WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION SESSION, 2010

ENROLLED

House Bill No. 2485
(By Delegates Border and Perdue)

Passed March 12, 2010
In Effect Ninety Days From Passage
AN ACT to amend and reenact §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-8 of the Code of West Virginia, 1931, as amended, all relating to updating who may sell, possess or otherwise handle pseudoephedrine and other chemical precursors of methamphetamine; defining terms; and updating reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-3. Definitions.

1 In this article:

2 (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 seven 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 as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided for 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) "Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

(h) "Pseudoephedrine" means pseudoephedrine, its salts, optical isomers and salts of optical isomers.

(i) "Precursor" means any substance which may be used along with other substances as a component in the production and distribution of illegal methamphetamine.
(j) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care as defined in subsection (t), section one-b, article fifty, chapter thirty of this code.

(k) "Pharmacy intern" has the same meaning as the term "intern" as set forth in section one-b, article five, chapter thirty of this code.

(l) "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 pharmaceutical care is provided outside of this state where drugs are dispensed and pharmaceutical care is provided to residents of this state.

(m) "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 or pharmacy technician.

(n) "Pharmacy technician" means a registered technician who meets the requirements for registration as set forth in article five, chapter thirty of this code.

(o) "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.

(p) "Schedule V" means the schedule of controlled substances set out in section two hundred twelve, section two of this chapter.

(q) "Single active ingredient" means those ingredients listed on a drug product package as the only active ingredient
in over-the-counter medication or identified on the Schedule
maintained by the Board of Pharmacy as being primarily
used in the illegal production and distribution of
methamphetamine.

(r) "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.

(s) "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.

§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) Any person who within any thirty-day period knowingly purchases, receives or otherwise possesses more than three packages of a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine in any form shall be guilty of a misdemeanor and, upon conviction, shall be confined in a jail for not more than one year, fined not more than $1,000, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of the provisions of said subsection or a statute or ordinance of the United States or another state which contains the same essential elements shall be guilty of a
felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than $25,000, or both.

(c) The provisions of subsection (a) of this section shall not apply to:

(1) Drug products which are for pediatric use primarily intended for administration to children under the age of twelve;

(2) Drug products which have been determined by the Board of Pharmacy to be in a form which is unamenable to being used for the manufacture of methamphetamine;

(3) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharmacists, pharmacy interns, pharmacy technicians, health care professionals or persons possessing such drug products pursuant to a valid prescription.

(d) Notwithstanding any provision of this code to the contrary, any person who knowingly 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 shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two nor more than ten years, fined not more than $25,000, or both.

(e) (1) Any pharmacy, wholesaler, manufacturer or distributor of drug products containing as their single active
ingredient 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 section six of this article. Any such pharmacy, wholesaler, manufacturer or distributor shall keep complete records of all sales and transactions as provided in section eight of this article. 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.

§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 as its single active ingredient 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 shall 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 require the person purchasing, receiving or otherwise acquiring the drug product to:

(1) Produce a government-issued photo identification showing his or her date of birth; and

(2) Sign a form containing the information set forth in subsection (b), section eight of this article and attesting to the validity of such information. Any person who knowingly makes a false representation or statement pursuant to the requirements of this section shall be 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.

(e) 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.

(f) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in an amount not more than $10,000.

§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, 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.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 19th day of March, 2010.

Governor