

Delegate Perdue, Azinger, Ellem, Fleischauer, Guthrie, Iaquina and Poore moves to amend the amendment on page one, line 1, by removing everything and inserting in lieu thereof the following:

1 "That §60A-10-8 of the Code of West Virginia, 1931, as  
2 amended, be repealed; that §60A-2-210 and §60A-2-212 of said code  
3 be amended and reenacted; that §60A-10-2, §60A-10-3, §60A-10-4,  
4 §60A-10-5 and §60A-10-7 of said code be amended and reenacted; and  
5 that said code be amended by adding thereto a new section,  
6 designated §60A-10-4a, all to read as follows:

7 **ARTICLE 2. STANDARDS AND SCHEDULES.**

8 **§60A-2-210. Schedule IV.**

9 (a) Schedule IV shall consist of the drugs and other  
10 substances, by whatever official name, common or usual name,  
11 chemical name or brand name designated, listed in this section.

12 (b) *Narcotic drugs.* -- Unless specifically excepted or unless  
13 listed in another schedule, any material, compound, mixture or  
14 preparation containing any of the following narcotic drugs, or  
15 their salts calculated as the free anhydrous base or alkaloid, in  
16 limited quantities as set forth below:

17 (1) Not more than 1 milligram of difenoxin and not less than  
18 25 micrograms of atropine sulfate per dosage unit;

19 ( 2 ) D e x t r o p r o p o x y p h e n e

1 (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybuta  
2 ne).

3 (c) *Depressants*. -- Unless specifically excepted or unless  
4 listed in another schedule, any material, compound, mixture or  
5 preparation which contains any quantity of the following  
6 substances, including its salts, isomers and salts of isomers  
7 whenever the existence of such salts, isomers and salts of isomers  
8 is possible within the specific chemical designation:

- 9 (1) Alprazolam;
- 10 (2) Barbitol;
- 11 (3) Bromazepam;
- 12 (4) Camazepam;
- 13 (5) Carisoprodol;
- 14 (6) Chloral betaine;
- 15 (7) Chloral hydrate;
- 16 (8) Chlordiazepoxide;
- 17 (9) Clobazam;
- 18 (10) Clonazepam;
- 19 (11) Clorazepate;
- 20 (12) Clotiazepam;
- 21 (13) Cloxazolam;
- 22 (14) Delorazepam;
- 23 (15) Diazepam;
- 24 (16) Estazolam;

- 1 (17) Ethchlorvynol;
- 2 (18) Ethinamate;
- 3 (19) Ethyl loflazepate;
- 4 (20) Fludiazepam;
- 5 (21) Flunitrazepam;
- 6 (22) Flurazepam;
- 7 (23) Halazepam;
- 8 (24) Haloxazolam;
- 9 (25) Ketazolam;
- 10 (26) Loprazolam;
- 11 (27) Lorazepam;
- 12 (28) Lormetazepam;
- 13 (29) Mebutamate;
- 14 (30) Medazepam;
- 15 (31) Meprobamate;
- 16 (32) Methohexital;
- 17 (33) Methylphenobarbital (mephobarbital);
- 18 (34) Midazolam;
- 19 (35) Nimetazepam;
- 20 (36) Nitrazepam;
- 21 (37) Nordiazepam;
- 22 (38) Oxazepam;
- 23 (39) Oxazolam;
- 24 (40) Paraldehyde;

- 1       (41) Petrichloral;
- 2       (42) Phenobarbital;
- 3       (43) Pinazepam;
- 4       (44) Prazepam;
- 5       (45) Quazepam;
- 6       (46) Temazepam;
- 7       (47) Tetrazepam;
- 8       (48) Triazolam;
- 9       (49) Zolpidem.

10       (d) *Fenfluramine*. -- Any material, compound, mixture or  
11 preparation which contains any quantity of the following substance,  
12 including its salts, isomers (whether optical, position or  
13 geometric) and salts of such isomers whenever the existence of such  
14 salts, isomers and salts of isomers is possible: *Fenfluramine*.

15       (e) *Stimulants*. -- Unless specifically excepted or unless  
16 listed in another schedule, any material, compound, mixture or  
17 preparation which contains any quantity of the following substances  
18 having a stimulant effect on the central nervous system, including  
19 its salts, isomers and salts of isomers:

- 20       (1) Cathine ((+)-norpseudoephedrine);
- 21       (2) Diethylpropion;
- 22       (3) Fencamfamin;
- 23       (4) Fenproporex;
- 24       (5) Mazindol;

(6) Mefenorex;

(7) Pemoline (including organometallic complexes and chelates thereof);

(8) Phentermine;

(9) Pipradrol;

(10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Any compound, mixture or preparation containing 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, that shall be subject to the provisions of article ten of this chapter.

~~(f)~~ (g) *Other substances.* -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine;

(2) Butorphanol.

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be

1 possessed, bought or sold other than pursuant to a bona fide  
2 prescription or for industrial or manufacturing purposes.

3 **§60A-2-212. Schedule V.**

4 (a) Schedule V shall consist of the drugs and other  
5 substances, by whatever official name, common or usual name,  
6 chemical name or brand name designated, listed in this section.

7 (b) *Narcotic drugs.* -- Unless specifically excepted or unless  
8 listed in another schedule, any material, compound, mixture or  
9 preparation containing any of the following narcotic drugs and  
10 their salts, as set forth below:

11 (1) Buprenorphine.

12 (c) *Narcotic drugs containing nonnarcotic active medicinal*  
13 *ingredients.* -- Any compound, mixture or preparation containing any  
14 of the following narcotic drugs or their salts calculated as the  
15 free anhydrous base or alkaloid in limited quantities as set forth  
16 below, which shall include one or more nonnarcotic active medicinal  
17 ingredients in sufficient proportion to confer upon the compound,  
18 mixture or preparation valuable medicinal qualities other than  
19 those possessed by the narcotic drug alone:

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

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

24 (3) Not more than 100 milligrams of ethylmorphine per 100

1 milliliters or per 100 grams;

2 (4) Not more than 2.5 milligrams of diphenoxylate and not less  
3 than 25 micrograms of atropine sulfate per dosage unit;

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

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

8 (d) *Stimulants*. -- Unless specifically exempted or excluded or  
9 unless listed in another schedule, any material, compound, mixture  
10 or preparation which contains any quantity of the following  
11 ~~substances~~ substance having a stimulant effect on the central  
12 nervous system, including its salts, isomers and salts of isomers:  
13 ~~(1)~~ Pyrovalerone.

14 ~~(e) Any compound, mixture or preparation containing as its~~  
15 ~~single active ingredient ephedrine, pseudoephedrine or~~  
16 ~~phenylpropanolamine, their salts or optical isomers, or salts of~~  
17 ~~optical isomers except products which are for pediatric use~~  
18 ~~primarily intended for administration to children under the age of~~  
19 ~~twelve: Provided, That neither the offenses set forth in section~~  
20 ~~four hundred one, article four of this chapter, nor the penalties~~  
21 ~~therein, shall be applicable to ephedrine, pseudoephedrine or~~  
22 ~~phenylpropanolamine, which shall be subject to the provisions of~~  
23 ~~article ten of this chapter.~~

24 **ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

1 **§60A-10-2. Purpose; findings.**

2 The Legislature finds:

3 (a) That the illegal production and distribution of  
4 methamphetamine is an increasing problem nationwide and  
5 particularly prevalent in rural states such as West Virginia.

6 (b) That methamphetamine is a highly addictive drug that can  
7 be manufactured in small and portable laboratories. These  
8 laboratories are operated by individuals who manufacture the drug  
9 in a clandestine and unsafe manner, often resulting in explosions  
10 and fires that can injure not only the individuals involved, but  
11 their families, neighbors, law-enforcement officers and firemen.

12 (c) That use of methamphetamine can result in fatal kidney and  
13 lung disorders, brain damage, liver damage, blood clots, chronic  
14 depression, hallucinations, violent and aggressive behavior,  
15 malnutrition, disturbed personality development, deficient immune  
16 system and psychosis. Children born to mothers who are abusers of  
17 methamphetamine can be born addicted and suffer birth defects, low  
18 birth weight, tremors, excessive crying, attention deficit disorder  
19 and behavior disorders.

20 (d) That in addition to the physical consequences to an  
21 individual who uses methamphetamine, usage of the drug also  
22 produces an increase in automobile accidents, explosions and fires,  
23 increased criminal activity, increased medical costs due to  
24 emergency room visits, increases in domestic violence, increased



1 spread of infectious diseases and a loss in worker productivity.

2 (e) That environmental damage is another consequence of the  
3 methamphetamine epidemic. Each pound of methamphetamine produced  
4 leaves behind five to six pounds of toxic waste. Chemicals and  
5 byproducts that result from the manufacture of methamphetamine are  
6 often poured into plumbing systems, storm drains or directly onto  
7 the ground. Clean up of methamphetamine laboratories is extremely  
8 resource intensive, with an average remediation cost of \$5,000.

9 (f) That it is in the best interest of every West Virginian to  
10 develop a viable solution to address the growing methamphetamine  
11 problem in the State of West Virginia. The Legislature finds that  
12 extraction- or conversion-resistant pseudoephedrine hydrochloride  
13 can provide a nonprescription option that is less readily usable in  
14 the manufacture of methamphetamine. The Legislature finds that  
15 ~~restricting access to over the counter~~ requiring a prescription for  
16 drugs that can be readily converted ~~used~~ to facilitate production  
17 of methamphetamine is necessary to protect the public safety of all  
18 West Virginians.

19 (g) That it is further in the best interests of every West  
20 Virginian to create impediments to the manufacture of  
21 methamphetamine by requiring persons purchasing chemicals necessary  
22 to the process to provide identification.

23 **§60A-10-3. Definitions.**

24 In this article:

1 (a) "Board of Pharmacy" or "board" means the West Virginia  
2 Board of Pharmacy established by the provisions of article five,  
3 chapter thirty of this code.

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

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

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

18 (e) "Ephedrine" means ephedrine, its salts or optical isomers  
19 or salts of optical isomers.

20 (f) "Extraction or conversion resistant" means a product  
21 containing ephedrine, pseudoephedrine or phenylpropanolamine that  
22 because of its compounding, preparation, mixture or ingredients has  
23 been found by the Board of Pharmacy to pose a significantly reduced  
24 risk of being used in the manufacture of methamphetamine.

1       ~~(f)~~ (g) "Manufacturer" means any person within this state who  
2 produces, compounds, packages or in any manner initially prepares  
3 for sale or use any drug product or any such person in another  
4 state if they cause the products to be compounded, packaged or  
5 transported into this state.

6       ~~(g)~~ (h) "National Association of Drug Diversion Investigators"  
7 or "NADDI" means the nonprofit 501(c)(3) organization established  
8 in 1989, made up of members who are responsible for investigating  
9 and prosecuting pharmaceutical drug diversion, and that facilitates  
10 cooperation between law enforcement, health care professionals,  
11 state regulatory agencies and pharmaceutical manufacturers in the  
12 investigation and prevention of prescription drug abuse and  
13 diversion.

14       ~~(h)~~ (i) "Multi-State Real-Time Tracking System" or "MSRTTS"  
15 means the real-time electronic logging system provided by NADDI at  
16 no cost to states that have legislation requiring real-time  
17 electronic monitoring of precursor purchases, and agree to use the  
18 system. MSRTTS is used by pharmacies and law enforcement to track  
19 sales of over-the-counter (OTC) cold and allergy medications  
20 containing precursors to the illegal drug methamphetamine.

21       ~~(i)~~ (j) "Phenylpropanolamine" means phenylpropanolamine, its  
22 salts, optical isomers and salts of optical isomers.

23       ~~(j)~~ (k) "Pseudoephedrine" means pseudoephedrine, its salts,  
24 optical isomers and salts of optical isomers.

1       ~~(k)~~ (l) "Precursor" means any substance which may be used  
2 along with other substances as a component in the production and  
3 distribution of illegal methamphetamine.

4       ~~(l)~~ (m) "Pharmacist" means an individual currently licensed by  
5 this state to engage in the practice of pharmacist care as defined  
6 in article five, chapter thirty of this code.

7       ~~(m)~~ (n) "Pharmacy intern" has the same meaning as the term  
8 "intern" as set forth in section ~~one-b~~ four, article five, chapter  
9 thirty of this code.

10       ~~(n)~~ (o) "Pharmacy" means any drugstore, apothecary or place  
11 within this state where drugs are dispensed and sold at retail or  
12 display for sale at retail and pharmacist care is provided outside  
13 of this state where drugs are dispensed and pharmacist care is  
14 provided to residents of this state.

15       ~~(o)~~ (p) "Pharmacy counter" means an area in the pharmacy  
16 restricted to the public where controlled substances are stored and  
17 housed and where controlled substances may only be sold,  
18 transferred or dispensed by a pharmacist, pharmacy intern or  
19 pharmacy technician.

20       ~~(p)~~ (q) "Pharmacy technician" means a registered technician  
21 who meets the requirements for registration as set forth in article  
22 five, chapter thirty of this code.

23       ~~(q)~~ (r) "Retail establishment" means any entity or person  
24 within this state who sells, transfers or distributes goods,

1 including over-the-counter drug products, to an ultimate consumer.

2 ~~(r)~~ (s) ~~"Schedule V"~~ "Schedule IV" means the schedule of  
3 controlled substances set out in section two hundred ~~twelve~~ ten,  
4 ~~section~~ article two of this chapter.

5 ~~(s)~~ (t) "Superintendent of the State Police" or  
6 "superintendent" means the Superintendent of the West Virginia  
7 State Police as set forth in ~~section five~~, article two, chapter  
8 fifteen of this code.

9 ~~(t)~~ (u) "Wholesaler" means any person within this state or  
10 another state, other than a manufacturer, who sells, transfers or  
11 in any manner furnishes a drug product to any other person in this  
12 state for the purpose of being resold.

13 **§60A-10-4. Purchase, receipt, acquisition and possession of**  
14 **substances which may be used as a precursor to manufacture of**  
15 **methamphetamine or another controlled substance; offenses;**  
16 **exceptions; penalties.**

17 (a) A pharmacy may not sell, transfer or dispense ~~to the same~~  
18 ~~person, and a person may not purchase more than three and~~  
19 ~~six-tenths grams per day, more than seven and two-tenths grams in~~  
20 ~~a thirty-day period or more than forty-eight grams annually of~~  
21 ephedrine, pseudoephedrine or phenylpropanolamine without a  
22 prescription, ~~The limits shall apply to the total amount of~~  
23 ~~ephedrine, pseudoephedrine and phenylpropanolamine contained in the~~  
24 ~~products, and not the overall weight of the products. unless the~~

1 product has been determined by the Board of Pharmacy to be in an  
2 extraction- or conversion-resistant form.

3 (1) Any person who ~~or knowingly purchases, receives or~~  
4 ~~otherwise possesses, more than seven and two-tenths grams in a~~  
5 ~~thirty-day period~~ delivers or possesses with the intent to deliver  
6 of ephedrine, pseudoephedrine or phenylpropanolamine in any form  
7 without a prescription that has not been determined by the Board of  
8 Pharmacy to be in an extraction- or conversion-resistant form  
9 without a prescription is guilty of a misdemeanor and, upon  
10 conviction, shall be confined in a jail for not more than one year,  
11 fined not more than \$1,000, or both fined and confined: Provided,  
12 That the provisions of subdivision (3), subsection (a), section  
13 seven, article seven, chapter sixty-one of this code are  
14 inapplicable to persons possessing ephedrine, pseudoephedrine or  
15 phenylpropanolamine which has been lawfully purchased in the  
16 jurisdiction of sale and which is possessed with the intent that it  
17 be used in the manner and form intended by the manufacturer.

18 (2) Any pharmacy, wholesaler or other entity operating the  
19 retail establishment which sells, transfers or dispenses a product  
20 in violation of this section is guilty of a misdemeanor and, upon  
21 conviction, shall be fined not more than \$1,000 for the first  
22 offense, or more than \$10,000 for each subsequent offense.

23 (b) Notwithstanding the provisions of ~~subdivision (a)(1)~~  
24 subdivision (1), subsection (a) of this section, any person

1 convicted of a second or subsequent violation of the provisions of  
2 said subdivision or a statute or ordinance of the United States or  
3 another state which contains the same essential elements is guilty  
4 of a felony and, upon conviction, shall be imprisoned in a state  
5 correctional facility for not less than one nor more than five  
6 years, fined not more than \$25,000, or both imprisoned and fined.

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

9 (1) Products dispensed pursuant to a valid prescription;

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

12 ~~(3) Drug products containing ephedrine, pseudoephedrine or~~  
13 ~~phenylpropanolamine, their salts or optical isomers or salts of~~  
14 ~~optical isomers or other designated precursor which have been~~  
15 ~~determined by the Board of Pharmacy to be in a form which is not~~  
16 ~~feasible for being used for the manufacture of methamphetamine; or~~

17 ~~(4)~~ (3) Persons lawfully possessing drug products in their  
18 capacities as distributors, wholesalers, manufacturers,  
19 pharmacists, pharmacy interns, pharmacy technicians or health care  
20 professionals.

21 (d) Notwithstanding any provision of this code to the  
22 contrary, any person who knowingly possesses any amount of  
23 ephedrine, pseudoephedrine, phenylpropanolamine or other designated  
24 precursor with the intent to use it in the manufacture of

1 methamphetamine, or who knowingly compensates, hires or provides  
2 other incentives for another person to purchase, obtain or transfer  
3 any amount of ephedrine, pseudoephedrine, phenylpropanolamine or  
4 other designated precursor with the intent to use it in the  
5 manufacture of methamphetamine or who knowingly possesses a  
6 substance containing ephedrine, pseudoephedrine or  
7 phenylpropanolamine or their salts, optical isomers or salts of  
8 optical isomers in a state or form which is or has been altered or  
9 converted from the state or form in which these chemicals are, or  
10 were, commercially distributed is guilty of a felony and, upon  
11 conviction, shall be imprisoned in a state correctional facility  
12 for not less than two nor more than ten years, fined not more than  
13 \$25,000, or both imprisoned and fined.

14 (e) (1) Any pharmacy, wholesaler, manufacturer or distributor  
15 of drug products containing ephedrine, pseudoephedrine,  
16 phenylpropanolamine, their salts or optical isomers or salts of  
17 optical isomers or other designated precursor shall obtain a  
18 registration annually from the State Board of Pharmacy as described  
19 in section six of this article. Any such pharmacy, wholesaler,  
20 manufacturer or distributor shall keep complete records of all  
21 sales and transactions as provided in section eight of this  
22 article. The records shall be gathered and maintained pursuant to  
23 legislative rule promulgated by the Board of Pharmacy.

24 (2) Any drug products possessed without a registration as



1 provided in this section are subject to forfeiture upon conviction  
2 for a violation of this section.

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

6 **60A-10-4a. Expungement of first offense possession of ephedrine,**  
7 **pseudoephedrine or phenylpropanolamine.**

8 (a) Whenever any person who has not previously been convicted  
9 of a violation of chapter sixty-a of this code or a violation of  
10 the provisions of this article or under any statute of the United  
11 States or any state relating to controlled substances or  
12 methamphetamine precursors is charged with possession of  
13 ephedrine, pseudoephedrine or phenylpropanolamine in violation of  
14 subdivision (1), subsection (a), section four of this article, he  
15 or she may move the court to defer further proceedings and to be  
16 placed on probation under such terms and conditions as the court  
17 deems appropriate. Should the court find that the person possessed  
18 three and six-tenths grams of ephedrine, pseudoephedrine or  
19 phenylpropanolamine or less which had been lawfully purchased in  
20 the jurisdiction of sale and that the person possessed the  
21 ephedrine, pseudoephedrine or phenylpropanolamine with the intent  
22 that it be used in the manner and form intended by the  
23 manufacturer, the court shall defer further proceedings and place  
24 the person on probation.

1           (b)   Upon violation of a term or condition, the court may  
2 enter an adjudication of guilt and proceed as otherwise provided.  
3 Upon fulfillment of the terms and conditions, the court shall  
4 discharge the person and dismiss the proceedings against him or  
5 her. Discharge and dismissal under this section shall be without  
6 adjudication of guilt and is not a conviction for purposes of this  
7 section or for purposes of disqualifications or disabilities or  
8 sentencing enhancements imposed by law upon conviction of a crime.  
9 The effect of the dismissal and discharge shall be to restore the  
10 person in contemplation of law to the status he or she occupied  
11 prior to arrest. No person as to whom a dismissal and discharge  
12 have been effected shall be thereafter held to be guilty of  
13 perjury, false swearing or otherwise giving a false statement by  
14 reason of his or her failure to disclose or acknowledge his or her  
15 arrest or trial in response to any inquiry made of him or her for  
16 any purpose. There may be only one discharge and dismissal under  
17 this section with respect to any person.

18           (c) After a period of not less than six months, which shall  
19 begin to run immediately upon the expiration of a term of probation  
20 imposed upon any person under this chapter, the person may apply to  
21 the court for an order to expunge from all official records all  
22 recordations of his or her arrest, trial and conviction, pursuant  
23 to this section. If the court determines after a hearing that the  
24 person during the period of his or her probation and during the

1 period of time prior to his or her application to the court under  
2 this section has not been guilty of any serious or repeated  
3 violation of the conditions of his or her probation, it shall order  
4 the expungement.

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

7 (a) No pharmacy or individual may display, offer for sale or  
8 place a drug product containing ephedrine, pseudoephedrine or  
9 phenylpropanolamine or other designated methamphetamine precursor  
10 where the public may freely access the drug product. All such drug  
11 products or designated precursors shall be placed behind a pharmacy  
12 counter where access is restricted to a pharmacist, a pharmacy  
13 intern, a pharmacy technician or other pharmacy employee.

14 (b) All storage of drug products regulated by the provisions  
15 of this section shall be in a controlled and locked access location  
16 that is not accessible by the general public and shall maintain  
17 strict inventory control standards and complete records of quantity  
18 of the product maintained in bulk form: Provided, That wholesale  
19 drug distributors required to be licensed by the Board of Pharmacy  
20 which are registered with and regulated by the United States Drug  
21 Enforcement Administration shall not be subject to any board  
22 requirements relating to the storage, recordkeeping or physical  
23 security of controlled substances containing ephedrine,  
24 pseudoephedrine or phenylpropanolamine which are more stringent

1 than those imposed by the U. S. Drug Enforcement Administration.

2 (c) No pharmacy may sell, deliver or provide any drug product  
3 regulated by the provisions of this section to any person who is  
4 under the age of eighteen.

5 (d) If a drug product regulated by the provisions of this  
6 section is transferred, sold or delivered, the individual, pharmacy  
7 or retail establishment transferring, selling or delivering the  
8 drug product shall offer to have a pharmacist provide patient  
9 counseling, as defined by article five, chapter thirty of this code  
10 and the rules of the Board of Pharmacy, to the person purchasing,  
11 receiving or acquiring the drug product in order to improve the  
12 proper use of the drug product and to discuss contraindications.

13 (e) If a drug product regulated by the provisions of this  
14 section which the Board of Pharmacy has determined is in an  
15 extraction- or conversion-resistant form is transferred, sold or  
16 delivered, the individual or pharmacy ~~or retail establishment~~  
17 transferring, selling or delivering the drug product shall require  
18 the person purchasing, receiving or otherwise acquiring the drug  
19 product to ~~(1) Produce~~ produce a valid government-issued photo  
20 identification showing his or her date of birth; and

21 ~~(2) Sign a logbook, in either paper or electronic format,~~  
22 ~~containing the information set forth in subsection (b), section~~  
23 ~~eight of this article and attesting to the validity of the~~  
24 ~~information.~~

1       (f) Any person who knowingly makes a false representation or  
2 statement pursuant to the requirements of this section is guilty of  
3 a misdemeanor and, upon conviction, be confined in a jail for not  
4 more than six months, fined not more than \$5,000, or both fined and  
5 confined.

6       (g) (1) The pharmacist, pharmacy intern or pharmacy technician  
7 processing the transaction shall determine that the name entered in  
8 the logbook corresponds to the name provided on the identification.

9       (2) Beginning January 1, 2013, a pharmacy or retail  
10 establishment shall, before completing a sale under this section,  
11 electronically submit the information required by section eight of  
12 this article to the Multi-State Real-Time Tracking System (MSRTTS)  
13 administered by the National Association of Drug Diversion  
14 Investigators (NADDI): *Provided*, That the system is available to  
15 retailers in the state without a charge for accessing the system.  
16 This system shall be capable of generating a stop-sale alert, which  
17 shall be a notification that completion of the sale would result in  
18 the seller or purchaser violating the quantity limits set forth in  
19 this article. The seller may not complete the sale if the system  
20 generates a stop-sale alert. The system shall contain an override  
21 function that may be used by a dispenser of a drug product who has  
22 a reasonable fear of imminent bodily harm if he or she does not  
23 complete a sale. Each instance in which the override function is  
24 utilized shall be logged by the system. Absent negligence,

1 wantonness, recklessness or deliberate misconduct, any retailer  
2 utilizing the Multi-State Real-Time Tracking System in accordance  
3 with this subdivision may not be civilly liable as a result of any  
4 act or omission in carrying out the duties required by this  
5 subdivision and is immune from liability to any third party unless  
6 the retailer has violated any provision of this subdivision in  
7 relation to a claim brought for the violation.

8       (3) If a pharmacy or retail establishment selling a  
9 nonprescription product containing ephedrine, pseudoephedrine or  
10 phenylpropanolamine experiences mechanical or electronic failure of  
11 the Multi-State Real-Time Tracking System and is unable to comply  
12 with the electronic sales tracking requirement, the pharmacy or  
13 retail establishment shall maintain a written log or an alternative  
14 electronic record-keeping mechanism until such time as the pharmacy  
15 or retail establishment is able to comply with the electronic sales  
16 tracking requirement.

17       (h) This section does not apply to drug products that are  
18 dispensed pursuant to a prescription, ~~are~~ or pediatric products  
19 primarily intended for administration, according to label  
20 instructions, to children under twelve years of age.

21       (i) Any violation of this section for which there is not a  
22 particularized penalty is a misdemeanor, punishable upon conviction  
23 by a fine in an amount not more than \$10,000.

24       (j) The provisions of this section supersede and preempt all

1 local laws, ordinances, rules and regulations pertaining to the  
2 sale of any compounds, mixtures or preparation containing  
3 ephedrine, pseudoephedrine or phenylpropanolamine.

4 **§60A-10-7. Restricted products; rule-making authority; effective**  
5 **date of amendments.**

6 (a) On or before July 1, ~~2005~~ 2014, the Board of Pharmacy  
7 shall promulgate emergency and legislative rules pursuant to the  
8 provision of article three, chapter twenty-nine-a of this code to  
9 ~~a implement~~ continue the program wherein the Board of Pharmacy  
10 ~~shall consult~~ consults with the Superintendent of the State Police  
11 in identifying drug products which are a designated precursor, in  
12 addition to those that contain ephedrine, pseudoephedrine or  
13 phenylpropanolamine, that are commonly being used in the production  
14 and distribution of methamphetamine. Those drug products which the  
15 Superintendent of the State Police ~~have~~ has demonstrated by  
16 empirical evidence are commonly used in the manufacture of  
17 methamphetamine shall be added to a supplemental list and shall be  
18 subject to all of the restrictions of this article. These rules  
19 established pursuant to this section shall include:

20 (1) A process whereby pharmacies are made aware of all drug  
21 products that contain ephedrine, pseudoephedrine and  
22 phenylpropanolamine that will be listed as a Schedule ~~V~~ IV  
23 substance. ~~and must be sold, transferred or dispensed from behind~~  
24 ~~a pharmacy counter.~~ This process shall specifically state which

1 products have been determined by the Board of Pharmacy to be in a  
2 form which is extraction or conversion resistant and may,  
3 therefore, be sold without a prescription. The process shall  
4 specify that all other drug products which have not been determined  
5 by the Board of Pharmacy to be extraction or conversion resistant  
6 shall be distributed by prescription only;

7 (2) A process whereby pharmacies and retail establishments are  
8 made aware of additional drug products added to Schedule ~~V~~ IV, that  
9 are required to be placed behind the pharmacy counter for sale,  
10 transfer or distribution. ~~can be periodically reviewed and updated.~~

11 (b) At any time after July 1, 2005, the Board of Pharmacy,  
12 upon the recommendation of the Superintendent of the State Police,  
13 shall promulgate emergency and legislative rules pursuant to the  
14 provision of article three, chapter twenty-nine-a of this code to  
15 implement an updated supplemental list of products containing the  
16 controlled substances ephedrine, pseudoephedrine or  
17 phenylpropanolamine as an active ingredient or any other drug used  
18 as a precursor in the manufacture of methamphetamine, which the  
19 Superintendent of the State Police has demonstrated by empirical  
20 evidence is being used in the manufacture of methamphetamine. This  
21 list shall also note any products containing ephedrine,  
22 pseudoephedrine or phenylpropanolamine but which has been  
23 determined by the Board of Pharmacy to be in a form which is  
24 extraction or conversion resistant. This listing process shall



1 comport with the requirements of subsection (a) of this section.

2       (c) The repeal of section eight, article ten, chapter sixty-a  
3 of this code, and the amendments to sections two hundred ten and  
4 two hundred twelve, article two, chapter sixty-a and sections two,  
5 three, four, five and seven, article ten, chapter sixty-a of this  
6 code during the 2014 Regular Session of the Legislature shall be  
7 effective September 1, 2014.