effective date of this act, with like effect as to such prior offenses as if said articles had not been repealed and this act had not been enacted: Provided, That if the offense being prosecuted is similar to one set out in article four of this act, then the penalties under article four apply if they are less than those under prior law.

(b) Civil seizures of forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(c) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state Board of Pharmacy or the appropriate departments, boards, and agencies, as specified in section 301, shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this act and who are registered or licensed by the state.

(e) This act applies to violations of law, seizures, and forfeiture, injunctive proceedings, administrative proceedings, and investigations which occur following its effective date.

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§60A-6-602. Continuation of orders and rules.

Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

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§60A-6-603. Uniformity of interpretation.

This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

WV Legislature

§60A-6-604. Short title.

This act may be cited as the Uniform Controlled Substances Act.

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§60A-6-605. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act, and to this end the provisions of this act are hereby declared to be severable.

WV Legislature

§60A-7-701. Short title.

This article shall be known and cited as the "West Virginia Contraband Forfeiture Act."

WV Legislature

§60A-7-702. Legislative findings.

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in article twelve, section five of the West Virginia Constitution and to the extent that such seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article twelve, section five of the West Virginia Constitution.

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§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or possessed in violation of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter;

(3) All tax-not-paid tobacco products, as that term is defined in section two, article seventeen, chapter eleven of this code, declared to be contraband under said article;

(4) All property which is used, or has been used, or is intended for use, as a container for property described in subdivision (1), (2) or (3) of this subsection;

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this chapter; and

(iii) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this chapter;

(6) All books, records, research products and materials, including formulas, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of this chapter;

(7) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of this chapter by any person in exchange for a controlled substance, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which have been used, or which are intended to be used to facilitate any violation of this chapter: Provided, That no property may be forfeited under

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this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and

(8) All real property, including any right, title and interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter punishable by more than one year imprisonment: Provided, That no property may be forfeited under this subdivision, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent.

The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances to the real property.

(b) Property subject to forfeiture under this article may be seized by any person granted enforcement powers in section five hundred one, article five of this chapter (hereinafter referred to as the "appropriate person" in this article).

(c) Controlled substances listed in article two of this chapter which are manufactured, possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the controlled substances.

(d) Species of plant from which controlled substances may be derived which have been planted or cultivated in violation of the provisions of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the state upon the seizure of the plants.

(e) The failure, upon demand by the appropriate person, or his or her authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plants.

(f) Notwithstanding any provision of this article to the contrary, controlled substances listed in article two of this chapter and species of plants from which controlled substances may be derived shall either be destroyed or used only for investigative or prosecutorial purposes.

(g) Notwithstanding any other provisions of this article to the contrary, any items of real property or any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years

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next preceding the sale been used in violation of this chapter or that the property is a controlled substance.

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§60A-7-704. Procedures for seizure of forfeitable property.

(a) Seizure of property made subject to forfeiture by the provisions of this article may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this article;

(3) The appropriate person has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The appropriate person has probable cause to believe that the property was used or intended for use in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:

(1) Place the property under seal;

(2) Remove the property to a place designated by him

(3) Require the appropriate law-enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.

The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and appurtenances thereto.

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§60A-7-705. Procedures for forfeiture.

(a) (1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor.

(2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court of the county wherein the seizure was made, the real property subject to forfeiture is situate, or the circuit court of the county wherein any owner of the property subject to forfeiture may reside.

(3) Any civil trial stemming from a petition for forfeiture brought under this chapter at the demand of either party shall be by jury.

(4) A petition for forfeiture of the seized property shall be filed within ninety days after the seizure of the property in question. The petition shall be verified by oath or affirmation of a law-enforcement officer representing the law-enforcement agency responsible for the seizure or the prosecuting attorney and shall contain the following:

(i) A description of the property seized;

(ii) A statement as to who is responsible for the seizure;

(iii) A statement of the time and place of seizure;

(iv) The identity of the owner or owners of the property, if known;

(v) The identity of the person or persons in possession of the property at the time seized, if known;

(vi) A statement of facts upon which probable cause for belief that the seized property is subject to forfeiture pursuant to the provisions of this article is based;

(vii) The identity of all persons or corporations having a perfected security interest or lien in the subject property, as well as the identity of all persons or corporations known to the affiant who may be holding a possessory or statutory lien against such property;

(viii) A prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state.

(b) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized property, as well as all holders of a perfected security interest or lien or of a possessory or statutory lien in the same class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of the petition for forfeiture shall be served upon any person who

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was in possession or alleged to be in possession of the property at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as follows:

"To any claimant to the within described property: You have the right to file an answer to this petition setting forth your title in, and right to possession of, the property within thirty days from the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will be entered, and such order is not subject to appeal."

If no owner or possessors, lienholders or holders of a security interest be found, then such service may be by Class II legal publication in accordance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county wherein such property was located at the time of seizure and the county wherein the petition for forfeiture is filed.

(c) In addition to the requirements of subsection (b) above, the prosecuting attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be responsible for the publication of a further notice. Such further notice that a petition for forfeiture has been filed shall be published by Class II legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county wherein the property was seized and the county wherein the petition for forfeiture is filed. The notice shall advise any claimant to the property of their right to file a claim on or before the date set forth in the notice, which date shall not be less than thirty days from the date of the first publication. The notice shall specify that any claim must clearly state the identity of the claimant and an address where legal process can be served upon that person. In addition such notice shall contain the following information:

(1) A description of the property seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the property, if known;

(5) The identity of the person or persons in possession of the property at the time of seizure, if known;

(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall

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be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this chapter.

(f) Any order forfeiting property to the state and entered pursuant to this section perfects the state's right, title and interest in the forfeited property and relates back to the date of seizure: Provided, That in any proceeding under this article the circuit court shall in its final order make specific findings with respect to whether or not probable cause to seize such property existed at the time of such seizure.

(g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or holder of a bona fide security interest or other valid lienholder to transfer or attempt to transfer any ownership interest or security interest in seized property with the intent to defeat the purpose of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner or holder of a security interest or other lienholder from making such a transfer should one come to its attention. Any such transfer which is made in violation of the provisions of this subsection shall have no effect upon an order of the court forfeiting seized property to the state if a notice of lis pendens is filed prior to the recording of the instrument of transfer.

(h) The court may void any transfer of property made before or after a forfeiture proceeding has been commenced, which is subject to forfeiture, if the transfer was not to a bona fide purchaser without notice for value.

(i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought pursuant to this chapter must be filed within one hundred twenty days of the date of entry of the final appealable order. The appellant shall be required to give notice of intent to appeal within thirty days of the entry of such appealable order.

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§60A-7-705a. Additional procedures for forfeiture.

(a) Notwithstanding the provisions of section seven hundred five of this article, forfeitable moneys are subject to administrative forfeiture by the prosecuting attorney of a county or duly appointed special prosecutor.

(b) An administrative forfeiture notice shall be provided by the prosecuting attorney after the seizure of the money in question. The notice shall contain the following:

(1) A description of the money seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the money, if known; and

(5) The identity of the person or persons in possession of the money at the time seized.

(c) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized money. Should diligent efforts fail to disclose the lawful owner or owners of the seized money, a copy of the petition for forfeiture shall be served upon any person who was in possession or alleged to be in possession of the money at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure.

(d) The administrative forfeiture notice shall include a statement substantially as follows: To any claimant: "The confiscated money is subject to administrative forfeiture unless you provide a written notice, within thirty days of receipt of this notice, that you wish to contest this forfeiture. If you fail to provide a notice to the prosecuting attorney, you will immediately and forever lose all right, claim, title and interest to the confiscated money, and it will be disposed of according to law."

(e) If, after thirty days of the delivery of notice from the prosecuting attorney as provided in subsections (c) and (d) of this section, no notice is received from any person indicating a desire to contest the administrative forfeiture, all right, title and interest to the confiscated money shall immediately vest in the state, and shall be disposed of in the same manner as in a civil forfeiture.

(f) If notice is received from any person, within the required period of time, indicating a desire to contest the administrative forfeiture, then no forfeiture may be obtained except through a civil forfeiture proceeding under section seven hundred five of this article.

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§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this article, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding;

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:

(1) In the case of the funds belonging to the State Police, the funds shall only be expended at the direction of the Superintendent of the State Police and in accordance with the provisions of article two, chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two, article two, chapter twelve of this code;

(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections four and five, article five, chapter seven of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section twenty-two, article thirteen, chapter eight of this code.

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§60A-7-707. Disposition of other forfeited property; distribution of proceeds.

(a) When property other than that referred to in section seven hundred six of this article is forfeited under this article, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the chief of the law-enforcement agency that seized said forfeited property, may direct that:

(1) Title to the forfeited property be vested in the law-enforcement agency so petitioning; or

(2) The law-enforcement agency responsible for the seizure retain the property for official use; or

(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county where the public auction will be held.

(b) When a law-enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law-enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant to this section shall be paid and applied as follows: First, to the balance due on any security interest preserved by the court; second, to the costs incurred in the storage, maintenance and security of the property; third, to the costs incurred in selling the property.

(d) Any proceeds of a public sale remaining after distribution pursuant to subsection (c) of this section shall be distributed as follows:

(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding.

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property sold and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the chief of the law-enforcement agency may deem appropriate; however, these funds may not be utilized for regular operating needs.

(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall

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equitably distribute the forfeited property among the law-enforcement agencies. In the event of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to subsection (a) of this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to subsection (a) of this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.

(g) Any funds expended pursuant to the provisions of this section, shall only be expended in the manner provided in subsection (b), section seven hundred five of this article.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this article shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No county or municipality may use anticipated receipts of forfeited property in their budgetary process.

(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to subsection (a) of this section.

(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this article, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section seven, article four, chapter fifty-eight of this

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code.

(l) The special law-enforcement investigative funds of each law-enforcement agency may be placed in an interest-bearing depository insured by the federal government.

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§60A-7-708. Bookkeeping procedures and internal controls.

(a) Any law-enforcement agency or office in this state, including, but not limited to, an "appropriate person" as identified in §60A-7-703(b), excluding prosecuting attorneys, who seizes or receives forfeited moneys, securities, negotiable instruments, items subject to forfeiture in accordance with §60A-7-703(a) of this code, or other property under the provisions of this article shall account for the same in the following manner:

(1) Maintain any items of property subject to forfeiture in accordance with §60A-7-704(d) of this code, including, but not limited to, moneys, securities, negotiable instruments, or other items and property identified in the same manner as the agency's appropriated funds. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds;

(2) Establish a segregated account or accounting codes to track both revenues and expenditures for each respective program. No other funds may be commingled in these accounts or with these accounting codes;

(3) Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions;

(4) In accordance with the provisions of §60A-7-704(d)(4) of this code, in the case of seized moneys, securities, or other negotiable instruments, place the assets in an interest-bearing depository insured by an agency of the federal government. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account;

(5) Develop, maintain, and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel;

(6) Maintain records of all revenue and expenditures posted to the account or accounting code, to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement and disposition process;

(7) Report all transactions using cash-based accounting methods;

(8) Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and, if consistent with the agency's procurement and disposal polices, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies;

(9) Ensure the agency head, or designee, authorizes all expenditures from the sharing

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accounts; and

(10) Obtain approval for expenditures from the governing body, such as the county commission, town council, or city manager's office, when required under normal established jurisdiction accounting procedures.

(b) Any law-enforcement agency or office in this state, excluding prosecuting attorneys, receiving forfeited moneys, securities, negotiable instruments, real property, personal property, or other property under the provisions of this article shall report the same to the State Auditor. For each seizure only one report shall be filed by the agency that made the seizure. All agencies receiving forfeited property shall report disposition and expenditures of any proceeds of that property. Reports shall be filed in the following manner:

(1) Name of the law-enforcement agency or office that seized the property, or if seized by a multijurisdictional task force, the name of the lead agency;

(2) The time and date the property was seized;

(3) The type of property seized, whether real or personal;

(4) The actual or estimated value of the property seized;

(5) The property's final disposition, including the amount received if the property was sold, or if the property was put to use on behalf of a law-enforcement agency or office, the identity of the agency or office that took possession and use of the property;

(6) Whether forfeiture was made by settlement agreement;

(7) Whether any procedure for forfeiture was initiated in accordance with the provisions of §60A-7-705 of this code, or other identifying information sufficient to permit acquisition of any available public records related to the forfeiture procedure and disposition of the forfeited property;

(8) The disposition of any action under the provisions of §60A-7-705 of this code;

(9) If an arrest was made;

(10) Whether any charges brought against a defendant in conjunction with a seizure pursuant to this article resulted in deferred action, conviction, plea deal, acquittal, or ongoing criminal case;

(11) When an administrative forfeiture procedure has been initiated pursuant to the provisions of §60A-7-705a of this code, provide designated information contained in the administrative forfeiture notice;

(12) The total value of seized and forfeited or property held by the agency at the end of the

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reporting period; and

(13) A copy of the United States Department of Justice's Equitable Sharing Agreement and Certification - Annual Certification Report shall be provided to the State Auditor no later than October 31 each calendar year.

(c) The State Auditor shall establish and maintain a searchable public website that includes the aggregate information submitted by any law-enforcement agency or office required under subsection (b) of this section: *Provided*, That the State Auditor's website must not provide individual case details on its public website.

(d) The State Auditor, before December 31 of each year, shall submit to the Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the Governor a written report summarizing activity in the state for the preceding fiscal year on the type, approximate value, and disposition of the property forfeited and/or seized and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of forfeiture proceeds shall be disaggregated by agency.

(e) In the course of preparing its annual report, the State Auditor may, in its discretion or for good cause shown, perform a financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds by any law-enforcement agency or office in this state. This audit shall be conducted under the Generally Accepted Government Auditing Standards (GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later than 90 days after its initiation. The State Auditor shall submit a copy of the financial audit report to the Speaker of the House of Delegates, the President of the Senate, the Attorney General and the Governor.

(f) If, in the course of a calendar year, any law enforcement agency or office that secures seized or forfeited assets valued in excess of 50 percent of the prior year's total seized or forfeited assets, or expends more than 50 percent of the prior year's total expenditures of forfeited assets, shall so advise the State Auditor, who shall perform a financial audit under the Generally Accepted Government Auditing Standards (GAGAS) of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the State Auditor no later than 90 days after the end of the fiscal year and shall be made public.

(g) The State Auditor may recoup its costs under this section by charging a fee.

(h) The State Auditor may include in its aggregate report required by subsection (d) of this section recommendations to improve statutes, rules, and policies related to seizure, forfeiture, and expenditures. The aggregate report shall be made available on the State Auditor's website.

(i) If a law-enforcement agency fails to timely file the report identified in subsection (b) of

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this section the State Auditor shall immediately notify the law-enforcement agency that the report has not been received.

(j) The State Auditor may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement this section.

(k) The data and reports compiled and prepared under this section are public information under the West Virginia Freedom of Information Act, chapter 29B of this code.

(l) This section is effective for the reporting period starting January 1, 2021.

(m) Nothing provided in this section would prevent a court of competent jurisdiction from sealing records otherwise made available under the provisions of this section.

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§60A-8-1. Short title.

This article may be cited as the "Wholesale Drug Distribution Licensing Act of 1991".

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§60A-8-2. Scope.

This article applies to any person, partnership, corporation or business firm engaging in the wholesale distribution of human prescription drugs within this state.

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§60A-8-3. Purpose.

The purpose of this article is to protect the health, safety and general welfare of residents of this state and to implement the federal Prescription Drug Marketing Act of 1987 ("PDMA"), U. S. Public Law 100-293, 102 Stat. 95, codified at 21 U. S. Code §321; and particularly PDMA requirements that no person or entity may engage in the wholesale distribution of human prescription drugs in any state unless such person or entity is licensed by such state in accordance with federally-prescribed minimum standards, terms and conditions as set forth in guidelines issued by United States food and drug administration (FDA) regulations pursuant to 21 U. S. Code §353(e)(2)(A) and (B); and such regulations as are set forth in 21 C. F. R. Part 205.

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§60A-8-4.

Repealed.

Acts, 2012 Reg. Sess., Ch. 203.

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§60A-8-5. Definitions.

As used in this article:

(a) "Wholesale distribution" and "wholesale distributions" mean distribution of prescription drugs, including directly or through the use of a third-party logistics provider or any other situation in which title, ownership or control over the prescription drug remains with one person or entity but the prescription drug is brought into this state by another person or entity on his, her or its behalf, to persons other than a consumer or patient, but does not include:

(1) Intracompany sales, being defined as any transaction, transfer or delivery into or within this state between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity;

(2) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in section 501(c)(3) of the United States Internal Revenue Code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug among hospitals or other health care entities that are under common control. For purposes of this article, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(5) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug for "emergency medical reasons" for purposes of this article includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any twelve consecutive month period;

(6) The sale, purchase or trade of a drug, an offer to sell, purchase, or trade a drug or the dispensing of a drug pursuant to a prescription;

(7) The distribution of drug samples by manufacturers' representatives or distributors' representatives, if the distribution is permitted under federal law [21 U. S. C. 353(d)];

(8) Drug returns by a pharmacy or chain drug warehouse to wholesale drug distributor or the drug's manufacturer; or

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(9) The sale, purchase or trade of blood and blood components intended for transfusion.

(b) "Wholesale drug distributor" or "wholesale distributor" means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription drug repackagers, physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs.

(c) "Pharmacy distributor" means any pharmacy licensed in this state or hospital pharmacy which is engaged in the delivery or distribution of prescription drugs either to any other pharmacy licensed in this state or to any other person or entity, including, but not limited to, a wholesale drug distributor as defined in subdivision (b) of this section engaged in the delivery or distribution of prescription drugs and who is involved in the actual, constructive or attempted transfer of a drug in this state to other than the ultimate consumer except as otherwise provided for by law.

(d) "Manufacturer" means any person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging or labeling of a prescription drug, whether within or outside this state.

(e) "West Virginia Board of Pharmacy", "Board of Pharmacy" or "board" means the agency of this state authorized to license wholesale drug distribution except where otherwise provided.

(f) "Prescription drug" means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and active ingredients subject to section 503(b) of the federal food, drug and cosmetic act.

(g) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(h) "Blood component" means that part of blood separated by physical or mechanical means.

(i) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(j) "Person" means any individual, partnership, association, limited liability company, corporation or other entity.

(k) "Key person" means the person designated by the applicant or license holder from any of

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the following:

(1) An officer, director, trustee, partner, principal or proprietor of a person that has applied for or holds a license issued under this article or an affiliate or holding company that has control of a person that has applied for or holds a license under this article.

(2) A person that holds a combined direct, indirect or attributed debt or equity interest of more than five percent in a person that has applied for or holds a license under this article;

(3) A person that holds a combined direct, indirect or attributed equity interest of more than five percent in a person that has a controlling interest in a person that has applied for or holds license under this article;

(4) A managerial employee of a person that has applied for or holds a license under this article or a managerial employee of an affiliate or holding company that has control of a person that has applied for or holds a license under this article, who performs the function of principal executive officer, principal operating officer, principal accounting officer or an equivalent officer;

(5) A managerial employee of a person that has applied for or holds a license under this article or a managerial employee of an affiliate or holding company that has control of a person that has applied for or holds a license under this article who will perform or performs the function of an operations manager or will exercise or exercises management, supervisory or policy-making authority over the distribution of prescription drugs.

(l) "Third-party logistics provider" means a person who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider must be licensed as a wholesale distributor under this article and, in order to be considered part of the normal distribution channel, must also be an authorized distributor of record.

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§60A-8-6. Prohibited drug purchases or receipt; penalties.

It is unlawful for any person or entity to knowingly purchase or receive any prescription drug from any source other than a person or entity licensed pursuant to the laws of this state except where otherwise provided, such person or entity to include, but not be limited to, a wholesale distributor, manufacturer, pharmacy distributor or pharmacy. Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000. Any person who violates this section shall for a second offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000.

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§60A-8-6a. Distribution of safety net drugs to contract pharmacies; penalties; and preemption.

(a) Definitions. — As used in this section:

(1) "340B drug" means a drug that:

(A) Is a covered outpatient drug within the meaning of 42 U.S.C. §256b;

(B) Has been subject to any offer for reduced prices by a manufacturer under 42 U.S.C. §256b(a)(1); and

(C) Is purchased by a covered entity within the meaning of 42 U.S.C. §256b.

(2) "340B entity" has the same meaning as that term is defined in §33-51-3 of this code.

(3) "Biological product" has the same meaning as that term is defined in 42 U.S.C. §262.

(4) "Board of Pharmacy" means the West Virginia Board of Pharmacy, which is the agency of this state authorized to issue and condition licensure and permitting of wholesale drug distributors, third-party logistics providers, and manufacturers.

(5) "Commissioner" means the West Virginia Insurance Commissioner, his or her deputies, or the West Virginia Offices of the Insurance Commissioner.

(6) "Manufacturer" has the same meaning as that term is defined in §60A-8-5 of this code, except that such definition shall include manufacturers of biological products.

(7) "Package" has the same meaning as that term is defined in 21 U.S.C. §360eee(11)(A).

(8) "Pharmacy" has the same meaning as that term is defined in §30-5-4 of this code.

(b) Distribution of drugs to safety net providers and contract pharmacies. —

(1) A manufacturer, agent, or affiliate of such manufacturer shall not, either directly or indirectly, deny, restrict, or prohibit the acquisition of a 340B drug by, or delivery of a 340B drug to, a location authorized by a 340B entity to receive such 340B drug, unless the receipt of the 340B drug is prohibited by the United States Department of Health and Human Services.

(2) A manufacturer, agent, or affiliate of such manufacturer shall not, either directly or indirectly, require a 340B entity to submit any claims or utilization data as a condition for allowing the acquisition of a 340B drug by, or delivery of a 340B drug to, a 340B entity unless the claims or utilization data sharing is required by the United States Department of Health and Human Services.

(c) Penalties and investigations. —

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(1) The commission of any act prohibited by subsection (b) of this section constitutes:

(A) A violation of §46A-6-104 of this code and shall subject the violator to a civil penalty of $50,000 per each violation, as well as any and all actions, including investigative demands, remedies, and penalties provided for in §46A-7-101 *et seq*. of this code, except that there shall be no right to bring a private cause of action; and

(B) A violation of §33-11-1 *et seq*. of this code and shall subject the violator to any and all actions, including cease and desist orders, civil penalties, and restitution provided for in §33-11-6 of this code, except that there shall be no right to bring a private cause of action.

(2) Each package of 340B drugs determined to be subject to a prohibited act under subsection (b) of this section constitutes a separate violation under this section.

(3) Upon receipt by the Board of Pharmacy of a complaint that a manufacturer has violated subsection (b) of this section, the Board of Pharmacy:

(A) May investigate the complaint, including by investigating the manufacturer or any agent, affiliate, or contractor thereof, including any wholesaler or third-party logistics provider that may possess evidence supporting such complaint; and

(B) Shall consider appropriate penalties, including imposing discipline, or suspending, or revoking the license or permit of any manufacturer; and

(C) Shall share the results of the investigation with the Attorney General and commissioner if an investigation is conducted.

(3) The Board of Pharmacy and commissioner may promulgate rules to implement the provisions of subsection (b) of this section.

(d) Preemption. —

(1) Nothing in this section is to be construed or applied to be less restrictive than any federal law as to any person or other entity regulated by this section. Nothing in this section is to be construed or applied to be in conflict with any of the following:

(A) Applicable federal law and related regulations.

(B) Other laws of this state, if the state law is compatible with applicable federal law.

(2) Limited distribution of a drug required under 21 U.S.C. §355-1 is not to be construed as a violation of this section.

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§60A-8-7. Wholesale drug distributor licensing requirements.

(a) Every applicant for a license under this article shall provide the board with the following as part of the application for a license and as part of any renewal of such license:

(1) The name, full business address and telephone number of the licensee;

(2) All trade or business names used by the licensee;

(3) Addresses, telephone numbers and the names of contact persons for all facilities used by the licensee for the storage, handling and distribution of prescription drugs;

(4) The type of ownership or operation (i.e., partnership, corporation or sole proprietorship);

(5) The name(s) of the owner and operator, or both, of the licensee, including:

(A) If a person, the name of the person;

(B) If a partnership, the name of each partner and the name of the partnership;

(C) If a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation; and

(D) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) Any other information or documentation that the board may require.

(b) All wholesale distributors and pharmacy distributors shall be subject to the following requirements:

(1) No person or distribution outlet may act as a wholesale drug distributor without first obtaining a license to do so from the Board of Pharmacy and paying any reasonable fee required by the Board of Pharmacy, such fee not to exceed four hundred dollars per year: Provided, That for licenses that are effective on and after July 1, 2012, the annual fee shall be $750 per license until modified by legislative rule. All fees collected pursuant to this section shall be used for the operation and implementation of the West Virginia Controlled Substances Monitoring Program database or in the same manner as those fees governed by article five, chapter thirty of this code.

(2) The Board of Pharmacy may grant a temporary license when a wholesale drug distributor first applies to the board for a wholesale drug distributor's license and the temporary license shall remain valid until the Board of Pharmacy finds that the applicant meets or fails to meet the requirements for regular licensure, except that no temporary license shall be valid for more than ninety days from the date of issuance. Any temporary license issued pursuant to this subdivision shall be renewable for a similar period of time not to exceed ninety days

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pursuant to policies and procedures to be prescribed by the Board of Pharmacy.

(3) No license may be issued or renewed for a wholesale drug distributor to operate unless the distributor operates in a manner prescribed by law and according to the rules promulgated by the Board of Pharmacy with respect thereto.

(4) The Board of Pharmacy may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(c) The minimum qualifications for licensure are set forth in this section as follows:

(1) As a condition for receiving and retaining any wholesale drug distributor license issued pursuant to this article, each applicant shall satisfy the Board of Pharmacy that it has and will continuously maintain:

(A) Acceptable storage and handling conditions plus facilities standards;

(B) Minimum liability and other insurance as may be required under any applicable federal or state law;

(C) A security system which includes after hours central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening and safeguards against employee theft;

(D) An electronic, manual or any other reasonable system of records describing all wholesale distributor activities governed by this article for the two-year period following disposition of each product and being reasonably accessible as defined by Board of Pharmacy regulations during any inspection authorized by the Board of Pharmacy;

(E) Officers, directors, managers and other persons in charge of wholesale drug distribution, storage and handling, who must at all times demonstrate and maintain their capability of conducting business according to sound financial practices as well as state and federal law;

(F) Complete, updated information to be provided to the Board of Pharmacy as a condition for obtaining and retaining a license about each wholesale distributor to be licensed under this article including all pertinent licensee ownership and other key personnel and facilities information determined necessary for enforcement of this article;

(G) Written policies and procedures which assure reasonable wholesale distributor preparation for protection against and handling of any facility security or operation problems, including, but not limited to, those caused by natural disaster or government emergency, inventory inaccuracies or product shipping and receiving, outdated product or other unauthorized product control, appropriate disposition of returned goods and product

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recalls;

(H) Sufficient inspection procedures for all incoming and outgoing product shipments; and

(I) Operations in compliance with all federal legal requirements applicable to wholesale drug distribution.

(2) The board of pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who apply for a wholesale distributor license under this section or for renewal of that license:

(A) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(B) Any felony convictions of the applicant or any key person under federal, state or local laws;

(C) The applicant's past experience in the manufacture or distribution of prescription drugs, including, but not limited to, controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(E) Suspension or revocation by federal, state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drug, including, but not limited to, controlled substances;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Whether personnel employed by the applicant in wholesale drug distribution have appropriate education or experience, or both education and experience, to assume responsibility for positions related to compliance with the requirements of this article;

(H) Compliance with requirements to maintain and make available to the Board of Pharmacy or to federal, state or local law-enforcement officials those records required by this article; and

(I) Any other factors or qualifications the Board of Pharmacy considers relevant to and consistent with the public health and safety, including whether the granting of the license would not be in the public interest.

(3) All requirements set forth in this subsection shall conform to wholesale drug distributor licensing guidelines formally adopted by the United States Food and Drug Administration (FDA); and in case of conflict between any wholesale drug distributor licensing requirement imposed by the Board of Pharmacy pursuant to this subsection and any food and drug administration wholesale drug distributor licensing guideline, the latter shall control.

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(d) An employee of any licensed wholesale drug distributor need not seek licensure under this section and may lawfully possess pharmaceutical drugs when the employee is acting in the usual course of business or employment.

(e) The issuance of a license pursuant to this article does not change or affect tax liability imposed by this state's Department of Tax and Revenue on any wholesale drug distributor.

(f) An applicant who is awarded a license or renewal of a license shall give the board written notification of any material change in the information previously submitted in, or with the application for the license or for renewal thereof, whichever is the most recent document filed with the board, within thirty days after the material change occurs or the licensee becomes aware of the material change, whichever event occurs last. Material changes include, but are not limited to:

(1) A change of the physical address or mailing address;

(2) A change of the responsible individual, compliance officer or other executive officers or board members;

(3) A change of the licensee's name or trade name;

(4) A change in the location where the records of the licensee are retained;

(5) The felony conviction of a key person of the licensee; and

(6) Any other material change that the board may specify by rule.

(g) Before denial of a license or application for renewal of a license, the applicant shall be entitled to a hearing in accordance with subsection (h), section eight, article one, chapter thirty of this code.

(h) The licensing of any person as a wholesale drug distributor subjects the person and the person's agents and employees to the jurisdiction of the board and to the laws of this state for the purpose of the enforcement of this article, article five, chapter thirty of this code and the rules of the board. However, the filing of an application for a license as a wholesale drug distributor by, or on behalf of, any person or the licensing of any person as a wholesale drug distributor may not, of itself, constitute evidence that the person is doing business within this state.

(i) The Board of Pharmacy may adopt rules pursuant to section nine of this article which permit out-of-state wholesale drug distributors to obtain any license required by this article on the basis of reciprocity to the extent that: (1) An out-of-state wholesale drug distributor possesses a valid license granted by another state pursuant to legal standards comparable to those which must be met by a wholesale drug distributor of this state as prerequisites for obtaining a license under the laws of this state; and (2) such other state would extend reciprocal treatment under its own laws to a wholesale drug distributor of this state.

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§60A-8-8. License renewal application procedures.

Application blanks for renewal of any license required by this article shall be mailed to each licensee at least thirty days before July 1, of each calendar year by the board. All licenses issued under this section are not transferable and expire on June 30 of each calendar year. If application for renewal of such license with required fee is not made before the expiration date of the license, the existing license, or renewal thereof, shall lapse and become null and void upon the last day of June of each calendar year.

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§60A-8-9. West Virginia Board of Pharmacy powers to promulgate rules.

The Board of Pharmacy shall promulgate rules not inconsistent with law, as may be necessary to carry out the purposes and enforce the provisions of this article pursuant to chapter twenty-nine-a of this code. Rules which incorporate and set detailed standards for meeting each of the license prerequisites set forth in section seven of this article shall be promulgated in final form by no later than September 14, 1992. All rules promulgated pursuant to this section shall conform to wholesale drug distributor licensing guidelines formally adopted by the food and drug administration at 21 C.F.R. Part 205; and in case of conflict between any rule adopted by the Board of Pharmacy and any food and drug administration wholesale drug distributor guideline, the latter shall control.

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§60A-8-10. West Virginia Board of Pharmacy complaint provisions.

Complaints arising under any provision of this article shall be handled as follows:

(a) The Board of Pharmacy is hereby authorized and empowered, when complaints or examinations or inspections of a wholesale drug distributor disclose that a wholesale drug distributor is not operating or conducting business according to the state and federal laws, to file a written complaint with the board charging the holder of a license to operate a wholesale drug distributorship operation with violations of this article which are grounds for restriction, suspension or revocation of the wholesale drug distributor's license.

(b) If the Board of Pharmacy concludes that a wholesale drug distributor has committed an act or is engaging in a course of conduct which constitutes a clear and present danger to the public health and safety in this state, the Board of Pharmacy may hold an expedited hearing. Within fifteen days after service of the complaint on a wholesale drug distributor, the West Virginia Board of Pharmacy shall conduct a preliminary hearing to determine whether the alleged activities of the wholesale drug distributor appear to constitute a clear and present danger to the public health and safety which justify that the wholesale drug distributor's license be immediately restricted or suspended. The burden of proving that a wholesale drug distributor is a clear and present danger to the public health and safety shall be upon the board. The board shall issue its decision immediately after the hearing and shall dismiss the action or suspend, restrict or revoke the license. The board shall require any wholesale drug distributor found in violation of this article to take all necessary measures for compliance.

(c) If the board restricts, revokes or suspends the wholesale drug distributor's license, such temporary restriction, revocation or suspension shall become a final restriction or suspension if there is no request by the wholesale drug distributor for a final hearing within thirty days of the preliminary hearing. The board shall, if requested by the wholesale drug distributor named in the complaint, set a date to hold a final hearing which shall be held pursuant to the provisions of chapter twenty-nine-a of this code.

WV Legislature

§60A-8-11. The West Virginia Board of Pharmacy inspection powers and access to wholesale drug distributor records.

(a) A person authorized by the board may inspect during normal business hours any premises being used by a wholesale drug distributor in this state in the course of its business. Any wholesale drug distributor providing adequate documentation of the most recent satisfactory inspection less than three years old of such distributor's wholesale drug distribution activities and facilities by either the food and drug administration or a state agency, or any person or entity lawfully designated by a state agency to perform such inspection, determined to be comparable by the board shall be exempt from further inspection for a period of time to be determined by the Board of Pharmacy. Such exemption shall not bar the board from initiating an investigation pursuant to a public or governmental complaint received by the board regarding a wholesale drug distributor.

(b) Wholesale drug distributors may keep records regarding purchase and sales transactions at a central location apart from the principal office of the wholesale drug distributor or the location at which the drugs were stored and from which they were shipped: Provided, That such records shall be made available for inspection within two working days after a request to inspect by the board is made. Such records may be kept in any form permissible under federal law applicable to prescription drugs record keeping.

WV Legislature

§60A-8-12. Judicial enforcement of the article.

(a) Upon proper application by the board, a court of competent jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit or license is required by any applicable federal or state law, including, but not limited to, this act upon a showing that such acts or practices were or are likely to be performed or offered to be performed without a certificate of registration or authority, permit or license.

(b) Any such judicial actions shall be commenced either in the county in which such conduct occurred or in the county in which defendant resides.

(c) Any action brought under this section shall be in addition to and not in lieu of any other penalty provided by law and may be brought concurrently with other actions to enforce this article.

WV Legislature

§60A-8-13. Criminal penalties.

Every person who violates any provision of section seven of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $200 nor more than $1,000.

WV Legislature

§60A-8-14. Disciplinary actions - wholesale drug distributor.

(a) In accordance with article five, chapter thirty of this code, the Board of Pharmacy may suspend, revoke or refuse to renew any license issued to a wholesale distributor of prescription drugs pursuant to this article or may impose a civil money penalty not to exceed $1,000, in the discretion of the board for any of the following causes:

(1) Making any false material statements in an application for a license or for renewal of a license as a wholesale distributor or pharmacy distributor of prescription drugs;

(2) Violating any federal, state or local drug law, any provision of this article or any rule of the board;

(3) Conviction of a felony. For purposes of this subdivision "felony" means a felony or crime punishable as a felony under the laws of this state, any other state or the United States;

(4) Ceasing to satisfy the qualifications for licensure under section seven of this article or the rules of the board;

(5) The license or registration of a wholesale drug distributor licensed under this article has been revoked by the licensing authority of another state, jurisdiction of foreign nation; or

(6) Any reason for which the board may impose disciplinary sanctions under the provisions of chapter thirty of this code.

(b) Upon the suspension or revocation of the license of any wholesale distributor of prescription drugs, the distributor shall immediately surrender the license to the board.

(c) If the board suspends, revokes or refuses to renew any license issued to a wholesale distributor of prescription drugs and determines that there is clear and convincing evidence of a danger of immediate and serious harm to any person, the board may place under seal all drugs owned by or in the possession, custody or control of the affected wholesale distributor. Except as provided in this article, the board may not dispose of the drugs sealed under this subsection until the distributor exhausts all of his or her appeal rights under this article or article five, chapter thirty of this code. The court involved in the appeal may order the board, during the pendency of the appeal, to sell sealed dangerous drugs that are perishable. The board shall deposit the proceeds of the sale with the court.

WV Legislature

§60A-8-15. Maintenance of register and roster of wholesale and pharmacy distributors.

(a) The Executive Director of the Board of Pharmacy shall maintain a register of the names, addresses and the date the current license was issued or renewed pursuant to this article for license years beginning on and after July 1, 2013. The register shall be the property of the board and shall be open for public examination and inspection at all reasonable times, as the board may direct.

(b) The register shall set forth the names and addresses of:

(1) Those persons who are or have been licensed under this article for the current license year;

(2) Those persons whose licenses have been suspended, revoked or surrendered during the current license year or during the two preceding license years; and

(3) Those persons whose licenses have not been renewed for the current license year.

(c) In lieu of annually publishing a typed or printed register providing the information required by this subsection, the board may make the information required to be published available at its website.

(d) A written statement signed and verified by the executive director of the board, in which it is stated that after diligent search of the register no record or entry of the issuance of a license or registration certificate to a person is found, is admissible in evidence and constitutes presumptive evidence of the fact that the person is not a licensed as a wholesale drug distributor under this article.

WV Legislature

§60A-8-16. Disposition of fees.

The board shall pay all fees it collects under this article into the separate fund created in the State Treasury for the board pursuant to section ten, article one, chapter thirty of this code. The money in this fund shall be used exclusively by the board for the purposes of administering and enforcement of its duties pursuant to this article, articles one and five, chapter thirty of this code, or any other duty of the board prescribed by any other provision of this code.

WV Legislature

§60A-9-1. Short title.

This article shall be referred to as the West Virginia Controlled Substances Monitoring Act.

WV Legislature

§60A-9-2. Establishment of program; purpose.

There is continued a West Virginia controlled substances monitoring act the purpose of which is to require the recordation and retention in a single repository of information regarding the prescribing, dispensing and consumption of certain controlled substances. A veterinarian is exempt from the requirements of this article.

WV Legislature

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

(a) The Board of Pharmacy shall implement a program wherein a central repository is established and maintained which shall contain such information as is required by the provisions of this article regarding Schedule II, III, and IV controlled substance prescriptions written or filled in this state. In implementing this program, the Board of Pharmacy shall consult with the West Virginia State Police, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The board shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the board. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than within twenty-four hours.

(c) (1) The board shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

(2) A dispenser, who does not have an automated record-keeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting. The request for a waiver shall be made to the board in writing and shall be granted if the dispenser agrees in writing to report the data by submitting a completed "Pharmacy Universal Claim Form" as defined by legislative rule.

WV Legislature

§60A-9-4. Required information.

(a) The following individuals shall report the required information to the Controlled Substances Monitoring Program Database when:

(1) A medical services provider dispenses a controlled substance listed in Schedule II, III, IV, or V;

(2) A prescription for the controlled substance or opioid antagonist is filled by:

(A) A pharmacist or pharmacy in this state;

(B) A hospital, or other health care facility, for outpatient use; or

(C) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state; and

(3) A pharmacist or pharmacy sells an opioid antagonist.

(b) The above individuals shall, in a manner prescribed by rules promulgated by the Board of Pharmacy pursuant to 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 or the dispensing physician or dentist;

(2) The full legal 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, IV, and V controlled substance or opioid antagonist dispensed;

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

(6) The date the prescription was written and the date filled;

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

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person’s government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

WV Legislature

(9) The source of payment for the controlled substance dispensed.

(c) Whenever a medical services provider treats a patient for an overdose that has occurred as a result of illicit or prescribed medication, the medical service provider shall report the full legal name, address, and birth date of the person who is being treated, including any known ancillary evidence of the overdose. The Board of Pharmacy shall coordinate with the Division of Justice and Community Services and the Office of Drug Control Policy regarding the collection of overdose data.

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

(e) Products regulated by the provisions of §60A-10-1 *et seq*. of this code shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

(f) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own patient may not exceed an amount adequate to treat the patient for a maximum of 72 hours with no greater than two 72-hour cycles dispensed in any 15-day period of time: *Provided*, That an advanced practice registered nurse who is participating in a clinical trial, with institutional review board approval, for the rural expansion of medication-assisted treatment for opioid use disorder may exceed the 3-day supply for the time frame of the clinical trial, after registering with the Board of Pharmacy: *Provided, however*, That this exemption only permits one program to participate once in CTN-0102-XR, which is also the same program as provided for in §30-7-15a of this code.

(g) The Board of Pharmacy shall notify a physician prescribing buprenorphine or buprenorphine/naloxone within 60 days of the availability of an abuse deterrent or a practitioner-administered form of buprenorphine or buprenorphine/naloxone if approved by the Food and Drug Administration as provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch his or her patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent or a practitioner-administered form of the drug.

WV Legislature

§60A-9-4a. Verification of identity.

Prior to releasing a Schedule II, III, or IV controlled substance sold at retail, a pharmacist or pharmacy shall verify the full legal name, address and birth date of the person picking up the controlled substance dispensed by requiring the presentation of a valid government-issued photo identification card. This information shall be reported in accordance with the provisions of this article.

WV Legislature

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

(a)(1) The information required by this article to be kept by the Board of Pharmacy is confidential and not subject to the provisions of §29B-1-1 *et seq*. of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the 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 members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of Health Facility Licensure and Certification for use in certification, licensure, and regulation of health facilities, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III, IV, and V controlled substances, prescribing practitioners and pharmacists, a dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers, and residents enrolled in a degree program at the school where he or she serves as dean, a physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses, or physician assistants in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information, and persons with an enforceable court order or regulatory agency administrative subpoena. All law-enforcement personnel who have access to the Controlled Substances Monitoring Program Database shall be granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the Board of Pharmacy. All information released by the 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 or dispense 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: *Provided*, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in §60A-9-5(b) of this code is authorized to query the database to comply with §60A-9-5(b) of this code.

(2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall also review the West Virginia Controlled Substances Monitoring Program Database and issue reports that identify abnormal or unusual practices of patients and practitioners with prescriptive authority who exceed parameters as determined by the advisory committee established in this section. The Board of Pharmacy shall communicate with practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the advisory committee. All other reports produced by the Board of

Pharmacy shall be kept confidential. The Board of Pharmacy 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, and may be shared with the West Virginia Department of Health for those purposes, as long as the identities of persons or entities and any personally identifiable information, including protected health information, contained therein shall be redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the confidential nature of the information. No individual or entity required to report under §60A-9-4 of this code 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.

(3) The Board of Pharmacy shall establish an advisory committee to develop, implement, and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients and practitioners with prescriptive authority in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine; a dentist licensed by the West Virginia Board of Dental Examiners; a physician licensed by the West Virginia Board of Osteopathic Medicine; a licensed physician certified by the American Board of Pain Medicine; a licensed physician board certified in medical oncology recommended by the West Virginia State Medical Association; a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care; a pharmacist licensed by the West Virginia Board of Pharmacy; a licensed physician member of the West Virginia Academy of Family Physicians; an expert in drug diversion; and such other members as determined by the Board of Pharmacy.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with §60A-9-5(a)(2) of this code.

(C) Make recommendations for training, research, and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists, and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring real-time reporting.

(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program Database established in this article.

WV Legislature

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation, or discipline resulting from the findings of the review committee within 30 days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy. The review committee shall also review notices provided by the chief medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as provided in this article and is not subject to the provisions of §29B-1-1 *et seq*. of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and in accordance with the provisions of §29A-3-1 *et seq*. of this code. The legislative rules must include, but shall not be limited to, the following matters:

(1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing

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patterns;

(2) Processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners, and dispensers;

(3) Establishing the information to be contained in reports and the process by which the reports will be generated and disseminated;

(4) Dissemination of these reports at least quarterly to:

(A) The West Virginia Board of Medicine codified in §30-3-1 *et seq*. of this code;

(B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 *et seq*. of this code;

(C) The West Virginia Board of Examiners for Registered Professional Nurses codified in §30-7-1 *et seq*. of this code;

(D) The West Virginia Board of Dentistry codified in §30-4-1 *et seq*. of this code; and

(E) The West Virginia Board of Optometry codified in §30-8-1 *et seq*. of this code; and

(5) Setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted, and maintained by the review committee is not disclosed except as provided in this section.

(e) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program Database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database.

(f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or declining to prescribe or dispense a Schedule II, III, IV, or V controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.

(g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner’s judgment, may be in violation of §60A-4-410 of this code, based on information obtained and reviewed from the Controlled Substances Monitoring Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative, or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

(h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program Database except as provided in

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§60A-9-5 of this code.

(i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substances Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed legislation no later than January 1 of each year.

WV Legislature

§60A-9-5a. Practitioner requirements to access database and conduct annual search of the database; required rulemaking.

(a) All practitioners, as that term is defined in §60A-2-201 of this code who prescribe or dispense Schedule II, III, IV or V controlled substances shall register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database: *Provided*, That compliance with the provisions of this subsection must be accomplished within 30 days of the practitioner obtaining a new license: *Provided, however*, That the Board of Pharmacy may renew a practitioner's license without proof that the practitioner meet the requirements of this subsection.

(b) All persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and who are licensed by the Board of Medicine as set forth in §30-3-1 *et seq*. of this code, the Board of Registered Professional Nurses as set forth in §30-7-1 *et seq*. of this code, the Board of Dental Examiners as set forth in §30-4-1 *et seq*. of this code, the Board of Osteopathic Medicine as set forth in §30-14-1 *et seq*. of this code, the West Virginia Board of Optometrists as set forth in §30-8-1 *et seq*. of this code, and a pharmacist licensed by the West Virginia Board of Pharmacy as set forth in §30-5-1 *et seq*. upon initially prescribing or dispensing any Schedule II controlled substance, any opioid or any benzodiazepine to a patient who is not suffering from a terminal illness, and at least annually thereafter should the practitioner or dispenser continue to treat the patient with a controlled substance, shall access the West Virginia Controlled Substances Monitoring Program Database for information regarding specific patients. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program Database for the patient shall be documented in the patient's medical record maintained by a private prescriber or any inpatient facility licensed pursuant to the provisions of chapter 16 of this code. A pain-relieving controlled substance shall be defined as set forth in §30-3A-1 of this code.

(c) The various boards mentioned in §60A-9-5(b) of this code shall amend its legislative rules pursuant to the provisions of §29A-3-1 *et seq*. of this code to effectuate the provisions of this article.

WV Legislature

§60A-9-6. Promulgation of rules.

The state Board of Pharmacy shall promulgate legislative rules to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-a of this code.

WV Legislature

§60A-9-7. Criminal penalties; and administrative violations.

(a) Any person who is required to submit information to the state Board of Pharmacy pursuant to the provisions of this article who fails to do so as directed by the board is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500.

(b) Any person who is required to submit information to the state Board of Pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit the information required by this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than $1,000, or both confined and fined.

(c) Any person who is required by the provisions of this article to submit information to the state Board of Pharmacy who knowingly submits thereto information known to that person to be false or fraudulent is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than $5,000, or both confined and fined.

(d) Any person granted access to the information required by the provisions of this article to be maintained by the state Board of Pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than $1,000, or both confined and fined.

(e) Unauthorized access or use or unauthorized disclosure for reasons unrelated to the purposes of this article of the information in the database is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years or fined not less than $3,000 nor more than $10,000, or both imprisoned or fined.

(f) Any practitioner who fails to register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database as required in subsection (a), section five-a, article nine of this chapter, shall be subject to an administrative penalty of $1,000 by the licensing board of his or her licensure. All such fines collected pursuant to this subsection shall be remitted by the applicable licensing board to the Fight Substance Abuse Fund created under section eight of this article. The provisions of this subsection shall become effective on July 1, 2016.

(g) Any practitioner or dispenser who is required to access the information contained in the West Virginia Controlled Substances Monitoring Program database as set forth in subsection (a), section five-a of this article and fails to do so as directed by the rules of his or her licensing board shall be subject to such discipline as the licensing board deems appropriate and on or after July 1, 2016, be subject to a $100 administrative penalty per violation by the

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applicable licensing board. All such fines collected pursuant to this subsection shall be transferred by the applicable licensing board to the Fight Substance Abuse Fund created under section eight of this article.

(h) Lack of available internet connectivity is a defense to any action brought pursuant to subsections (d) or (f) of this section.

WV Legislature

§60A-9-8. Creation of Fight Substance Abuse Fund.

There is created a special revenue account in the state treasury, designated the Fight Substance Abuse Fund, which shall be an interest-bearing account. The fund shall consist of all moneys received from whatever source to further the purpose of this article. The fund shall be administered by the West Virginia Bureau for Public Health to provide funding for substance abuse prevention, treatment, treatment coordination, recovery and education. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest earnings on these investments shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article. There is created within the Office of the Secretary of the Department of Health and the Department of Human Services the Grant Writer Pilot Project. The Secretary shall hire a person as a grant writer, who shall be placed within the Office of the Secretary. This person shall identify, application and monitoring policies and procedures to increase grant applications and improve management and oversight of grants. The grant writer shall focus his or her abilities on obtaining grants concerning the prevention and treatment of substance abuse. The grant writer is not eligible for civil service. The department shall report to the Legislative Oversight Commission on Health and Human Resources Accountability on the implementation of the new grant policy; the number of grants obtained; and an analysis examining the costs associated with obtaining a grant verses the federal money received.

WV Legislature

§60A-9-9. Drugs of concern designation.

(a) The Board of Pharmacy may designate certain drugs as drugs of concern which must be reported to the database established pursuant to this article. The designation of a drug of concern shall be reserved for drugs which have a high potential for abuse. Whenever a medical services provider dispenses a drug of concern or whenever a prescription for a drug of concern is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for outpatient 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 or the dispensing physician or dentist;

(2) The full legal 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 number of the drug of concern dispensed;

(5) The quantity and dosage of the drug of concern dispensed;

(6) The date the prescription was written and the date filled;

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

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person's government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

(9) The source of payment for the drug of concern dispensed.

(b) The penalties set forth in section seven of this article shall not apply to drugs listed as drugs of concern. Failure to report may be considered a violation of the practice act of the prescriber and may result in discipline by the appropriate licensing board.

(c) The Board of Pharmacy may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

WV Legislature

§60A-10-1. Short title.

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

WV Legislature

§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 $5,000.

(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.

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§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 ten 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 ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided in section seven of this article which may be sold without a prescription and which is labeled for use by a consumer in accordance 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) "National Association of Drug Diversion Investigators" or "NADDI" means the non-profit 501(c)(3) organization established in 1989, made up of members who are responsible for investigating and prosecuting pharmaceutical drug diversion, and that facilitates cooperation between law enforcement, health care professionals, state regulatory agencies and pharmaceutical manufacturers in the investigation and prevention of prescription drug abuse and diversion.

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

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

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

WV Legislature

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

(l) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacist care as defined in article five, chapter thirty of this code.

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

(n) "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 pharmacist care is provided outside of this state where drugs are dispensed and pharmacist care is provided to residents of this state.

(o) "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, pharmacy intern or pharmacy technician.

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

(q) "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.

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

(s) "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.

(t) "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.

WV Legislature

§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) A pharmacy may not sell, transfer, or dispense to the same person, and a person may not purchase more than three and six-tenths grams per day, more than seven and two-tenths grams in a 30-day period, or more than 86 and four-tenths grams annually of ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. The limits shall apply to the total amount of ephedrine, pseudoephedrine, and phenylpropanolamine contained in the products, and not the overall weight of the products.

(1) Any person who knowingly purchases, receives, or otherwise possesses more than seven and two-tenths grams in a 30-day period of ephedrine, pseudoephedrine, or phenylpropanolamine in any form without a prescription is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a jail for not more than one year, fined not more than $1,000, or both fined and confined.

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

(b) Notwithstanding the provisions of subdivision (1), subsection (a), of this section, any person convicted of a second or subsequent violation of the provisions of said subdivision or a statute or ordinance of the United States or another state which contains the same essential elements is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than $25,000, or both imprisoned and fined.

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

(1) Products dispensed pursuant to a valid prescription;

(2) Drug products which are for pediatric use primarily intended for administration to children under the age of 12;

(3) Drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, or optical isomers, or salts of optical isomers, or other designated precursor which have been determined by the Board of Pharmacy to be in a form which is not feasible for being used for the manufacture of methamphetamine; or

(4) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharmacists, pharmacy interns, pharmacy technicians, or health care professionals.

(d) Notwithstanding any provision of this code to the contrary, any person who knowingly

WV Legislature

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 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years, fined not more than $25,000, or both imprisoned and fined.

(e) (1) Any pharmacy, wholesaler, manufacturer, or distributor of drug products containing 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 §60A-10-6 of this code. Any such pharmacy, wholesaler, manufacturer, or distributor shall keep complete records of all sales and transactions as provided in §60A-10-8 of this code. 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 $10,000.

WV Legislature

§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.

(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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

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

(a) On or before July 1, 2005, 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 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 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 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 of 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 July 1, 2005, 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.

WV Legislature

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

(a) Until January 1, 2013, upon each sale, retail, transfer or distribution of any drug product referred to in section seven of this article or another designated precursor, the pharmacist, pharmacy intern, or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in the central repository established and maintained by the Board of Pharmacy:

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

(b) The information required to be reported by this section shall be reported by paper log maintained at the point of sale: Provided, That, beginning on January 1, 2007, reporting shall be by electronic transmission to the Board of Pharmacy no more frequently than once a week. Beginning on January 1, 2013, the electronic transmission of the information required to be reported in subsection (a) of this section shall be reported to the MSRTTS, and shall be made in real time at the time of the transaction.

(c) The information required by this section shall be the property of the state. The information shall be disclosed as appropriate to the federal Drug Enforcement Administration and to state and local law-enforcement agencies. The information shall not be accessed, used or shared for any purpose other than to ensure compliance with this article and federal law. NADDI shall forward state transaction records in the MSRTTS to the West Virginia State Police weekly, and provide real-time access to MSRTTS information through the MSRTTS online portal to authorized agents of the federal Drug Enforcement Administration and certified law enforcement in this and other states for use in the detection of violations of this article or of federal laws designed to prevent the illegal use, production or distribution of methamphetamine.

WV Legislature

§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 $100 or imprisoned in jail not more than ten days, or both fined and imprisoned.

WV Legislature

§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.

WV Legislature

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

Beginning July 1, 2013, the Superintendent of the West Virginia State Police shall submit an annual report no later than July 1 of each year to the Legislative Oversight Commission on Health and Human Resources Accountability with data and statistics related to methamphetamine use, production and distribution in this state including, but not limited to, the number of clandestine methamphetamine lab incidents per year.

WV Legislature

§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 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years, fined not more than $10,000, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, 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 and the child thereby suffers serious bodily injury is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $25,000, or both imprisoned and fined.

(c) As used in subsection (b) of this section, “serious bodily injury” shall have the same meaning as this term is defined in section one, article eight-b, chapter sixty-one of this code.

WV Legislature

§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, byproduct, 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 $5,000 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.

WV Legislature

§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 $10,000, 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.

WV Legislature

§60A-10-15. Iodine solution greater than two 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.

(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 shall not possess with intent to distribute or distribute 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 (h) of this section.

(e) Any person who violates subsection (d) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $10,000.

(f) A person shall not:

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

WV Legislature

(2) Possess with intent to distribute or distribute iodine crystals and/or an iodine matrix in violation of subsection (a) of this section.

(g) Any person who violates subsection (f) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $10,000.

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

(1) A public or private regularly established primary or secondary school or 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.

(5) The transfer or receipt of any betadine or povidone solution with an iodine content not exceeding ten percent in containers of eight ounces or less, or any tincture of iodine not exceeding two percent in containers of one ounce or less that is sold over the counter and is employed solely for its intended common household use.

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

WV Legislature

§60A-10-16. Expiration of enactments.

The provisions of this article establishing the Multi–State Real-Time Tracking System shall expire on June 30, 2023.

WV Legislature

§60A-11-1. Legislative findings and purpose.

(a) Findings. — The Legislature finds that some residential and business properties are being used for the consumption, production and manufacture of illegal drugs resulting in contamination with hazardous chemical residues. These illegal laboratories present an immediate and ongoing danger to public health and safety. Innocent members of the public may be harmed when they are exposed to the chemical residues if the property is not decontaminated prior to subsequent rental, sale or use of the property.

(b) Purpose. -– The purpose of this article is to protect the public health, safety and welfare by designating the Department of Health as the state agency to set forth standards for the remediation of clandestine drug laboratories.

WV Legislature

§60A-11-2. Definitions.

In this article:

(a) "Clandestine drug laboratory" means the area or areas where controlled substances, or their immediate precursors, have been, or were attempted to be, manufactured, processed, cooked, disposed of or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

(b) "Department" means the West Virginia Department of Health.

(c) "Controlled substance" means the same as that term is defined in section one hundred one, article one of this chapter and article ten, section three of this chapter a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(d) "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.

(e) "Law-enforcement agency" means the West Virginia State Police or any other policing agency of the state or of any political subdivision of the state.

(f) "Remediation" means the act of rendering safe and usable for the purposes for which it is intended residential property, as defined in subsection (g) of this section, or any structure appurtenant to the residential property, or other structure on the residential property that has been used for the manufacture or consumption of methamphetamines or other illicit drug products.

(g) "Residential property" means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including, but not limited to, a storage facility, a mobile home, manufactured home or recreational vehicle, hotel or motel that may be sold, leased or rented for any length of time.

(h) "Residential property owner" means the person holding record title to residential property as that term is defined in subsection (f) of this section.

WV Legislature

§60A-11-3. Remediation of clandestine drug laboratories; promulgation of legislative rules.

(a) The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to address, at a minimum, the following issues:

(1) Establishment of scientific guidelines and numeric decontamination levels for the remediation of clandestine drug laboratories;

(2) Establishment of a certification program for persons or contractors who engage in the business of clandestine drug lab remediation;

(3) Establishment of a licensure procedure whereby individuals and businesses certified to do remediation of clandestine drug laboratories obtain a license from the Department of Health to do such work;

(4) Requiring licensed contractors to notify the Department of Health prior to beginning any remediation project;

(5) Setting forth certification procedures for the department to certify that the completed remediation of the residential property fully meets the scientific guidelines and numeric decontamination levels set forth in the legislative rule; and

(6) Establishing requirements for property owners, sellers and landlords to disclose the existence of any former clandestine laboratory site or activity to any potential occupant of the residential property.

(b) Fees may be set by the legislative rule to be charged to persons or contractors engaged in the business of clandestine drug laboratory remediation for certification, licensing and notification as required in this article.

WV Legislature

§60A-11-4. Law-enforcement responsibility.

Any law-enforcement agency, upon locating chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory on residential property, shall notify the residential property owner and the department in a manner prescribed by the legislative rule authorized by this article.

WV Legislature

§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.

(a) Upon notification to the residential property owner by a law-enforcement agency that chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory have been located on the residential property owner's property, the residential property owner shall be responsible for actions necessary to meet the remediation standards established by the legislative rule authorized by this article. The residential property owner is responsible for actions to ensure the residential property shall remain unoccupied from the time the residential property owner is notified of the clandestine drug laboratory until such time as the department certifies that the completed remediation meets the numeric decontamination levels set forth in the legislative rule authorized in this article. The department shall have forty-five days from receipt of all necessary paperwork and documentation to complete remediation certification: Provided, That a residential property owner may demolish the residential property as an alternative to meeting the remediation standards established by the department.

(b) Once the remediation has been certified complete by the department, the residential property owner and any representative or agent of a residential property owner who neither knew or should have known of the property's illegal use shall be immune from civil liability for action brought for injuries or loss based upon the prior use of the residential property as a clandestine drug laboratory by future owners, renters, lessees or any other person who occupies the residential property.

(c) Any residential property owner who neither knew or should have known of the property's illegal use who chooses to voluntarily and successfully complete the remediation prior to notification by a law-enforcement agency shall have the same immunity from liability as set forth in subsection (b) of this section if the remediation meets the certification standards set forth in legislative rules authorized by this article.

WV Legislature

§60A-11-6. Liability for costs of remediation.

Any person convicted pursuant to section four, subsection (d), article ten of this chapter and whose actions also resulted in the necessity of remediation of a clandestine drug laboratory, shall be liable to the person or entity for all costs associated with the remediation of the clandestine drug laboratory. These costs may include attorney's fees and court costs reasonably necessary to bring an action to collect the amount paid for the remediation.

WV Legislature