WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED
SENATE BILL NO. 55

(By Mr. Allen)

PASSED February 15, 1951
In Effect Ninety days from Passage
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(By Mr. Allen)

[Passed February 15, 1951; in effect ninety days from passage.]

AN ACT to amend and reenact article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of pharmacy and its powers and duties; registration of pharmacists, assistant pharmacists and apprentices; use of titles of pharmacist, assistant pharmacist, pharmacy and drug store; operation of pharmacies and drug stores and permits and fees to operate the same; permits for manufacture, packaging and preparation of drugs, medicines and other products; sale of poisonous and habit-forming drugs; enforcement of this article and penalties for the violation of the provisions thereof.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 5. Pharmacists, Assistant Pharmacists and Drug Stores.

Section 1. Definitions.—The following words and phrases as used in this article, shall have the following meanings, unless the context otherwise requires:

(1) The term "drug" means (a) articles in the official United States Pharmacopoeia, or official National Formulary, or any other supplement to either of them, which are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, and (b) all other articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, and (c) articles, other than food, intended to affect the structure or any function of the body or man or other animals and (d) articles intended for use as a component of any articles specified in clause (a), (b), or (c).

(2) The term "poisonous drug" means any drug likely to be destructive to adult human life in quantities of five grains or less.
(3) The term "deleterious drug" means any drug likely to be destructive to adult human life in quantities of sixty grains or less.

(4) The term "habit-forming drug" means any drug which has been or may be designated as habit-forming under the regulations promulgated in accordance with Section 502(d) of the Federal Food, Drug and Cosmetic Act of June 25, 1938.

(5) The term "pharmacy" or "drug store" or "apothecary" shall be held to mean and include every store or shop or other place (a) where drugs are dispensed, or sold at retail, or displayed for sale at retail, or (b) where physicians prescriptions are compounded; or (c) which has upon it or displayed within it, or affixed to or used in connection with it, a sign bearing the word or words "pharmacy", "pharmacists", "apothecary", "drug store", "drugs", "druggist", "medicine", "medicine store", "drug sundries", "remedies", or any word or words of similar or like import; or (d) any store or shop or other place, with respect to which any of the above words are used in any advertisement.
The term "prescription" shall be held to mean an order for drugs or medicines or combinations or mixtures thereof, written or signed by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease of man or animals. The term "prescription" shall also include orders for drugs or medicines or combinations or mixtures thereof transmitted to the pharmacist by word of mouth, telephone or other means of communication by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for treatment or prevention of disease of man or animals, and such prescriptions received by word of mouth, telephone or other means of communication shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be filed by the pharmacist. All such prescriptions shall be preserved on file for a period of five years, subject to inspection by the proper officer of the law. The above shall apply except for narcotic prescriptions, when all narcotic laws and regulations must be complied with.
The term "cosmetic" which, shall be held to include "dentrifice" and "toilet article", means (a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body, or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (b) articles intended for use as a component of any such articles, except that such term shall not include soap.

Sec. 2. Board of Pharmacy.—There shall be a state board of pharmacy, known as the "West Virginia Board of Pharmacy", which shall consist of five practicing pharmacists, who shall be appointed by the governor by and with the advice and consent of the Senate. Each member of the board, at the time of his appointment, shall be a citizen and registered pharmacist of this state, and actively engaged in the practice of pharmacy.

The members of the board in office on the date this code takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.

On or before the first day of July, one thousand nine
hundred thirty-one, and on or before the first day of July of each year thereafter, the governor shall appoint one member to serve for a term of five years, commencing on said first day of July, and any member shall be eligible for reappointment.

Sec. 3. When Registered Pharmacist Required; Special Provision for Villages of not More Than Five Hundred Inhabitants; Person not a Registered Pharmacist or Assistant Pharmacist or Apprentice not to Compound Prescriptions or Dispense Poisons or Narcotics; Registration of Apprentices.—It shall be unlawful for any person not a registered pharmacist within the meaning of this article, who does not employ a registered pharmacist within the meaning of this article, to conduct any pharmacy, drug store, or apothecary shop or store for the purpose of retailing, compounding or dispensing medicines, poisons or narcotic drugs; Provided, That in any village of not more than five hundred inhabitants where there is no registered pharmacist within less than two miles of such village, the board of pharmacy may grant to any person who is a registered assistant pharmacist
a permit to conduct a drug store or pharmacy in such
village, which permit shall not be valid in any other
village than the one for which it was granted, and shall
cease and determine when the population of the village
for which such permit was granted shall become greater
than five hundred. It shall be unlawful for the pro-
prietor of any store or pharmacy to permit any person
not a registered pharmacist or assistant pharmacist to
compound or dispense prescriptions or prescription re-
fills, or to retail or dispense the poisons and narcotic
drugs named in section two, three and six, article eight,
chapter sixteen of this code. Except that an apprentice
registered with the state board of pharmacy, may com-
 pound and dispense prescriptions or prescription refills
under the direct supervision of a registered pharma-
cist.

It shall be the duty of registered pharmacists or other
employers, who take into their employ an apprentice
for the purpose of his becoming a registered pharmacist,
to register said apprentice within ninety days thereafter
with the board of pharmacy. The board shall furnish
proper blanks for this purpose and shall issue certificates
to the apprentice upon being properly certified. The
experience requirement for licensure as a registered
pharmacist shall be computed from the date certified
as the date of entering said apprenticeship; and if such
apprenticeship is not registered with the board of phar-
mary, then he or she shall receive no credit for such
experience in a pharmacy when he or she makes ap-
lication for examination for licensure as a registered
pharmacist. An apprentice having served part or all
of his or her apprenticeship in a pharmacy without the
state shall be given credit for the same when the af-
fidavit of his or her said apprenticeship is signed by the
registered pharmacist under whom he or she served,
and it shows the exact time of such apprenticeship served,
and when same is attested by the secretary of the state
board of pharmacy of that state.

Sec. 4. Use of Titles “Pharmacist” or “Assistant Phar-
macist”; “Drug Store” or “Drugs”.—It shall be unlawful
for any person not legally registered as a pharmacist,
unless he has in his employ a registered pharmacist, to
take, use or exhibit the title of pharmacist, or licensed
or registered pharmacist, or the title of druggist or apothe-
cary, or any other title or description of like import, or
to label, mark, or advertise his or any other place of
business as a pharmacy or drug store or by the use of
the words drug or medicines or any other compound or
derivative of the same, or by any other word or sign
indicating or intended to indicate that drugs or pharma-
ceutical supplies are either sold or offered for sale. And
it shall be unlawful for any person not legally registered
as an assistant pharmacist to take, use or exhibit the
title of assistant pharmacist, or any title or description
of like import. Any person violating this section shall,
upon conviction, be deemed guilty of a misdemeanor
and fined not more than one hundred dollars.

Sec. 5. Qualification of Applicant for Registration as
Pharmacist; Certificates of Registration.—In order to be
registered as a pharmacist within the meaning of this
article, an applicant shall be a citizen of the United
States, not less than twenty-one years of age, shall present
to the board of pharmacy satisfactory evidence that he
is a graduate of a recognized school of pharmacy as defined by the board of pharmacy, and in addition thereto he shall have had at least one year of practical experience in a pharmacy or drug store under the instruction and supervision of a registered pharmacist and shall pass a satisfactory examination by or under the direction of the board of pharmacy.

Every applicant for registration as a pharmacist shall present to the board of pharmacy satisfactory evidence that he is a person of good moral character and not addicted to drunkenness or the use of narcotic drugs. The board shall issue certificates of registration to all applicants who successfully pass the required examination and are otherwise qualified, and to all those whose certificates or licenses the board shall accept in lieu of an examination as provided in the next succeeding section.

Sec. 6. Registration of Pharmacists From Other States.

The board of pharmacy may register and admit to practice as pharmacists in this state, without examination, such persons as have been legally registered or licensed as pharmacists in other states; Provided, That the ap-
Applicant for such registration shall appear personally before the board and shall present satisfactory evidence of qualification equal to that required of applicants for registration in this state, and that he was registered or licensed by examination in such other state, and that the standard of competence required in such other state is not lower than that required in this state. And provided further, That the board is satisfied that such other state accords similar recognition to registered pharmacists of this state. Applicants for registration under this section shall, with their application, forward to the secretary of the board of pharmacy the same fees required of other applicants for registration.

Sec. 7. Refusal to Issue; Suspension or Revocation of Certificate of Registration.—The state board of pharmacy shall refuse to issue a certificate of registration to a person guilty of felony or gross immorality, or addicted to drunkenness or the use of narcotic drugs, and shall suspend or revoke a certificate for like cause or for fraud in procuring it.

Sec. 8. Reports by Secretary of Board to Secretary of State; “List of Pharmacists”.—Within ninety days after
this code takes effect, the secretary of the board of pharmacy shall make a report to the secretary of state of all registered pharmacists and registered assistant pharmacists in this state, giving the name of the person, his business address, and the date of his registration. On or before the fifteenth day of September each year, the secretary of the board shall certify to the secretary of state all changes in said list required by the addition of new registrations, renewals, deaths, forfeiture of registration, or for other causes, occurring during the preceding year. The secretary of state shall enter in an appropriate book, known as "List of Pharmacists" the facts shown by such reports, which reports shall be filed and preserved in his office.

Sec. 9. Fees.—The board of pharmacy shall be entitled to charge and collect the following fees, in addition to those provided in article one of this chapter and in section fourteen and section sixteen of this article: For renewing the registration of a pharmacist, five dollars; for renewing the registration of an assistant pharmacist, five dollars; for issuing a permit to an assistant pharma-
cist to conduct a pharmacy or drug store in a village of not more than five hundred inhabitants, ten dollars.

Sec. 10. Annual Renewal of Registration and Permits.—

Every registered pharmacist and assistant pharmacist within this state, who desires to continue in the practice of his profession, shall on or before the first day of July, one thousand nine hundred fifty-one and annually thereafter apply to the state board of pharmacy for a renewal of his registration, or permit, and shall transmit with his application the fees prescribed in the preceding section of this article. If the board shall find that such applicant has been legally registered in this state, and is entitled to a renewal of the certificate or permit, it shall issue to him a renewal certificate attesting that fact. Notification of the annual renewal shall be given by the secretary of the board at least thirty days prior to said first day of July. If any pharmacist or assistant pharmacist shall fail for a period of thirty days after said first day of July to apply to the board for a renewal of his registration, his name shall be erased from the register of registered pharmacists and assistant pharmacists, and
such person, in order to again become registered, shall be required to appear personally before the board to show cause for permitting the certificate or permit to lapse. If such person submits to the board satisfactory reasons for allowing the certificate or permit to lapse, and satisfies the board as to his qualifications to practice the profession, such person shall be required to pay the same fee as in the case of examination.

Sec. 11. Certificate of Registration or Permit Shall be Exposed.—Every certificate of registration to practice as a pharmacist or assistant pharmacist, and every permit to an assistant pharmacist to conduct a drug store in a village of not more than five hundred inhabitants, and every renewal of such certificate or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed.

Sec. 12. Responsibility for Quality of Drugs Dispensed Exception; Falsification of Labels; Deviation from Prescription.—All persons, whether registered pharmacists
or not shall be held responsible for the quality of all
drugs, chemicals and medicines they may sell or dis-
pense, with the exception of those sold in the original re-
tail package of the manufacture.

The following acts shall be prohibited: (1) the falsi-
fication of any label upon the immediate container, box,
and/or package containing a drug. (2) The substitu-
tion or the dispensing of a different drug in lieu of any
drug prescribed in a prescription without the approval
of the practitioner authorizing the original prescription:
Provided, That this shall not be construed to interfere
with the Art of Prescription Compounding as practiced
by the pharmacist in preparing more elegant preparations
which do not alter the therapeutic properties of the pre-
scription. (3) The filling or refilling of any prescription
for a greater or lesser quantity of any ingredient than
that prescribed in the original prescription without the
approval of the practitioner authorizing the original pre-
scription.

Any person violating this section shall be guilty of a
misdemeanor, and on conviction thereof, shall be pun-
ished by a fine of not less than fifty nor more than one
hundred fifty dollars for each such offense.

Sec. 13. *Each Pharmacy to Have United States Phar-macoepia and National Formulary.*—Every pharmacy or
drug store as defined, shall own and have on file at all
times a recent edition of the United States Pharma-
coepia and a recent edition of the National Formulary
and any supplements to any of them or some other pub-
lication embodying their texts in full, and no license
shall be issued until there is a compliance with this
section.

Sec. 14. *Pharmacies or Drug Stores to be Registered; Permit to Operate; Fees; Registered Pharmacist to Con-
duct Business.*—The board of pharmacy shall require and
provide for the annual registration of every pharmacy
or drug store, as defined, doing business in this state.
Any person, firm, corporation or copartnership desiring
to operate, maintain, open or establish a pharmacy or
drug store, as defined, in this state, shall apply to the
board of pharmacy for a permit to do so. The application
for such permit or license shall be made on a form pre-
scribed and furnished by the board of pharmacy, which
when properly executed, shall indicate the owner, man-
ger, trustee, lessee, receiver, or other person or persons
desiring such permit, as well as the location of such
pharmacy or drug store, including street and number,
and such other information as the board of pharmacy
may require. If it is desired to operate, maintain, open
or establish more than one pharmacy or drug store,
separate applications shall be made and separate permits
or licenses shall be issued for each. Every application
for a permit shall be accompanied by the required fee
of ten dollars, which amount shall be paid annually as
the fee for renewal of such permit or license. If an ap-
plication is found satisfactory, the secretary of the board
of pharmacy shall issue to the applicant a permit or
license for each pharmacy or drug store for which ap-
plication is made. Permits or licenses issued under this
section shall not be transferable and shall expire on the
thirtieth day of June of each calendar year, and if ap-
plication for renewal of permit or license is not made
or a new one granted on or before the first day of Sep-
tember, following, the old permit or license shall lapse and become null and void. Every such place of business so registered shall be in direct charge of a registered pharmacist and operate in compliance with the general provisions governing the practice of pharmacy and the operation of a drug store or pharmacy.

The provisions of this section shall have no application to the sale of patent or proprietary medicines which are not poisonous, deleterious or habit-forming nor to such ordinary drugs in original retail packages when such are not poisonous, deleterious or habit-forming nor to flavoring extracts or dyestuffs as are usually sold in a country store.

Sec. 15. Professional and Technical Equipment Required for Pharmacy or Drug Store—Every registered drug store or pharmacy must be equipped with proper pharmaceutical utensils so that prescriptions can be properly filled and United States Pharmacopoeia and National Formulary preparations properly compounded. The board of pharmacy shall prescribe the minimum of such professional and technical equipment which a phar-
macy or drug store shall at all times possess.

Any person violating this section shall, upon conviction, be deemed guilty of a misdemeanor and fined not more than fifty dollars, and no permit shall be issued or continued for the conducting of a pharmacy or drug store which has not complied with the provisions of this section.

Sec. 16. Permit for Manufacture, Packaging, etc. of Drugs, Medicines, Cosmetics, etc.; Regulations as to Sanitation and Equipment; Penalties; Revocation of Permit.—No drugs or medicines, or toilet articles, dentifrices, or cosmetics, shall be manufactured, made, produced, packed, packaged or prepared within the state, except under the personal and immediate supervision of a registered pharmacist or such other person as may be approved by the board of pharmacy, after an investigation and determination by the said board that they are qualified by scientific or technical training and/or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture, make, produce, pack, package or prepare any such articles without first obtaining a permit to do so.
from the board of pharmacy. Such permit shall be sub-
ject to such rules and regulations, with respect to sanita-
tion and/or equipment, as the said board of pharmacy
may from time to time adopt for the protection of the
public health and safety.

The application for such permit shall be made on a
form to be prescribed and furnished by the said board
of pharmacy and shall be accompanied by the required
fee of fifty dollars which amount shall also be paid as
the fee for each annual renewal of such permit. Separate
applications shall be made and separate permits issued
for each separate place of manufacture, making, pro-
ducing, packing, packaging or preparation.

Permits issued under the provisions of this section
shall be posted in a conspicuous place in the factory or
place for which issued; such permits shall not be trans-
ferable, and shall expire on the thirtieth day of June
following the date of issue and shall be renewed an-
nually. Nothing in this section shall be construed to
apply to those operating registered pharmacies or drug
stores.
Any person, firm or corporation violating any of the provisions of this section and any permittee here-under who shall violate any of the conditions of this permit or any of the rules and regulations adopted by the said board of pharmacy in pursuance of the power hereby conferred, shall, upon conviction, be deemed guilty of a misdemeanor and fined not more than fifty dollars for each offense, and each and every day such violation continues shall constitute a separate and distinct offense, and upon conviction of a permittee, his permit shall also forthwith be revoked and become null and void.

Any person, firm, corporation, or any permittee here-under who shall have been convicted of two or more successive violations of the provisions of this section or of the rules and regulations adopted by the board of pharmacy in pursuance of the powers hereby conferred, shall at the discretion of the board of pharmacy have such permit permanently revoked, and the board of pharmacy is hereby authorized to refuse the issuance of further permits to such person, firm, corporation, or permittee.
Sec. 17. Hearings by Board Upon Complaint.—Any person aggrieved by the rules or regulations promulgated by the said board of pharmacy under the provisions of section sixteen, shall be entitled to have his complaint set down for hearing by said board. Requests for such hearing shall be made in writing and shall specify in detail the basis for the complaint, and the hearing shall be held within ten days from the date of the receipt of said request by the said board, unless postponed by mutual agreement. The said board shall have the power to make such rules and regulations with respect to the conduct of such hearings as may be necessary.

Sec. 18. Limitation of Sale of Poisonous, Deleterious and Habit-Forming Drugs.—The sale, holding for sale, or offering for sale at retail of any poisonous, deleterious, or habit-forming drug, or any injection, or any other medicine if the contents of its container, or any part thereof, taken at one time, are likely to prove poisonous, deleterious, or habit-forming is prohibited by any person other than a registered pharmacist, who shall take precautions to acquaint the purchaser of the nature of such drug, medicine or injection at the time of sale.
Sec. 19. Rules and Regulations of Board of Pharmacy; Revocation of Permits; Employment of Field Agents, Chemists, Clerical and Other Qualified Personnel.—The board of pharmacy shall make such rules and regulations, not inconsistent with law, as necessary, to carry out the purposes and enforce the provisions of this article and is hereby authorized to revoke any permit or license issued under the provisions of this article at any time when examination or inspection of the pharmacy or drug store shall disclose that such place of business is not being conducted according to law.

The board of pharmacy shall have the power and authority to employ field agents, chemists, clerical help and other qualified personnel, as may be necessary to carry out the purposes and enforce the provisions of this article.

Sec. 20. Duty of Prosecuting Attorney When Violation Reported.—It shall be the duty of each county prosecuting attorney to whom the board of pharmacy or such other person shall report any violations of this, or any other law, now in force pertaining to the practice of
pharmacy, or as defined, to cause appropriate proceedings

to be commenced and prosecuted for the enforcement of

the penalties as in such case may be provided.

Sec. 21. Limitations of Article.—The provisions of

this article shall not apply to the sale of patent or pro-

prietary medicines, nor to such ordinary drugs and dye-

stuffs as are usually sold in a country store.

The term "ordinary drugs" shall not be held to include

any of the poisons and narcotics named in sections two,

three and six of article eight, chapter sixteen of this code,

nor any intoxicating liquors, nor any poisonous, dele-

terious, or habit-forming drugs, as defined, or any injection,

and nothing in this article shall be construed to interfere

with any legally qualified practitioner of medicine, den-

tistry or veterinary medicine, who is not the proprietor

of the store for the dispensing or retailing of drugs, and

who is not in the employ of such proprietor, in the com-
pounding of his own prescriptions, or to prevent him from

supplying to his patients such medicines as he may deem

proper, if such supply is not made as a sale.

Sec. 22. Offenses; Penalties.—Any person who shall
2 violate any of the provisions of section three of this article
3 shall be guilty of a misdemeanor, and upon conviction
4 thereof, shall for each offense, be fined not exceeding two
5 hundred dollars, or confined in the county jail not to ex-
6 ceed six months, or both fined and imprisoned, in the
7 discretion of the court, and each day such violation shall
8 continue shall be deemed a separate offense.
9 Any person, firm, partnership or corporation who shall
10 violate any of the provisions of section fourteen shall be
11 deemed guilty of a misdemeanor and upon conviction
12 thereof for the first offense shall be fined not to exceed
13 one hundred dollars, or shall be imprisoned in the county
14 jail not to exceed six months, or both such fine and im-
15 prisonment, in the discretion of the court, and each and
16 every day that such violation continues shall constitute a
17 separate offense.
18 Any person, firm, partnership or corporation who shall
19 violate any of the provisions of section eighteen shall be
20 deemed guilty of a misdemeanor and upon conviction
21 thereof shall be fined not to exceed fifty dollars for the
22 first offense, and upon conviction of a second offense shall
be fined not less than one hundred dollars, or shall be im-
prisoned in the county jail not to exceed thirty days, or
both such fine and imprisonment, in the discretion of the
court, and each and every day that such violation con-
stitutes shall constitute a separate offense.

Sec. 23. Relief by Injunction.—The board of pharmacy
or any person, corporation, or association, in addition to
the remedy set forth, may apply to a court having com-
petent jurisdiction over the parties and subject matter,
for a writ of injunction to restrain repetitious violations
of the provisions of this article.

Sec. 24. Validity.—If any clause, phrase, sentence,
paragraph or section of this article is for any reason held
to be unconstitutional, such decision shall not affect the
validity of the remaining portions of the article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

A. R. Weiders  
Chairman Senate Committee

James W. Hoop  
Chairman House Committee

Originated in the Senate.

Takes effect ________day from ________passage.

J. W. Lyman  
Clerk of the Senate

J. R. Clipp  
Clerk of the House of Delegates

W. E. Harmon  
President of the Senate

W. E. Harmon  
Speaker House of Delegates

The within ________approved ________this the ________day of ________, 1951.

Oliver L. Patterson  
Governor.

Note: In the office of the Secretary of State.

of West Virginia MAR 1, 1951
D. Pitt O'Brien,  
Secretary of State