

The Committee on the Judiciary moves to amend the bill on page three, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following language:

"That §60A-10-4, §60A-10-6 and §60A-10-7 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-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.

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

(1) Any person who ~~or knowingly purchases, receives or otherwise possesses more than seven and two-tenths grams in a thirty-day period of ephedrine, pseudoephedrine or phenylpropanolamine in any form without a prescription is guilty of~~

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

11 (2) Any person who knowingly purchases, receives or otherwise
12 possesses ephedrine, pseudoephedrine or phenylpropanolamine in any
13 form with the intent to transfer the substance to someone that the
14 person knows or should know will use the substance to manufacture
15 methamphetamine is guilty of a misdemeanor and, upon conviction,
16 shall be confined in a jail for not more than one year, fined not
17 more than \$1,000, or both fined and confined.

18 (3) A person is required to obtain a valid prescription prior
19 to obtaining products containing ephedrine, pseudoephedrine or
20 phenylpropanolamine if that person has been:

21 (A) Convicted of an offense which includes the use, possession
22 or distribution of a drug as an element of the offense; or

23 (B) Convicted of a violation of this section, or an equivalent
24 statute in another jurisdiction.

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

6 (5) Beginning on January 1, 2015, the electronic transmission
7 of the information required to be reported in this subsection of
8 this section on persons who have been convicted of an offense which
9 includes the use, possession or distribution of a drug as an
10 element of the offense; or convicted of a violation of this
11 section, or an equivalent statute in another jurisdiction, shall be
12 reported by the respective clerk of the circuit court where the
13 conviction occurred, to the Multi-State Real-Time Tracking System
14 described in section six of article ten of chapter sixty of this
15 code, and shall be made in real time at the time of the
16 transaction.

17 (b) Notwithstanding the provisions of ~~subdivision (a) (1)~~
18 subsection (a) of this section, any person convicted of a second or
19 subsequent violation of the provisions of said subdivision or a
20 statute or ordinance of the United States or another state which
21 contains the same essential elements is guilty of a felony and,
22 upon conviction, shall be imprisoned in a state correctional
23 facility for not less than one nor more than five years, fined not
24 more than \$25,000, or both imprisoned and fined.

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

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

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

6 (3) Drug products containing ephedrine, pseudoephedrine or
7 phenylpropanolamine, their salts or optical isomers or salts of
8 optical isomers or other designated precursor which have been
9 determined by the Board of Pharmacy to be in a form which is not
10 feasible for being used for the manufacture of methamphetamine; or

11 (4) Persons lawfully possessing drug products in their
12 capacities as distributors, wholesalers, manufacturers,
13 pharmacists, pharmacy interns, pharmacy technicians, or health care
14 professionals.

15 (d) Notwithstanding any provision of this code to the
16 contrary, any person who knowingly possesses any amount of
17 ephedrine, pseudoephedrine, phenylpropanolamine or other designated
18 precursor with the intent to use it in the manufacture of
19 methamphetamine, or any person who knowingly compensates, hires or
20 provides other incentives for another person to purchase, obtain or
21 transfer any amount of ephedrine, pseudoephedrine,
22 phenylpropanolamine or other designated precursor with the intent
23 to use it in the manufacture of methamphetamine, or who knowingly
24 possesses a substance containing ephedrine, pseudoephedrine or

1 phenylpropanolamine or their salts, optical isomers or salts of
2 optical isomers in a state or form which is, or has been altered or
3 converted from the state or form in which these chemicals are, or
4 were, commercially distributed is guilty of a felony and, upon
5 conviction, shall be imprisoned in a state correctional facility
6 for not less than two nor more than ten years, fined not more than
7 \$25,000, or both imprisoned and fined.

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

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

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

24 **§60A-10-6. Registration to sell, manufacture or distribute**

1 **products; rule-making authority.**

2 The State Board of Pharmacy shall propose rules for
3 legislative approval in accordance with the provisions of article
4 three, chapter twenty-nine-a of this code to require that every
5 wholesaler, manufacturer or distributor of any drug product
6 containing as ~~their single~~ an active ingredient ephedrine or
7 pseudoephedrine or a substance identified on the supplemental list
8 provided ~~for~~ in section seven of this article shall obtain a
9 registration and permit issued by the State Board of Pharmacy to
10 sell, distribute or transfer the product containing as their single
11 active ingredient ephedrine, pseudoephedrine or
12 phenylpropanolamine.

13 **§60A-10-7. Restricted products; rule-making authority.**

14 (a) ~~On or before July 1, 2005,~~ The Board of Pharmacy shall
15 ~~promulgate~~ propose emergency and legislative rules pursuant to the
16 provision of article three, chapter twenty-nine-a of this code to
17 implement a program wherein the Board of Pharmacy shall consult
18 with the Superintendent of the State Police in identifying drug
19 products which are a designated precursor, in addition to those
20 that contain ephedrine, pseudoephedrine or phenylpropanolamine,
21 that are commonly being used in the production and distribution of
22 methamphetamine. Those drug products which the Superintendent of
23 the State Police ~~have~~ has demonstrated by empirical evidence are
24 commonly used in the manufacture of methamphetamine shall be added

1 to a supplemental list and ~~shall be~~ subject to all of the
2 restrictions of this article. ~~These~~ Rules established pursuant to
3 this section shall include:

4 (1) A process whereby pharmacies are made aware of all drug
5 products that contain as an active ingredient, ephedrine,
6 pseudoephedrine and phenylpropanolamine that will be listed as a
7 Schedule V substance; ~~and must be sold, transferred or dispensed~~
8 ~~from behind a pharmacy counter;~~

9 (2) ~~A process whereby pharmacies and retail establishments are~~
10 ~~made aware of additional drug products added to Schedule V that are~~
11 ~~required to be placed behind the pharmacy counter for sale,~~
12 ~~transfer or distribution can be periodically reviewed and updated.~~
13 Wholesale drug distributors licensed by the Board of Pharmacy and
14 registered with, and regulated by, the United States Drug
15 Enforcement Administration are exempt from storage, reporting,
16 record keeping or physical security control requirements for
17 controlled substances containing pseudoephedrine, ephedrine, or
18 phenylpropanolamine.

19 ~~(b) At any time after July 1, 2005, the Board of Pharmacy,~~
20 ~~upon the recommendation of the Superintendent of the State Police,~~
21 ~~shall promulgate emergency and legislative rules pursuant to the~~
22 ~~provision of article three, chapter twenty-nine-a of this code to~~
23 ~~implement an updated supplemental list of products containing the~~
24 ~~controlled substances ephedrine, pseudoephedrine or~~

1 ~~phenylpropanolamine as an active ingredient or any other drug used~~
2 ~~as a precursor in the manufacture of methamphetamine, which the~~
3 ~~Superintendent of the State Police has demonstrated by empirical~~
4 ~~evidence is being used in the manufacture of methamphetamine. This~~
5 ~~listing process shall comport with the requirements of subsection~~
6 ~~(a) of this section.~~

7 (3) A process whereby pharmacies are made aware of all drug
8 products that are less than eleven percent of the product can be
9 used to manufacture methamphetamine that contain ephedrine,
10 pseudoephedrine or phenylpropanolamine, and may be sold,
11 transferred or dispensed over the counter."