

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

Committee Substitute for
HOUSE BILL No. 961

(By Mr. *Speaker, Mr. White, Mr. Nelson*)



PASSED March 12, 1965

In Effect from Passage



FILED IN THE OFFICE OF
JOE R. LITTON
SECRETARY OF STATE
THIS DATE 3-19-65

#961

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 961
(Originating in the Committee on the Judiciary.)

[Passed March 12, 1965; in effect from passage.]

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)

3 the salts and derivatives of barbituric acid or compounds,
4 preparations or mixtures thereof; (b) any derivative of
5 barbituric acid which has been designated by the state
6 board of pharmacy as being habit forming; (c) any drug
7 which contains any quantity of amphetamine or any salt
8 of amphetamine or any salt of an optical isomer of am-
9 phetamine or any substance which the state board of
10 pharmacy, after investigation, has found to be, and by
11 regulation designated as habit forming because of its
12 stimulant effect on the central nervous system; and (d)
13 any drug which, under the regulations promulgated in
14 accordance with the "Federal Food, Drug and Cosmetic
15 Act" of June, twenty-five, one thousand nine hundred
16 thirty-eight, or any amendment thereto, is designated as
17 dangerous or habit forming: *Provided*, That the term
18 "dangerous drug" shall not include any drug the manu-
19 facture or delivery of which is regulated by the narcotic
20 laws of the United States or of this state; *Provided, how-*
21 *ever*, That any drug, compound, preparation or mixture
22 containing the salts or derivatives of barbituric acid may
23 be exempted from the provisions of this article by regu-

24 lations promulgated by the state board of pharmacy and
25 if so exempted, shall not be subject to the provisions of
26 this article;

27 (2) The term "delivery" means sale, dispensing, giv-
28 ing or supplying in any other manner;

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

37 (4) The term "person" includes individual, corpora-
38 tion, partnership and association;

39 (5) The term "practitioner" means a physician, den-
40 tist, or veterinarian licensed to practice his respective pro-
41 fession in this state;

42 (6) The term "professional practice of a practitioner"
43 means treatment of patients under a bona fide practi-
44 tioner-patient relationship;

45 (7) The term "pharmacist" means a person duly li-
46 censed as a pharmacist by the state board of pharmacy;

47 (8) The term "prescription" means an order for dan-
48 gerous drugs or medicines or combinations or mixtures
49 thereof, written or signed by a practitioner intended for
50 the treatment or prevention of diseases of man or animals,
51 and also includes orders for dangerous drugs or medicines
52 or combinations or mixtures thereof transmitted to a
53 pharmacist by word of mouth, telephone, telegraph, or
54 other means of communication by a practitioner, and such
55 prescriptions received by word of mouth, telephone, tele-
56 graph, or other legal means of communication recorded
57 in writing by a pharmacist;

58 (9) The term "manufacturers" means persons who
59 manufacture dangerous drugs, and includes persons who
60 prepared such dangerous drugs in dosage forms by mix-
61 ing, compounding, encapsulating, entableting, or other
62 process, but does not include pharmacists so preparing
63 such dangerous drugs solely for dispensing on prescrip-
64 tions received or to be received by them;

65 (10) The term "wholesalers" means persons engaged

66 in the business of distributing dangerous drugs to persons
67 included in clauses (a) and (b) of paragraph (1) of sec-
68 tion three of this article;

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

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

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

2 (1) To deliver any dangerous drug unless (a) such
3 dangerous drug is delivered by a pharmacist in good faith
4 upon prescription and there is affixed to the immediate
5 container in which such dangerous drug is delivered a
6 label bearing (i) the name and address of the owner of
7 the establishment from which the dangerous drug was
8 delivered; (ii) the date on which the prescription for such

9 dangerous drug was filled; (iii) the number of such pre-
10 scription as filed in the prescription files of the pharma-
11 cist who filled such prescription; (iv) the name of the
12 practitioner who prescribed such dangerous drug; (v)
13 the name of the patient, and if such dangerous drug was
14 prescribed for an animal, a statement showing the species
15 of the animal; and (vi) the direction for use of the dan-
16 gerous drug and cautionary statements, if any, as con-
17 tained in the prescription; and (b) in the event that such
18 delivery is pursuant to a prescription transmitted by
19 word of mouth, telephone, telegraph, or other means of
20 communication, such prescription is promptly reduced to
21 writing and filed by the pharmacist; or (c) such danger-
22 ous drug is delivered by a practitioner in good faith and
23 in the course of his professional practice only;

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

27 (3) For any person to possess or exhibit a dangerous
28 drug unless such person obtained such dangerous drug
29 on the prescription of a practitioner or in accordance with

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30 clause (c), paragraph (1) of this section or from a person
31 licensed by the laws of any other state to prescribe or dis-
32 pense dangerous and other drugs;

33 (4) To sell, deliver or otherwise dispose of any dan-
34 gerous drugs in violation of this article;

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

43 (6) For any person to obtain or attempt to obtain a
44 dangerous drug by fraud, deceit, misrepresentation or
45 subterfuge; or by the forgery or alteration of a prescrip-
46 tion; or by the use of a false name or the giving of a false
47 address.

Sec. 3. Exemptions.—(1) The provisions of paragraphs
2 (1) and (3) of section two of this article shall not be ap-
3 plicable to: (a) The delivery of dangerous drugs for

4 medical or scientific purposes only to persons included in
5 any of the classes hereinafter named in this paragraph
6 in clauses (i) through (iv), or to the agents or employees
7 of such persons, for use in the usual course of their busi-
8 ness or practice or in the performance of their official
9 duties, as the case may be; or (b) the possession of dan-
10 gerous drugs by such persons or their agents or employees
11 for such use; or (c) the possession or exhibition of dan-
12 gerous drugs by persons included in any of the classes
13 hereinafter named in this paragraph in clauses (v) and
14 (vi), or their agents or employees, in the usual course of
15 their business as defined in paragraphs (9) through (12)
16 of section one of this article; (i) pharmacists; (ii) prac-
17 titioners; (iii) persons who legally procure dangerous
18 drugs for disposition by or under the supervision of phar-
19 macists or practitioners employed by them, or for the
20 purpose of lawful research, teaching, or testing and not
21 for resale; (iv) hospitals and other institutions which
22 procure dangerous drugs for lawful administration and
23 which dispense the same only upon the written direction

24 of a practitioner; (v) manufacturers and wholesalers;
25 (vi) carriers and warehousemen.

26 (2) Nothing contained in section two of this article
27 shall make it unlawful for a public officer, agent or em-
28 ployee, or person aiding such public officer, agent or em-
29 ployee, in performing his official duties to possess, obtain,
30 or attempt to obtain a dangerous drug for the purpose
31 of enforcing the provisions of any law in this state or of
32 the United States relating to the regulation of the han-
33 dling, sale or distribution of dangerous drugs and other
34 drugs.

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

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

Sec. 6. Penalties.—Any person violating any provision
2 of this article shall, upon conviction, be punished by a
3 fine not exceeding one thousand dollars, or by imprison-

4 ment for not less than one nor more than five years, or
5 both, and for a second and each subsequent offense by
6 a fine not exceeding ten thousand dollars, or by imprison-
7 ment for not less than two nor more than ten years, or
8 both.

Sec. 7. Severability.—If any provision of this article
2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the article which can be given
5 effect without the invalid provision or its application, and
6 to this end the provisions of this article are declared to
7 be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Ray Parker

Chairman Senate Committee

James W. Loop

Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Meyer

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Howard W. Larson

President of the Senate

H. Kaban White

Speaker House of Delegates

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

Huette C. Smith

Governor



Presented to the Governor's Office

March 19, 1965

4:10 P.M.