



1 without prescription with intent to transfer to another to  
2 make methamphetamine; permitting sale of certain drugs without  
3 prescription where Board of Pharmacy determines that drugs are  
4 not feasible for being used for manufacture of  
5 methamphetamine; updating maximum amounts persons are  
6 permitted to purchase of certain drugs that cannot feasibly be  
7 converted into methamphetamine; adjusting requirements of  
8 Multi-State Real-Time Tracking System; removing certain  
9 outdated language; and providing rule-making authority to  
10 Board of Pharmacy to implement emergency and legislative  
11 rules, which will provide procedures for which products may be  
12 sold over the counter and which require prescription and other  
13 information necessary to implement Methamphetamine Lab  
14 Eradication Act.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §60A-10-8 of the Code of West Virginia, 1931, as amended,  
17 be repealed; that §60A-2-210 and §60A-2-212 of said code be amended  
18 and reenacted; and that §60A-10-2, §60A-10-3, §60A-10-4 and  
19 §60A-10-7 of said code be amended and reenacted, all to read as  
20 follows:

21 **ARTICLE 2. STANDARDS AND SCHEDULES.**

22 **§60A-2-210. Schedule IV.**

23 (a) Schedule IV shall consist of the drugs and other

1 substances, by whatever official name, common or usual name,  
2 chemical name, or brand name designated, listed in this section.

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

8 (1) Not more than 1 milligram of difenoxin and not less than  
9 25 micrograms of atropine sulfate per dosage unit;

10 ( 2 ) D e x t r o p r o p o x y p h e n e  
11 (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybuta  
12 ne).

13 (c) *Depressants.* Unless specifically excepted or unless  
14 listed in another schedule, any material, compound, mixture or  
15 preparation which contains any quantity of the following  
16 substances, including its salts, isomers and salts of isomers  
17 whenever the existence of such salts, isomers and salts of isomers  
18 is possible within the specific chemical designation:

19 (1) Alprazolam;

20 (2) Barbitol;

21 (3) Bromazepam;

22 (4) Camazepam;

23 (5) Carisoprodol;

- 1 (6) Chloral betaine;
- 2 (7) Chloral hydrate;
- 3 (8) Chlordiazepoxide;
- 4 (9) Clobazam;
- 5 (10) Clonazepam;
- 6 (11) Clorazepate;
- 7 (12) Clotiazepam;
- 8 (13) Cloxazolam;
- 9 (14) Delorazepam;
- 10 (15) Diazepam;
- 11 (16) Estazolam;
- 12 (17) Ethchlorvynol;
- 13 (18) Ethinamate;
- 14 (19) Ethyl loflazepate;
- 15 (20) Fludiazepam;
- 16 (21) Flunitrazepam;
- 17 (22) Flurazepam;
- 18 (23) Halazepam;
- 19 (24) Haloxazolam;
- 20 (25) Ketazolam;
- 21 (26) Loprazolam;
- 22 (27) Lorazepam;
- 23 (28) Lormetazepam;

- 1 (29) Mebutamate;
- 2 (30) Medazepam;
- 3 (31) Meprobamate;
- 4 (32) Methohexital;
- 5 (33) Methylphenobarbital (mephobarbital);
- 6 (34) Midazolam;
- 7 (35) Nimetazepam;
- 8 (36) Nitrazepam;
- 9 (37) Nordiazepam;
- 10 (38) Oxazepam;
- 11 (39) Oxazolam;
- 12 (40) Paraldehyde;
- 13 (41) Petrichloral;
- 14 (42) Phenobarbital;
- 15 (43) Pinazepam;
- 16 (44) Prazepam;
- 17 (45) Quazepam;
- 18 (46) Temazepam;
- 19 (47) Tetrazepam;
- 20 (48) Triazolam;
- 21 (49) Zolpidem.
- 22 (d) *Fenfluramine*. Any material, compound, mixture or
- 23 preparation which contains any quantity of the following substance,

1 including its salts, isomers (whether optical, position or  
2 geometric) and salts of such isomers whenever the existence of such  
3 salts, isomers and salts of isomers is possible: Fenfluramine.

4 (e) *Stimulants*. Unless specifically excepted or unless listed  
5 in another schedule, any material, compound, mixture or preparation  
6 which contains any quantity of the following substances having a  
7 stimulant effect on the central nervous system, including its salts,  
8 isomers and salts of isomers:

9 (1) Cathine ((+)-norpseudoephedrine);

10 (2) Diethylpropion;

11 (3) Fencamfamin;

12 (4) Fenproporex;

13 (5) Mazindol;

14 (6) Mefenorex;

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

17 (8) Phentermine;

18 (9) Pipradrol;

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

20 (f) Any compound, mixture or preparation containing as its  
21 single active ingredient ephedrine, pseudoephedrine or  
22 phenylpropanolamine, their salts or optical isomers, or salts of  
23 optical isomers except products which are for pediatric use

1 primarily intended for administration to children under the age of  
2 twelve and products which have been determined by the Board of  
3 Pharmacy to be in a form which is not feasible for being used for  
4 the manufacture of methamphetamine, as set forth in article ten of  
5 this chapter: *Provided*, That neither the offenses set forth in  
6 section four hundred one, article four of this chapter, nor the  
7 penalties therein, shall be applicable to ephedrine, pseudoephedrine  
8 or phenylpropanolamine, which shall be subject to the provisions of  
9 article ten of this chapter.

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

14 (1) Pentazocine;

15 (2) Butorphanol.

16 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other  
17 organic nitrites are controlled substances and no product containing  
18 these compounds as a significant component shall be possessed,  
19 bought or sold other than pursuant to a bona fide prescription or  
20 for industrial or manufacturing purposes.

21 **§60A-2-212. Schedule V.**

22 (a) Schedule V shall consist of the drugs and other substances,  
23 by whatever official name, common or usual name, chemical name, or

1 brand name designated, listed in this section.

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

6 (1) Buprenorphine.

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

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

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

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

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

23 (5) Not more than 100 milligrams of opium per 100 milliliters

1 or per 100 grams;

2 (6) Not more than 0.5 milligrams of difenoxin and not less than  
3 25 micrograms of atropine sulfate per dosage unit.

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

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

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

21 **§60A-10-2. Purpose; findings.**

22 The Legislature finds:

23 (a) That the illegal production and distribution of

1 methamphetamine is an increasing problem nationwide and particularly  
2 prevalent in rural states such as West Virginia.

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

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

17 (d) That in addition to the physical consequences to an  
18 individual who uses methamphetamine, usage of the drug also produces  
19 an increase in automobile accidents, explosions and fires, increased  
20 criminal activity, increased medical costs due to emergency room  
21 visits, increases in domestic violence, increased spread of  
22 infectious diseases and a loss in worker productivity.

23 (e) That environmental damage is another consequence of the

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

7 (f) That it is in the best interest of every West Virginian to  
8 develop a viable solution to address the growing methamphetamine  
9 problem in the State of West Virginia. The Legislature finds that  
10 conversion-proof pseudoephedrine hydrochloride can provide an  
11 over-the-counter option that cannot be used in the manufacture of  
12 methamphetamine. The Legislature finds that requiring a  
13 prescription for ~~restricting access to over-the-counter~~ drugs that  
14 can be converted ~~used~~ to facilitate production of methamphetamine  
15 is necessary to protect the public safety of all West Virginians.

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

20 **§60A-10-3. Definitions.**

21 In this article:

22 (a) "Board of Pharmacy" or "board" means the West Virginia  
23 Board of Pharmacy established by the provisions of article five,

1 chapter thirty of this code.

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

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

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

15 (e) "Ephedrine " means ephedrine, its salts or optical isomers  
16 or salts of optical isomers.

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

22 (g) "National Association of Drug Diversion Investigators" or  
23 "NADDI" means the non-profit 501(c)(3) organization established in

1 1989, made up of members who are responsible for investigating and  
2 prosecuting pharmaceutical drug diversion, and that facilitates  
3 cooperation between law enforcement, health care professionals,  
4 state regulatory agencies and pharmaceutical manufacturers in the  
5 investigation and prevention of prescription drug abuse and  
6 diversion.

7 (h) "Multi-State Real-Time Tracking System" or "MSRTTS" means  
8 the real-time electronic logging system provided by NADDI at no cost  
9 to states that have legislation requiring real-time electronic  
10 monitoring of precursor purchases, and agree to use the system.  
11 MSRTTS is used by pharmacies and law enforcement to track sales of  
12 over-the-counter (OTC) cold and allergy medications containing  
13 precursors to the illegal drug, methamphetamine.

14 (i) "Phenylpropanolamine" means phenylpropanolamine, its salts,  
15 optical isomers and salts of optical isomers.

16 (j) "Pseudoephedrine" means pseudoephedrine, its salts, optical  
17 isomers and salts of optical isomers.

18 (k) "Precursor" means any substance which may be used along  
19 with other substances as a component in the production and  
20 distribution of illegal methamphetamine.

21 (l) "Pharmacist" means an individual currently licensed by this  
22 state to engage in the practice of pharmacist care as defined in  
23 article five, chapter thirty of this code.

1 (m) "Pharmacy intern" has the same meaning as the term "intern"  
2 as set forth in section one-b, article five, chapter thirty of this  
3 code.

4 (n) "Pharmacy" means any drugstore, apothecary or place within  
5 this state where drugs are dispensed and sold at retail or display  
6 for sale at retail and pharmacist care is provided outside of this  
7 state where drugs are dispensed and pharmacist care is provided to  
8 residents of this state.

9 (o) "Pharmacy counter" means an area in the pharmacy restricted  
10 to the public where controlled substances are stored and housed and  
11 where controlled substances may only be sold, transferred or  
12 dispensed by a pharmacist, pharmacy intern or pharmacy technician.

13 (p) "Pharmacy technician" means a registered technician who  
14 meets the requirements for registration as set forth in article  
15 five, chapter thirty of this code.

16 (q) "Retail establishment" means any entity or person within  
17 this state who sells, transfers or distributes goods, including  
18 over-the-counter drug products, to an ultimate consumer.

19 (r) "Schedule V" means the schedule of controlled substances  
20 set out in section two hundred twelve, ~~section~~ article two of this  
21 chapter.

22 (s) "Superintendent of the State Police" or "Superintendent"  
23 means the Superintendent of the West Virginia State Police as set

1 forth in section five, article two, chapter fifteen of this code.

2 (t) "Wholesaler" means any person within this state or another  
3 state, other than a manufacturer, who sells, transfers or in any  
4 manner furnishes a drug product to any other person in this state  
5 for the purpose of being resold.

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

10 (a) A pharmacy may not sell, transfer or dispense ~~to the same~~  
11 ~~person, and a person may not purchase more than three and six-tenths~~  
12 ~~grams per day, more than seven and two-tenths grams in a thirty-day~~  
13 ~~period or more than forty-eight grams annually of ephedrine,~~  
14 ~~pseudoephedrine or phenylpropanolamine without a prescription,~~  
15 unless the product has been determined by the Board of Pharmacy to  
16 be in a form which is not feasible for being used for the  
17 manufacture of methamphetamine: *Provided, That a pharmacy may not*  
18 sell, transfer or dispense to the same person, and a person may not  
19 purchase more than three and six-tenths grams per day, more than  
20 seven and two-tenths grams in a thirty-day period or more than  
21 forty-eight grams annually of ephedrine, pseudoephedrine or  
22 phenylpropanolamine that has been determined by the Board of  
23 Pharmacy to be in a form which is not feasible for being used for

1 the manufacture of methamphetamine. The limits shall apply to the  
2 total amount of ephedrine, pseudoephedrine and phenylpropanolamine  
3 contained in the products, and not the overall weight of the  
4 products.

5 (1) Any person who ~~or~~ knowingly purchases, receives or  
6 otherwise possesses more than seven and two-tenths grams in a  
7 thirty-day period of ephedrine, pseudoephedrine or  
8 phenylpropanolamine in any form without a prescription is guilty of  
9 a misdemeanor and, upon conviction, shall be confined in a jail for  
10 not more than one year, fined not more than \$1,000, or both fined  
11 and confined.

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

19 ~~(2)~~ (3) Any pharmacy, wholesaler or other entity operating the  
20 retail establishment which sells, transfers or dispenses a product  
21 in violation of this section is guilty of a misdemeanor and, upon  
22 conviction, shall be fined not more than \$1,000 for the first  
23 offense, or more than \$10,000 for each subsequent offense.

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

10 (c) The provisions of subsection (a) of this section shall not  
11 apply to:

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

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

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

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

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

17 (e) (1) Any pharmacy, wholesaler, manufacturer or distributor  
18 of drug products containing ephedrine, pseudoephedrine,  
19 phenylpropanolamine, their salts or optical isomers or salts of  
20 optical isomers or other designated precursor shall obtain a  
21 registration annually from the State Board of Pharmacy as described  
22 in section six of this article. Any such pharmacy, wholesaler,  
23 manufacturer or distributor shall keep complete records of all sales

1 and transactions as provided in section eight of this article. The  
2 records shall be gathered and maintained pursuant to legislative  
3 rule promulgated by the Board of Pharmacy.

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

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

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

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

1 this section shall include:

2 (1) A process whereby pharmacies are made aware of all drug  
3 products that contain ephedrine, pseudoephedrine and  
4 phenylpropanolamine that will be listed as a Schedule V substance  
5 and must be sold, transferred or dispensed from behind a pharmacy  
6 counter. This process shall specifically state which products have  
7 been determined by the Board of Pharmacy to be in a form which is  
8 not feasible for being used for the manufacture of methamphetamine  
9 and may, therefore, be sold without a prescription. The process  
10 shall specify that all other drug products which have not been  
11 determined by the Board of Pharmacy to be in a form which is not  
12 feasible for being used for the manufacture of methamphetamine may  
13 be distributed by prescription only;

14 (2) A process whereby pharmacies and retail establishments are  
15 made aware of additional drug products added to Schedule V,  
16 including whether that product has been determined by the Board of  
17 Pharmacy to be in a form which is not feasible for being used for  
18 the manufacture of methamphetamine, that are required to be placed  
19 behind the pharmacy counter for sale, transfer or distribution can  
20 be periodically reviewed and updated.

21 (b) At any time after July 1, 2005, the Board of Pharmacy, upon  
22 the recommendation of the Superintendent of the State Police, shall  
23 promulgate emergency and legislative rules pursuant to the provision

1 of article three, chapter twenty-nine-a of this code to implement  
2 an updated supplemental list of products containing the controlled  
3 substances ephedrine, pseudoephedrine or phenylpropanolamine as an  
4 active ingredient or any other drug used as a precursor in the  
5 manufacture of methamphetamine, which the Superintendent of the  
6 State Police has demonstrated by empirical evidence is being used  
7 in the manufacture of methamphetamine. This list shall also note  
8 any products containing ephedrine, pseudoephedrine or  
9 phenylpropanolamine as an active ingredient but which has been  
10 determined by the Board of Pharmacy to be in a form which is not  
11 feasible for being used for the manufacture of methamphetamine.  
12 This listing process shall comport with the requirements of  
13 subsection (a) of this section.

NOTE: The purpose of this bill is to allow for the sale of drug products determined by the Board of Pharmacy to be in a form which is not feasible for being used for the manufacture of methamphetamine to be sold in an over-the-counter transaction, while requiring drug products that may be converted to use in the manufacture of methamphetamine to be sold by prescription only.

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