

1 **H. B. 4591**

2
3 (By Delegates Espinosa, Arvon, R. Smith,
4 Border, D. Evans)

5 (By request of the Attorney General)

6 [Introduced February 17, 2014; referred to the
7 Committee on Health and Human Resources then the
8 Judiciary.]

9
10 A BILL to amend and reenact §60A-10-4 of the Code of West Virginia,
11 1931, as amended, relating to the purchase, receipt,
12 acquisition and possession for illicit purposes of substances
13 containing ephedrine, pseudoephedrine and phenylpropanolamine;
14 reducing the maximum amount of ephedrine, pseudoephedrine and
15 phenylpropanolamine a person may purchase in a year; and
16 creating criminal offenses for the illegal transfer of
17 ephedrine, pseudoephedrine and phenylpropanolamine.

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

19 That §60A-10-4 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

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

22 **§60A-10-4. Purchase, receipt, acquisition and possession of**
23 **substances to be used as precursor to manufacture**
24 **of methamphetamine or another controlled**

1 **substance; offenses; exceptions; penalties.**

2 (a) A pharmacy may not sell, transfer or dispense to the same
3 person, and a person may not purchase more than three and
4 six-tenths grams per day, more than seven and two-tenths grams in
5 a thirty-day period or more than ~~forty-eight~~ twenty-four grams
6 annually of ephedrine, pseudoephedrine or phenylpropanolamine
7 without a prescription, unless the product has been determined by
8 the Board of Pharmacy to be in a form which is not feasible for
9 being used to manufacture methamphetamine. The limits shall apply
10 to the total amount of ephedrine, pseudoephedrine and
11 phenylpropanolamine contained in the products, and not the overall
12 weight of the products.

13 (1) Any person who ~~or~~ knowingly purchases, receives or
14 otherwise possesses more than seven and two-tenths grams in a
15 thirty-day period of ephedrine, pseudoephedrine or
16 phenylpropanolamine in any form without a prescription is guilty of
17 a misdemeanor and, upon conviction, shall be confined in a jail for
18 not more than one year, fined not more than \$1,000, or both fined
19 and confined.

20 (2) Any person who knowingly purchases, receives or otherwise
21 possesses ephedrine, pseudoephedrine or phenylpropanolamine in any
22 form with the intent to transfer the substance to someone who the
23 transferor knows or should know will use the substance to
24 manufacture methamphetamine is guilty of a misdemeanor and, upon

1 conviction, shall be confined in jail for not more than one year,
2 fined not more than \$1,000, or both fined and confined.

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

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

17 (c) The provisions of subsection (a) of this section shall not
18 apply to:

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

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

22 (3) Drug products containing ephedrine, pseudoephedrine or
23 phenylpropanolamine, their salts or optical isomers or salts of
24 optical isomers or other designated precursor which have been

1 determined by the Board of Pharmacy to be in a form which is not
2 feasible for being used for the manufacture of methamphetamine; or

3 (4) Persons lawfully possessing drug products in their
4 capacities as distributors, wholesalers, manufacturers,
5 pharmacists, pharmacy interns, pharmacy technicians, or health care
6 professionals.

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

24 (e) (1) Any pharmacy, wholesaler, manufacturer or distributor

1 of drug products containing ephedrine, pseudoephedrine,
2 phenylpropanolamine, their salts or optical isomers or salts of
3 optical isomers or other designated precursor shall obtain a
4 registration annually from the State Board of Pharmacy as described
5 in section six of this article. Any such pharmacy, wholesaler,
6 manufacturer or distributor shall keep complete records of all
7 sales and transactions as provided in section eight of this
8 article. The records shall be gathered and maintained pursuant to
9 legislative rule promulgated by the Board of Pharmacy.

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

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

NOTE: The purpose of this bill is to reduce the annual amount of ephedrine, pseudoephedrine and phenylpropanolamine that can be sold without a prescription. The bill also creates criminal offenses for individuals engaged in the practice of "smurfing," which involves the transfer of those products with the intent to manufacture methamphetamine.

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