

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 6**

6 (By Senators Tucker, Kessler (Mr. President), Stollings, Laird

7 and Plymale)

8 \_\_\_\_\_  
9 [Originating in the Committee on the Judiciary;

10 reported February 13, 2014.]

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13  
14 A BILL to repeal §60A-10-8 of the Code of West Virginia, 1931, as  
15 amended; to amend and reenact §60A-2-210 and §60A-2-212 of  
16 said code; to amend and reenact §60A-10-2, §60A-10-3,  
17 §60A-10-4, §60A-10-5 and §60A-10-7 of said code; and to amend  
18 said code by adding thereto a new section, designated §60A-10-  
19 4a, all relating to the Methamphetamine Lab Eradication Act  
20 and the prevention of the production of methamphetamine  
21 generally; requiring certain drug products containing  
22 ephedrine, pseudoephedrine or phenylpropanolamine be obtained  
23 by prescription only; moving said drug products from Schedule  
24 V to Schedule IV; distinguishing between schedule

1 classifications; providing an exception for drug products that  
2 are extraction or conversion resistant; making legislative  
3 findings; defining terms; prohibiting pharmacies from selling  
4 certain drugs that can be used in the production of  
5 methamphetamine without a prescription; creating criminal  
6 offenses related to methamphetamine precursors and  
7 establishing penalties therefor; creating an expungement  
8 process for certain persons charged with possession of  
9 ephedrine, pseudoephedrine or phenylpropanolamine without a  
10 prescription; permitting the sale of certain drugs without a  
11 prescription where the Board of Pharmacy determines that the  
12 drugs are not feasible for being used for the manufacture of  
13 methamphetamine; reducing the maximum amounts persons are  
14 permitted to purchase of certain drugs that cannot feasibly be  
15 converted into methamphetamine; limiting authority of the  
16 Board of Pharmacy as to storage, recordkeeping and security  
17 requirements for wholesalers; adjusting the requirements of  
18 the Multi-State Real-Time Tracking System; removing certain  
19 outdated language; and providing rule-making authority to the  
20 Board of Pharmacy to implement emergency and legislative  
21 rules, which will provide procedures as to which products may  
22 be sold over the counter and which require a prescription and  
23 other modifications necessary to implement the Methamphetamine  
24 Lab Eradication Act.

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

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

8 **ARTICLE 2.   STANDARDS AND SCHEDULES.**

9 **§60A-2-210.   Schedule IV.**

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

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

18       (1) Not more than 1 milligram of difenoxin and not less than  
19 25 micrograms of atropine sulfate per dosage unit;

20       ( 2 )           D e x t r o p r o p o x y p h e n e  
21 (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybuta  
22 ne).

23       (c) *Depressants.* -- Unless specifically excepted or unless  
24 listed in another schedule, any material, compound, mixture or

1 preparation which contains any quantity of the following  
2 substances, including its salts, isomers and salts of isomers  
3 whenever the existence of such salts, isomers and salts of isomers  
4 is possible within the specific chemical designation:

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

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

- 1 (45) Quazepam;
- 2 (46) Temazepam;
- 3 (47) Tetrazepam;
- 4 (48) Triazolam;
- 5 (49) Zolpidem.

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

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

- 16 (1) Cathine ((+)-norpseudoephedrine);
- 17 (2) Diethylpropion;
- 18 (3) Fencamfamin;
- 19 (4) Fenproporex;
- 20 (5) Mazindol;
- 21 (6) Mefenorex;
- 22 (7) Pemoline (including organometallic complexes and chelates  
23 thereof);
- 24 (8) Phentermine;

1 (9) Pipradrol;  
2 (10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).  
3 (f) Any compound, mixture or preparation containing ephedrine,  
4 pseudoephedrine or phenylpropanolamine, their salts or optical  
5 isomers, or salts of optical isomers except products which are for  
6 pediatric use primarily intended for administration to children  
7 under the age of twelve: Provided, That neither the offenses set  
8 forth in section four hundred one, article four of this chapter,  
9 nor the penalties therein, shall be applicable to ephedrine,  
10 pseudoephedrine or phenylpropanolamine, that shall be subject to  
11 the provisions of article ten of this chapter.

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

- 16 (1) Pentazocine;
- 17 (2) Butorphanol.

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

23 **§60A-2-212. Schedule V.**

24 (a) Schedule V 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 and  
6 their salts, as set forth below:

7 (1) Buprenorphine.

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

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

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

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

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

24 (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  
3 than 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  
24 methamphetamine is an increasing problem nationwide and

1 particularly prevalent in rural states such as West Virginia.

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

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

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

22 (e) That environmental damage is another consequence of the  
23 methamphetamine epidemic. Each pound of methamphetamine produced  
24 leaves behind five to six pounds of toxic waste. Chemicals and

1 byproducts that result from the manufacture of methamphetamine are  
2 often poured into plumbing systems, storm drains or directly onto  
3 the ground. Clean up of methamphetamine laboratories is extremely  
4 resource intensive, with an average remediation cost of \$5,000.

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

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

19 **§60A-10-3. Definitions.**

20 In this article:

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

24 (b) "Designated precursor" means any drug product made subject

1 to the requirements of this article by the provisions of section  
2 ~~ten~~ seven of this article.

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

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

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

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

21 ~~(f)~~ (g) "Manufacturer" means any person within this state who  
22 produces, compounds, packages or in any manner initially prepares  
23 for sale or use any drug product or any such person in another  
24 state if they cause the products to be compounded, packaged or

1 transported into this state.

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

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

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

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

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

24 ~~(l)~~ (m) "Pharmacist" means an individual currently licensed by

1 this state to engage in the practice of pharmacist care as defined  
2 in article five, chapter thirty of this code.

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

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

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

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

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

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

1       ~~(s)~~ (t) "Superintendent of the State Police" or  
2 "superintendent" means the Superintendent of the West Virginia  
3 State Police as set forth in ~~section five,~~ article two, chapter  
4 fifteen of this code.

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

9 **§60A-10-4. Purchase, receipt, acquisition and possession of**  
10                   **substances which may be used as a precursor to**  
11                   **manufacture of methamphetamine or another**  
12                   **controlled substance; offenses; exceptions;**  
13                   **penalties.**

14       (a) A pharmacy may not sell, transfer or dispense ~~to the same~~  
15 ~~person, and a person may not purchase more than three and~~  
16 ~~six tenths grams per day, more than seven and two tenths grams in~~  
17 ~~a thirty-day period or more than forty-eight grams annually of~~  
18 ephedrine, pseudoephedrine or phenylpropanolamine without a  
19 prescription, ~~The limits shall apply to the total amount of~~  
20 ~~ephedrine, pseudoephedrine and phenylpropanolamine contained in the~~  
21 ~~products, and not the overall weight of the products. unless the~~  
22 product has been determined by the Board of Pharmacy to be in an  
23 extraction- or conversion-resistant form.

24       (1) Any person who ~~or knowingly purchases, receives or~~

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

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

20 (b) Notwithstanding the provisions of ~~subdivision (a)(1)~~  
21 subdivision (1), subsection (a) of this section, any person  
22 convicted of a second or subsequent violation of the provisions of  
23 said subdivision or a statute or ordinance of the United States or  
24 another state which contains the same essential elements is guilty

1 of a felony and, upon conviction, shall be imprisoned in a state  
2 correctional facility for not less than one nor more than five  
3 years, fined not more than \$25,000, or both imprisoned and fined.

4 (c) The provisions of subsection (a) of this section shall not  
5 apply to:

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

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

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

14 ~~(4)~~ (3) Persons lawfully possessing drug products in their  
15 capacities as distributors, wholesalers, manufacturers,  
16 pharmacists, pharmacy interns, pharmacy technicians or health care  
17 professionals.

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

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

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

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

24 (3) In addition to any administrative penalties provided by

1 law, any violation of this subsection is a misdemeanor, punishable  
2 upon conviction by a fine in an amount not more than \$10,000.

3 **60A-10-4a. Expungement of first offense possession of ephedrine,**  
4 **pseudoephedrine or phenylpropanolamine.**

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

22 (b) Upon violation of a term or condition, the court may  
23 enter an adjudication of guilt and proceed as otherwise provided.  
24 Upon fulfillment of the terms and conditions, the court shall

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

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

1 the expungement.

2 **§60A-10-5. Restrictions on the commercial sale, transfer or**  
3 **delivery of certain drug products; penalties.**

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

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

23 (c) No pharmacy may sell, deliver or provide any drug product  
24 regulated by the provisions of this section to any person who is

1 under the age of eighteen.

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

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

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

22 (f) Any person who knowingly makes a false representation or  
23 statement pursuant to the requirements of this section is guilty of  
24 a misdemeanor and, upon conviction, be confined in a jail for not

1 more than six months, fined not more than \$5,000, or both fined and  
2 confined.

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

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

1 act or omission in carrying out the duties required by this  
2 subdivision and is immune from liability to any third party unless  
3 the retailer has violated any provision of this subdivision in  
4 relation to a claim brought for the violation.

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

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

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

21 (j) The provisions of this section supersede and preempt all  
22 local laws, ordinances, rules and regulations pertaining to the  
23 sale of any compounds, mixtures or preparation containing  
24 ephedrine, pseudoephedrine or phenylpropanolamine.

1 **§60A-10-7. Restricted products; rule-making authority; effective**  
2 **date of amendments.**

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

17 (1) A process whereby pharmacies are made aware of all drug  
18 products that contain ephedrine, pseudoephedrine and  
19 phenylpropanolamine that will be listed as a Schedule ~~V~~ IV  
20 substance. ~~and must be sold, transferred or dispensed from behind~~  
21 ~~a pharmacy counter.~~ This process shall specifically state which  
22 products have been determined by the Board of Pharmacy to be in a  
23 form which is extraction or conversion resistant and may,  
24 therefore, be sold without a prescription. The process shall

1 specify that all other drug products which have not been determined  
2 by the Board of Pharmacy to be extraction or conversion resistant  
3 shall be distributed by prescription only;

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

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

23 (c) The repeal of section eight, article ten, chapter sixty-a  
24 of this code, and the amendments to sections two hundred ten and

1 two hundred twelve, article two, chapter sixty-a and sections two,  
2 three, four, five and seven, article ten, chapter sixty-a of this  
3 code during the 2014 Regular Session of the Legislature shall be  
4 effective September 1, 2014.