

HB 2485

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CLERK OF THE WEST VIRGINIA
SECRETARY OF STATE

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

E N R O L L E D

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H. B. 2485

WEST VIRGINIA
SECRETARY OF STATE

(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
3 Virginia Board of Pharmacy established by the provisions of
4 article five, chapter thirty of this code.

5 (b) "Designated precursor" means any drug product made
6 subject to the requirements of this article by the provisions of
7 section seven of this article.

8 (c) "Distributor" means any person within this state or
9 another state, other than a manufacturer or wholesaler, who
10 sells, delivers, transfers or in any manner furnishes a drug
11 product to any person who is not the ultimate user or
12 consumer of the product;

13 (d) "Drug product" means a pharmaceutical product that
14 contains as its single active ingredient ephedrine,
15 pseudoephedrine or phenylpropanolamine or a substance
16 identified on the supplemental list provided for in section
17 seven of this article which may be sold without a prescription
18 and which is labeled for use by a consumer in accordance
19 with the requirements of the laws and rules of this state and
20 the federal government.

21 (e) "Ephedrine " means ephedrine, its salts or optical
22 isomers or salts of optical isomers.

23 (f) "Manufacturer" means any person within this state
24 who produces, compounds, packages or in any manner
25 initially prepares for sale or use any drug product or any such
26 person in another state if they cause the products to be
27 compounded, packaged or transported into this state.

28 (g) "Phenylpropanolamine" means phenylpropanolamine,
29 its salts, optical isomers and salts of optical isomers.

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

32 (i) "Precursor" means any substance which may be used
33 along with other substances as a component in the production
34 and distribution of illegal methamphetamine.

35 (j) "Pharmacist" means an individual currently licensed
36 by this state to engage in the practice of pharmacy and
37 pharmaceutical care as defined in subsection (t), section one-
38 b, article fifty, chapter thirty of this code.

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

42 (l) "Pharmacy" means any drugstore, apothecary or place
43 within this state where drugs are dispensed and sold at retail
44 or display for sale at retail and pharmaceutical care is
45 provided outside of this state where drugs are dispensed and
46 pharmaceutical care is provided to residents of this state.

47 (m) "Pharmacy counter" means an area in the pharmacy
48 restricted to the public where controlled substances are stored
49 and housed and where controlled substances may only be
50 sold, transferred or dispensed by a pharmacist or pharmacy
51 technician.

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

55 (o) "Retail establishment" means any entity or person
56 within this state who sells, transfers or distributes goods,
57 including over-the-counter drug products, to an ultimate
58 consumer.

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

62 (q) "Single active ingredient" means those ingredients
63 listed on a drug product package as the only active ingredient

64 in over-the-counter medication or identified on the Schedule
65 maintained by the Board of Pharmacy as being primarily
66 used in the illegal production and distribution of
67 methamphetamine.

68 (r) "Superintendent of the State Police" or
69 "Superintendent" means the superintendent of the West
70 Virginia State Police as set forth in section five, article two,
71 chapter fifteen of this code.

72 (s) "Wholesaler" means any person within this state or
73 another state, other than a manufacturer, who sells, transfers
74 or in any manner furnishes a drug product to any other person
75 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.**

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

10 (b) Notwithstanding the provisions of subsection (a) of
11 this section, any person convicted of a second or subsequent
12 violation of the provisions of said subsection or a statute or
13 ordinance of the United States or another state which
14 contains the same essential elements shall be guilty of a

15 felony and, upon conviction, shall be confined in a state
16 correctional facility for not less than one nor more than five
17 years, fined not more than \$25,000, or both.

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

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

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

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

31 (d) Notwithstanding any provision of this code to the
32 contrary, any person who knowingly possesses any amount
33 of ephedrine, pseudoephedrine, phenylpropanolamine or
34 other designated precursor with the intent to use it in the
35 manufacture of methamphetamine or who knowingly
36 possesses a substance containing ephedrine, pseudoephedrine
37 or phenylpropanolamine or their salts, optical isomers or salts
38 of optical isomers in a state or form which is, or has been
39 altered or converted from the state or form in which these
40 chemicals are, or were, commercially distributed shall be
41 guilty of a felony and, upon conviction, shall be confined in
42 a state correctional facility for not less than two nor more
43 than ten years, fined not more than \$25,000, or both.

44 (e) (1) Any pharmacy, wholesaler, manufacturer or
45 distributor of drug products containing as their single active

46 ingredientephedrine, pseudoephedrine, phenylpropanolamine, their
47 salts or optical isomers or salts of optical isomers or other
48 designated precursor shall obtain a registration annually from
49 the State Board of Pharmacy as described in section six of
50 this article. Any such pharmacy, wholesaler, manufacturer or
51 distributor shall keep complete records of all sales and
52 transactions as provided in section eight of this article. The
53 records shall be gathered and maintained pursuant to
54 legislative rule promulgated by the Board of Pharmacy.

55 (2) Any drug products possessed without a registration as
56 provided in this section are subject to forfeiture upon
57 conviction for a violation of this section.

58 (3) In addition to any administrative penalties provided
59 by law, any violation of this subsection is a misdemeanor,
60 punishable upon conviction by a fine in an amount not more
61 than \$10,000.

**§60A-10-5. Restrictions on the sale, transfer or delivery of
certain drug products; penalties.**

1 (a) No pharmacy or individual may display, offer for sale
2 or place a drug product containing as its single active ingredient
3 ephedrine, pseudoephedrine or phenylpropanolamine or other
4 designated precursor where the public may freely access the
5 drug product. All such drug products or designated
6 precursors shall be placed behind a pharmacy counter where
7 access is restricted to a pharmacist, a pharmacy intern, a
8 pharmacy technician or other pharmacy employee.

9 (b) All storage of drug products regulated by the
10 provisions of this section shall be in a controlled and locked
11 access location that is not accessible by the general public and
12 shall maintain strict inventory control standards and complete
13 records of quantity of the product maintained in bulk form.

14 (c) No pharmacy shall sell, deliver or provide any drug
15 product regulated by the provisions of this section to any
16 person who is under the age of eighteen.

17 (d) If a drug product regulated by the provisions of this
18 section is transferred, sold or delivered, the individual,
19 pharmacy or retail establishment transferring, selling or
20 delivering the drug product shall require the person
21 purchasing, receiving or otherwise acquiring the drug product
22 to:

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

25 (2) Sign a form containing the information set forth in
26 subsection (b), section eight of this article and attesting to the
27 validity of such information. Any person who knowingly
28 makes a false representation or statement pursuant to the
29 requirements of this section shall be guilty of a misdemeanor
30 and, upon conviction, be confined in a jail for not more than
31 six months, fined not more than \$5,000, or both.

32 (e) This section does not apply to drug products that are
33 dispensed pursuant to a prescription, are pediatric products
34 primarily intended for administration, according to label
35 instructions, to children under twelve years of age.

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

§60A-10-8. Reporting requirements; confidentiality.

1 (a) Whenever there is a sale, retail, transfer or distribution
2 of any drug product referred to in section seven of this article
3 or another designated precursor, the pharmacist, pharmacy

4 intern, or pharmacy technician making the sale, transfer or
5 distribution shall report the following information for
6 inclusion in a central repository established and maintained
7 by the Board of Pharmacy:

8 (1) The date of the transaction;

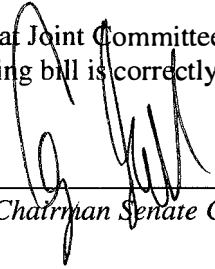
9 (2) The name, address and driver's license or state-issued
10 identification number of the person; and

11 (3) The name, quantity of packages and total gram weight
12 of the product or products purchased, received or otherwise
13 acquired.

14 (b) The information required to be reported by this
15 section shall be reported by paper log maintained at the point
16 of sale: *Provided, That*, beginning on January 1, 2007,
17 reporting shall be by electronic transmission to the Board of
18 Pharmacy no more frequently than once a week.

19 (c) The information required by this section shall be the
20 property of the state and a pharmacy shall have no duty to
21 retain a copy of the information in any format once the
22 information has been reported to the Board of Pharmacy as
23 required by this section.

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



Chairman Senate Committee



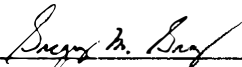
Chairman House Committee

Originating in the House.

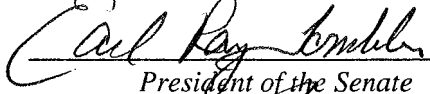
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

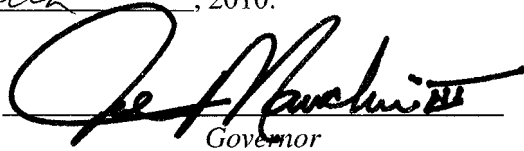


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2010

Time 3:08 pm