COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 440

(By Senators Foster, Unger and Miller)

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[Originating in the Committee on Health and Human Resources; reported February 24, 2011.]

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A BILL to repeal §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7 and §60A-10-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-208 and §60A-2-212 of said code; and to amend and reenact §60A-10-2, §60A-10-3 and §60A-10-11 of said code, all relating to adding ephedrine, pseudoephedrine and phenylpropanolamine to the list of Schedule III substances; requiring a prescription to dispense drug products containing as an active ingredient ephedrine, pseudoephedrine, phenylpropanolamine; removing ephedrine, pseudoephedrine and phenylpropanolamine from the list of Schedule V substances; to repeal certain provisions that do not apply to prescription drugs; to add findings; to eliminate definitions that no longer are needed; and to provide a report back to the Legislative Oversight Commission on Health and Human Resources Accountability.

Be it enacted by the Legislature of West Virginia:

That §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7 and §60A-10-8

of the Code of West Virginia, 1931, as amended, be repealed; that §60A-2-208 and §60A-2-212 of said code be amended and reenacted; and that §60A-10-2, §60A-10-3 and §60A-10-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-208. Schedule III.

(a) Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Stimulants and Stimulant Precursors. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on the twenty-fifth day of August, one thousand nine hundred seventy-one, as excepted compounds under 21 C.F.R §1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine;

(6) Hydrocodone.;

(7) Ephedrine;

(8) Pseudoephedrine;

(9) Phenylpropanolamine.

(c) Depressants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) Chlorhexadol;

(5) Lysergic acid;

(6) Lysergic acid amide;

(7) Methyprylon;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane;

(11) Tiletamine and zolazepam or any salt of tiletamine and zolazepam; some trade or other names for a tiletamine-zolazepam combination product: Telazol; some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; some trade or other names for zolazepam: 4-(2-flurophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon;

(12) Human growth hormones or anabolic steroids.

Ketamine, its salts, isomers and salts of isomers, including ketamine hydrochloride.

(d) Nalorphine.

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

(1) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active,

nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of anabolic steroids, including

its salts, isomers and salts of isomers whenever the existence of the salts of isomers is possible within the specific chemical designation.

(g) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

§60A-2-212. Schedule V.

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

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

(1) Buprenorphine.

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

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

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

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

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

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

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

(d) Stimulants. -- Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

(e) Any compound, mixture or preparation containing as its single active ingredient 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 which shall be subject to the provisions of article ten of this chapter.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-2. Purpose; findings.

The Legislature finds:

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

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

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

(d) That in addition to the physical consequences to an individual who uses methamphetamine, usage of the drug also produces an increase in automobile accidents, explosions and fires, increased criminal activity, increased medical costs due to

emergency room visits, increases in domestic violence, increased spread of infectious diseases and a loss in worker productivity.

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

(f) That in other states that have made drugs used to facilitate production of methamphetamines a prescription drug, there has been a significant decrease in the number of methamphetamine laboratories established in the state.

~~(f)~~ (g) That it is in the best interest of every West Virginian to develop a viable solution to address the growing methamphetamine problem in the State of West Virginia. The Legislature finds that restricting access to ~~over-the-counter~~ drugs used to facilitate production of methamphetamine is necessary to protect the public safety of all West Virginians.

~~(g)~~ (h) That it is further in the best interests of every West Virginian to create impediments to the manufacture of methamphetamine by requiring persons purchasing chemicals necessary to the process to ~~provide identification~~ get a prescription.

§60A-10-3. Definitions.

In this article:

(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)~~ (b)"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)~~ (c)"Ephedrine " means ephedrine, its salts or optical isomers or salts of optical isomers.

~~(f)~~ (d)"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)~~ (e)"Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

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

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

~~(j)~~ (h)"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)~~ (i)"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)~~ (j)"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)~~(k) "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)~~(l) "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)~~(m) "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-10-11. Reporting to the Legislative Oversight Commission on Health and Human Resources Accountability.

On or before the first day of January , two thousand~~ five~~ twelve, the Superintendent of the West Virginia State Police shall submit a report including findings, conclusions and recommendations, together with drafts of any legislation necessary, to improve the effectiveness of a reduction in illegal methamphetamine production and distribution to the Legislative Oversight Commission on Health and Human Resources Accountability for consideration.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.