WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1965

ENROLLED
Committee Substitute For
HOUSE BILL No. 961

(By Mr. Speaker, with consent of Mr. Nelson)

PASSED March 12, 1965

In Effect from Passage

Filed in the City of
JOE W. MILLER
Secretary of State
3-19-65
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-b, relating to dangerous drugs, and providing penalties.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eight-b, to read as follows:

Article 8-b. Dangerous Drugs Act.

Section 1. Definitions.—As used in this article:

2 (1) The term “dangerous drug or drugs” means (a)
the salts and derivatives of barbituric acid or compounds, preparations or mixtures thereof; (b) any derivative of barbituric acid which has been designated by the state board of pharmacy as being habit forming; (c) any drug which contains any quantity of amphetamine or any salt of amphetamine or any salt of an optical isomer of amphetamine or any substance which the state board of pharmacy, after investigation, has found to be, and by regulation designated as habit forming because of its stimulant effect on the central nervous system; and (d) any drug which, under the regulations promulgated in accordance with the “Federal Food, Drug and Cosmetic Act” of June, twenty-five, one thousand nine hundred thirty-eight, or any amendment thereto, is designated as dangerous or habit forming: Provided, That the term “dangerous drug” shall not include any drug the manufacture or delivery of which is regulated by the narcotic laws of the United States or of this state; Provided, however, That any drug, compound, preparation or mixture containing the salts or derivatives of barbituric acid may be exempted from the provisions of this article by regu-
lations promulgated by the state board of pharmacy and if so exempted, shall not be subject to the provisions of this article;

(2) The term “delivery” means sale, dispensing, giving or supplying in any other manner;

(3) The term “patient” means, as the case may be (a) the individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered, or (b) the owner or the agent of the owner of the animal for which a dangerous drug is prescribed, or to which a dangerous drug is administered, providing that the prescribing or administering referred to in (a) and (b) hereof is in good faith and in the course of professional practice only;

(4) The term “person” includes individual, corporation, partnership and association;

(5) The term “practitioner” means a physician, dentist, or veterinarian licensed to practice his respective profession in this state;

(6) The term “professional practice of a practitioner” means treatment of patients under a bona fide practitioner-patient relationship;
(7) The term "pharmacist" means a person duly licensed as a pharmacist by the state board of pharmacy;

(8) The term "prescription" means an order for dangerous drugs or medicines or combinations or mixtures thereof, written or signed by a practitioner intended for the treatment or prevention of diseases of man or animals, and also includes orders for dangerous drugs or medicines or combinations or mixtures thereof transmitted to a pharmacist by word of mouth, telephone, telegraph, or other means of communication by a practitioner, and such prescriptions received by word of mouth, telephone, telegraph, or other legal means of communication recorded in writing by a pharmacist;

(9) The term "manufacturers" means persons who manufacture dangerous drugs, and includes persons who prepared such dangerous drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, but does not include pharmacists so preparing such dangerous drugs solely for dispensing on prescriptions received or to be received by them;

(10) The term "wholesalers" means persons engaged
in the business of distributing dangerous drugs to persons included in clauses (a) and (b) of paragraph (1) of section three of this article;

(11) The term “warehousemen” means persons who, in the usual course of business, store dangerous drugs for others lawfully entitled to possess them and who have no control over the disposition of such dangerous drugs except for the purpose of storage; and

(12) The term “carriers” means persons who, in the usual course of business, transport dangerous drugs for others lawfully entitled to possess and ship them and who have no control over the disposition of such dangerous drugs except for the purpose of transportation.

Sec. 2. Prohibited Acts.—It shall be unlawful:

(1) To deliver any dangerous drug unless (a) such dangerous drug is delivered by a pharmacist in good faith upon prescription and there is affixed to the immediate container in which such dangerous drug is delivered a label bearing (i) the name and address of the owner of the establishment from which the dangerous drug was delivered; (ii) the date on which the prescription for such
dangerous drug was filled; (iii) the number of such pre-
scription as filed in the prescription files of the pharma-
cist who filled such prescription; (iv) the name of the
practitioner who prescribed such dangerous drug; (v)
the name of the patient, and if such dangerous drug was
prescribed for an animal, a statement showing the species
of the animal; and (vi) the direction for use of the dan-
gerous drug and cautionary statements, if any, as con-
tained in the prescription; and (b) in the event that such
delivery is pursuant to a prescription transmitted by
word of mouth, telephone, telegraph, or other means of
communication, such prescription is promptly reduced to
writing and filed by the pharmacist; or (c) such danger-
ous drug is delivered by a practitioner in good faith and
in the course of his professional practice only;

(2) To refill any prescription for a dangerous drug
unless such refilling is specifically authorized on the pre-
scription;

(3) For any person to possess or exhibit a dangerous
drug unless such person obtained such dangerous drug
on the prescription of a practitioner or in accordance with
clause (c), paragraph (1) of this section or from a person licensed by the laws of any other state to prescribe or dispense dangerous and other drugs;

(4) To sell, deliver or otherwise dispose of any dangerous drugs in violation of this article;

(5) For any person to use to his own advantage, or to reveal other than to a public official or employee charged with the duty of enforcing laws relating to the handling, sale, and distribution of dangerous drugs, or to a court when relevant to a judicial proceeding, any information required under the authority of this article concerning any method or process which as a trade secret is entitled to protection; or

(6) For any person to obtain or attempt to obtain a dangerous drug by fraud, deceit, misrepresentation or subterfuge; or by the forgery or alteration of a prescription; or by the use of a false name or the giving of a false address.

Sec. 3. Exemptions.—(1) The provisions of paragraphs (1) and (3) of section two of this article shall not be applicable to: (a) The delivery of dangerous drugs for
medical or scientific purposes only to persons included in any of the classes hereinafter named in this paragraph in clauses (i) through (iv), or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or (b) the possession of dangerous drugs by such persons or their agents or employees for such use; or (c) the possession or exhibition of dangerous drugs by persons included in any of the classes hereinafter named in this paragraph in clauses (v) and (vi), or their agents or employees, in the usual course of their business as defined in paragraphs (9) through (12) of section one of this article; (i) pharmacists; (ii) practitioners; (iii) persons who legally procure dangerous drugs for disposition by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing and not for resale; (iv) hospitals and other institutions which procure dangerous drugs for lawful administration and which dispense the same only upon the written direction
of a practitioner; (v) manufacturers and wholesalers; 
(vi) carriers and warehousemen.

(2) Nothing contained in section two of this article shall make it unlawful for a public officer, agent or employee, or person aiding such public officer, agent or employee, in performing his official duties to possess, obtain, or attempt to obtain a dangerous drug for the purpose of enforcing the provisions of any law in this state or of the United States relating to the regulation of the handling, sale or distribution of dangerous drugs and other drugs.

Sec. 4. Regulations.—The state board of pharmacy may promulgate necessary regulations for the administration of this article.

Sec. 5. Search Warrants.—Search and seizure warrants to enforce the provisions of this article shall be issued, executed and returned as provided in article one-a, chapter sixty-two of this code.

Sec. 6. Penalties.—Any person violating any provision of this article shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or by imprison-
ment for not less than one nor more than five years, or
both, and for a second and each subsequent offense by
a fine not exceeding ten thousand dollars, or by imprison-
ment for not less than two nor more than ten years, or
both.

Sec. 7. Severability.—If any provision of this article
or the application thereof to any person or circumstance
is held invalid, such invalidity shall not affect other pro-
visions or applications of the article which can be given
effect without the invalid provision or its application, and
to this end the provisions of this article are declared to
be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 19th day of March, 1965.

Governor
Presented to the Governor's Office
March 19, 1965
4:10 P.M.