WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 791

(By Senator Kessler, et al.)

PASSED March 11, 2004

In Effect 90 days from Passage
ENROLLED

Senate Bill No. 791

(By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §60A-2-212 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60A-10-7 and §60A-10-8 of said code, all relating to ephedrine, pseudoephedrine and phenylpropanolamine; clarifying that offenses and penalties for prohibited acts relating to controlled substances do not apply to ephedrine, pseudoephedrine or phenylpropanolamine; clarifying that the offenses and penalties for prohibited acts set forth in the provisions of article ten of said chapter are applicable to ephedrine, pseudoephedrine and phenylpropanolamine; clarifying the reporting requirements requiring pharmacists and pharmacy technicians to report sales, transfers and distribution of certain substances containing ephedrine, pseudoephedrine and phenylpropanolamine to the Board of Pharmacy; and providing for the methods of reporting the information required to be reported.
Be it enacted by the Legislature of West Virginia:

That §60A-2-212 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60A-10-7 and §60A-10-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

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.

(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 and their salts, as set forth below:

(1) Buprenorphine.

(c) 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:

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

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

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

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

(d) Stimulants. — Unless specifically exempted or excluded 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 and salts of isomers:

(1) Pyrovalerone.

(e) 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 twelve: 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.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-7. Restricted products; rule-making authority.

(a) On or before the first day of July, two thousand five, 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 as their single active ingredient 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 as their single active ingredient 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 the first day of July, two thousand five, 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.
§60A-10-8. Reporting requirements; confidentiality.

(a) Whenever there is a sale, retail, transfer or distribution of any drug product referred to in section seven of this article or another designated precursor, the pharmacist or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in a 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 the first day of January, two thousand seven, reporting shall be by electronic transmission to the Board of Pharmacy no more frequently than once a week.

(c) The information required by this section shall be the property of the state and a pharmacy shall have no duty to retain a copy of the information in any format once the information has been reported to the Board of Pharmacy as required by this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 4th Day of April, 2006.

Governor