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SB-191

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WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 791

(By Senator Kessler, et al)

PASSED March 11, 2006

In Effect 90 days from Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.

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

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

9 (1) Buprenorphine.

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

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

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

23 (3) Not more than 100 milligrams of ethylmorphine per
24 100 milliliters or per 100 grams;

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

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

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

33 (d) *Stimulants.* – Unless specifically exempted or ex-
34 cluded or unless listed in another schedule, any material,
35 compound, mixture or preparation which contains any
36 quantity of the following substances having a stimulant
37 effect on the central nervous system, including its salts,
38 isomers and salts of isomers:

39 (1) Pyrovalerone.

40 (e) Any compound, mixture or preparation containing as
41 its single active ingredient ephedrine, pseudoephedrine or
42 phenylpropanolamine, their salts or optical isomers, or
43 salts of optical isomers except products which are for
44 pediatric use primarily intended for administration to
45 children under the age of twelve: *Provided*, That neither
46 the offenses set forth in section four hundred one, article
47 four of this chapter, nor the penalties therein, shall be
48 applicable. to ephedrine, pseudoephedrine or
49 phenylpropanolamine which shall be subject to the
50 provisions of article ten of this chapter.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

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

1 (a) On or before the first day of July, two thousand five,
2 the Board of Pharmacy shall promulgate emergency and
3 legislative rules pursuant to the provision of article three,
4 chapter twenty-nine-a of this code to implement a pro-
5 gram wherein the Board of Pharmacy shall consult with
6 the Superintendent of the State Police in identifying drug

7 products which are a designated precursor, in addition to
8 those that contain as their single active ingredient ephed-
9 rine, pseudoephedrine or phenylpropanolamine, that are
10 commonly being used in the production and distribution
11 of methamphetamine. Those drug products which the
12 Superintendent of the State Police have demonstrated by
13 empirical evidence are commonly used in the manufacture
14 of methamphetamine shall be added to a supplemental list
15 and shall be subject to all of the restrictions of this article.
16 These rules established pursuant to this section shall
17 include:

18 (1) A process whereby pharmacies are made aware of all
19 drug products that contain as their single active ingredient
20 ephedrine, pseudoephedrine and phenylpropanolamine
21 that will be listed as a Schedule V substance and must be
22 sold, transferred or dispensed from behind a pharmacy
23 counter;

24 (2) A process whereby pharmacies and retail establish-
25 ments are made aware of additional drug products added
26 to Schedule V that are required to be placed behind the
27 pharmacy counter for sale, transfer or distribution can be
28 periodically reviewed and updated.

29 (b) At any time after the first day of July, two thousand
30 five, the Board of Pharmacy, upon the recommendation of
31 the Superintendent of the State Police, shall promulgate
32 emergency and legislative rules pursuant to the provision
33 of article three, chapter twenty-nine-a of this code to
34 implement an updated supplemental list of products
35 containing the controlled substances ephedrine, pseudo-
36 ephedrine or phenylpropanolamine as an active ingredient
37 or any other drug used as a precursor in the manufacture
38 of methamphetamine, which the Superintendent of the
39 State Police has demonstrated by empirical evidence is
40 being used in the manufacture of methamphetamine. This
41 listing process shall comport with the requirements of
42 subsection (a) of this section.

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

1 (a) Whenever there is a sale, retail, transfer or distribu-
2 tion of any drug product referred to in section seven of this
3 article or another designated precursor, the pharmacist or
4 pharmacy technician making the sale, transfer or distribu-
5 tion shall report the following information for inclusion in
6 a central repository established and maintained by the
7 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
12 weight of the product or products purchased, received or
13 otherwise acquired.

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

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

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

Candy White
.....
Chairman Senate Committee

Al Ben
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Daniel O'Leary
.....
Clerk of the Senate

Steve S.
.....
Clerk of the House of Delegates

Carl Ray Tompkins
.....
President of the Senate

Robert S.
.....
Speaker House of Delegates

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

Paul Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:10 pm