

E N G R O S S E D  
COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 6**

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

---

[Originating in the Committee on the Judiciary;  
reported February 13, 2014.]

---

A BILL to repeal §60A-10-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-210 and §60A-2-212 of said code; to amend and reenact §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-7 of said code; and to amend said code by adding thereto a new section, designated §60A-10-4a, all relating to the Methamphetamine Lab Eradication Act and the prevention of the production of methamphetamine generally; requiring certain drug products

containing ephedrine, pseudoephedrine or phenylpropanolamine be obtained by prescription only; moving said drug products from Schedule V to Schedule IV; distinguishing between schedule classifications; providing an exception for drug products that are extraction or conversion resistant; making legislative findings; defining terms; prohibiting pharmacies from selling certain drugs that can be used in the production of methamphetamine without a prescription; creating criminal offenses related to methamphetamine precursors and establishing penalties therefor; creating an expungement process for certain persons charged with possession of ephedrine, pseudoephedrine or phenylpropanolamine without a prescription; permitting the sale of certain drugs without a prescription where the Board of Pharmacy determines that the drugs are not feasible for being used for the manufacture of methamphetamine; reducing the maximum amounts persons are permitted to purchase of certain drugs that cannot feasibly be converted into methamphetamine; limiting authority of the Board of Pharmacy as to storage,

recordkeeping and security requirements for wholesalers; adjusting the requirements of the Multi-State Real-Time Tracking System; removing certain outdated language; and providing rule-making authority to the Board of Pharmacy to implement emergency and legislative rules, which will provide procedures as to which products may be sold over the counter and which require a prescription and other modifications necessary to implement the Methamphetamine Lab Eradication Act.

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

That §60A-10-8 of the Code of West Virginia, 1931, as amended, be repealed; that §60A-2-210 and §60A-2-212 of said code be amended and reenacted; that §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-7 of said code be amended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

## **ARTICLE 2. STANDARDS AND SCHEDULES.**

### **§60A-2-210. Schedule IV.**

- 1 (a) Schedule IV 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 this  
4 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, or their salts calculated as the free anhydrous  
9 base or alkaloid, in limited quantities as set forth below:

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

12 (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino  
13 -1,2-diphenyl-3-methyl-2-propionoxybutane).

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

21 (1) Alprazolam;

- 22 (2) Barbital;
- 23 (3) Bromazepam;
- 24 (4) Camazepam;
- 25 (5) Carisoprodol;
- 26 (6) Chloral betaine;
- 27 (7) Chloral hydrate;
- 28 (8) Chlordiazepoxide;
- 29 (9) Clobazam;
- 30 (10) Clonazepam;
- 31 (11) Clorazepate;
- 32 (12) Clotiazepam;
- 33 (13) Cloxazolam;
- 34 (14) Delorazepam;
- 35 (15) Diazepam;
- 36 (16) Estazolam;
- 37 (17) Ethchlorvynol;
- 38 (18) Ethinamate;
- 39 (19) Ethyl loflazepate;
- 40 (20) Fludiazepam;

- 41 (21) Flunitrazepam;
- 42 (22) Flurazepam;
- 43 (23) Halazepam;
- 44 (24) Haloxazolam;
- 45 (25) Ketazolam;
- 46 (26) Loprazolam;
- 47 (27) Lorazepam;
- 48 (28) Lormetazepam;
- 49 (29) Mebutamate;
- 50 (30) Medazepam;
- 51 (31) Meprobamate;
- 52 (32) Methohexital;
- 53 (33) Methylphenobarbital (mephobarbital);
- 54 (34) Midazolam;
- 55 (35) Nimetazepam;
- 56 (36) Nitrazepam;
- 57 (37) Nordiazepam;
- 58 (38) Oxazepam;
- 59 (39) Oxazolam;

7

[Eng. Com. Sub. for Com. Sub. for S. B. No. 6

60 (40) Paraldehyde;

61 (41) Petrichloral;

62 (42) Phenobarbital;

63 (43) Pinazepam;

64 (44) Prazepam;

65 (45) Quazepam;

66 (46) Temazepam;

67 (47) Tetrazepam;

68 (48) Triazolam;

69 (49) Zolpidem.

70 (d) *Fenfluramine*. – Any material, compound, mixture or

71 preparation which contains any quantity of the following

72 substance, including its salts, isomers (whether optical,

73 position or geometric) and salts of such isomers whenever the

74 existence of such salts, isomers and salts of isomers is

75 possible: Fenfluramine.

76 (e) *Stimulants*. – Unless specifically excepted or unless

77 listed in another schedule, any material, compound, mixture

78 or preparation which contains any quantity of the following

79 substances having a stimulant effect on the central nervous  
80 system, including its salts, isomers and salts of isomers:

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

82 (2) Diethylpropion;

83 (3) Fencamfamin;

84 (4) Fenproporex;

85 (5) Mazindol;

86 (6) Mefenorex;

87 (7) Pemoline (including organometallic complexes and  
88 chelates thereof);

89 (8) Phentermine;

90 (9) Pipradrol;

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

92 (f) Any compound, mixture or preparation containing  
93 ephedrine, pseudoephedrine or phenylpropanolamine, their  
94 salts or optical isomers, or salts of optical isomers except  
95 products which are for pediatric use primarily intended for  
96 administration to children under the age of twelve: *Provided,*  
97 That neither the offenses set forth in section four hundred



9 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6  
98 one, article four of this chapter, nor the penalties therein,  
99 shall be applicable to ephedrine, pseudoephedrine or  
100 phenylpropanolamine, that shall be subject to the provisions  
101 of article ten of this chapter.

102 (f) (g) *Other substances.* – Unless specifically excepted  
103 or unless listed in another schedule, any material, compound,  
104 mixture or preparation which contains any quantity of the  
105 following substances, including its salts:

106 (1) Pentazocine;

107 (2) Butorphanol.

108 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other  
109 organic nitrites are controlled substances and no product  
110 containing these compounds as a significant component shall  
111 be possessed, bought or sold other than pursuant to a bona  
112 fide prescription or for industrial or manufacturing purposes.

**§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 name,  
3 chemical name or brand name designated, listed in this section.

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

8           (1) Buprenorphine.

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

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

19           (2) Not more than 100 milligrams of dihydrocodeine per  
20 100 milliliters or per 100 grams;

21           (3) Not more than 100 milligrams of ethylmorphine per  
22 100 milliliters or per 100 grams;

11 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

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

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

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

30 (d) *Stimulants*. – Unless specifically exempted or  
31 excluded or unless listed in another schedule, any material,  
32 compound, mixture or preparation which contains any  
33 quantity of the following ~~substances~~ substance having a  
34 stimulant effect on the central nervous system, including its  
35 salts, isomers and salts of isomers:

36 (†) Pyrovalerone.

37 ~~(e) Any compound, mixture or preparation containing as~~  
38 ~~its single active ingredient ephedrine, pseudoephedrine or~~  
39 ~~phenylpropanolamine, their salts or optical isomers, or salts~~  
40 ~~of optical isomers except products which are for pediatric use~~  
41 ~~primarily intended for administration to children under the~~

42 ~~age of twelve. *Provided*, That neither the offenses set forth~~  
43 ~~in section four hundred one, article four of this chapter, nor~~  
44 ~~the penalties therein, shall be applicable to ephedrine,~~  
45 ~~pseudoephedrine or phenylpropanolamine, which shall be~~  
46 ~~subject to the provisions of article ten of this chapter.~~

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

**§60A-10-2. Purpose; findings.**

1 The Legislature finds:

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

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

13 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

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

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

28 (e) That environmental damage is another consequence  
29 of the methamphetamine epidemic. Each pound of  
30 methamphetamine produced leaves behind five to six pounds

31 of toxic waste. Chemicals and byproducts that result from  
32 the manufacture of methamphetamine are often poured into  
33 plumbing systems, storm drains or directly onto the ground.  
34 Clean up of methamphetamine laboratories is extremely  
35 resource intensive, with an average remediation cost of  
36 \$5,000.

37 (f) That it is in the best interest of every West Virginian  
38 to develop a viable solution to address the growing  
39 methamphetamine problem in the State of West Virginia.  
40 The Legislature finds that extraction- or conversion-resistant  
41 pseudoephedrine hydrochloride can provide a nonprescription  
42 option that is less readily usable in the manufacture of  
43 methamphetamine. The Legislature finds that ~~restricting~~  
44 ~~access to over-the-counter~~ requiring a prescription for drugs  
45 that can be readily converted ~~used~~ to facilitate production of  
46 methamphetamine is necessary to protect the public safety of  
47 all West Virginians.

48 (g) That it is further in the best interests of every West  
49 Virginian to create impediments to the manufacture of

15 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

50 methamphetamine by requiring persons purchasing chemicals

51 necessary to the process to provide identification.

**§60A-10-3. Definitions.**

1 In this article:

2 (a) “Board of Pharmacy” or “board” means the West  
3 Virginia Board of Pharmacy established by the provisions of  
4 article five, chapter thirty of this code.

5 (b) “Designated precursor” means any drug product made  
6 subject to the requirements of this article by the provisions of  
7 section ~~ten~~ seven of this article.

8 (c) “Distributor” means any person within this state or  
9 another state, other than a manufacturer or wholesaler, who  
10 sells, delivers, transfers or in any manner furnishes a drug  
11 product to any person who is not the ultimate user or  
12 consumer of the product.

13 (d) “Drug product” means a pharmaceutical product that  
14 contains ephedrine, pseudoephedrine or  
15 phenylpropanolamine or a substance identified on the  
16 supplemental list provided in section seven of this article

17 ~~which may be sold without a prescription~~ and which is  
18 labeled for use by a consumer in accordance with the  
19 requirements of the laws and rules of this state and the  
20 federal government.

21 (e) “Ephedrine” means ephedrine, its salts or optical  
22 isomers or salts of optical isomers.

23 (f) “Extraction or conversion resistant” means a product  
24 containing ephedrine, pseudoephedrine or  
25 phenylpropanolamine that because of its compounding,  
26 preparation, mixture or ingredients has been found by the  
27 Board of Pharmacy to pose a significantly reduced risk of  
28 being used in the manufacture of methamphetamine.

29 (f)(g) “Manufacturer” means any person within this state  
30 who produces, compounds, packages or in any manner  
31 initially prepares for sale or use any drug product or any such  
32 person in another state if they cause the products to be  
33 compounded, packaged or transported into this state.

34 (g) (h) “National Association of Drug Diversion  
35 Investigators” or “NADDI” means the nonprofit 501(c)(3)



17

[Eng. Com. Sub. for Com. Sub. for S. B. No. 6

36 organization established in 1989, made up of members who  
37 are responsible for investigating and prosecuting  
38 pharmaceutical drug diversion, and that facilitates  
39 cooperation between law enforcement, health care  
40 professionals, state regulatory agencies and pharmaceutical  
41 manufacturers in the investigation and prevention of  
42 prescription drug abuse and diversion.

43       ~~(h)~~ (i) “Multi-State Real-Time Tracking System” or  
44 “MSRTTS” means the real-time electronic logging system  
45 provided by NADDI at no cost to states that have  
46 legislation requiring real-time electronic monitoring of  
47 precursor purchases, and agree to use the system.  
48 MSRTTS is used by pharmacies and law enforcement to  
49 track sales of over-the-counter (OTC) cold and allergy  
50 medications containing precursors to the illegal drug  
51 methamphetamine.

52       ~~(i)~~ (j) “Phenylpropanolamine” means  
53 phenylpropanolamine, its salts, optical isomers and salts of  
54 optical isomers.

55       (†) (k) “Pseudoephedrine” means pseudoephedrine, its  
56 salts, optical isomers and salts of optical isomers.

57       (†) (l) “Precursor” means any substance which may be  
58 used along with other substances as a component in the  
59 production and distribution of illegal methamphetamine.

60       (†) (m) “Pharmacist” means an individual currently  
61 licensed by this state to engage in the practice of  
62 pharmacist care as defined in article five, chapter thirty of  
63 this code.

64       (†) (n) “Pharmacy intern” has the same meaning as the  
65 term “intern” as set forth in section ~~one-b~~ four, article five,  
66 chapter thirty of this code.

67       (†) (o) “Pharmacy” means any drugstore, apothecary or  
68 place within this state where drugs are dispensed and sold  
69 at retail or display for sale at retail and pharmacist care is  
70 provided outside of this state where drugs are dispensed  
71 and pharmacist care is provided to residents of this state.

72       (†) (p) “Pharmacy counter” means an area in the  
73 pharmacy restricted to the public where controlled

19 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

74 substances are stored and housed and where controlled  
75 substances may only be sold, transferred or dispensed by a  
76 pharmacist, pharmacy intern or pharmacy technician.

77 ~~(p)~~ (q) “Pharmacy technician” means a registered  
78 technician who meets the requirements for registration as  
79 set forth in article five, chapter thirty of this code.

80 ~~(q)~~ (r) “Retail establishment” means any entity or  
81 person within this state who sells, transfers or distributes  
82 goods, including over-the-counter drug products, to an  
83 ultimate consumer.

84 ~~(r)~~ (s) ~~“Schedule V”~~ “Schedule IV” means the schedule  
85 of controlled substances set out in section two hundred  
86 ~~twelve~~ ten, ~~section~~ article two of this chapter.

87 ~~(s)~~ (t) “Superintendent of the State Police” or  
88 “superintendent” means the Superintendent of the West  
89 Virginia State Police as set forth in ~~section five~~, article  
90 two, chapter fifteen of this code.

91 ~~(t)~~ (u) “Wholesaler” means any person within this state  
92 or another state, other than a manufacturer, who sells,

93 transfers or in any manner furnishes a drug product to any  
94 other person in this state for the purpose of being resold.

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

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

21 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

13 (1) Any person who ~~or knowingly purchases, receives or~~  
14 ~~otherwise possesses, more than seven and two-tenths grams~~  
15 ~~in a thirty-day period~~ delivers or possesses with the intent to  
16 deliver of ephedrine, pseudoephedrine or  
17 phenylpropanolamine in any form without a prescription that  
18 has not been determined by the Board of Pharmacy to be in  
19 an extraction- or conversion-resistant form without a  
20 prescription is guilty of a misdemeanor and, upon conviction,  
21 shall be confined in a jail for not more than one year, fined  
22 not more than \$1,000, or both fined and confined: Provided,  
23 That the provisions of subdivision (3), subsection (a), section  
24 seven, article seven, chapter sixty-one of this code are  
25 inapplicable to persons possessing ephedrine,  
26 pseudoephedrine or phenylpropanolamine which has been  
27 lawfully purchased in the jurisdiction of sale and which is  
28 possessed with the intent that it be used in the manner and  
29 form intended by the manufacturer.

30 (2) Any pharmacy, wholesaler or other entity operating  
31 the retail establishment which sells, transfers or dispenses a

32 product in violation of this section is guilty of a misdemeanor  
33 and, upon conviction, shall be fined not more than \$1,000 for  
34 the first offense, or more than \$10,000 for each subsequent  
35 offense.

36 (b) Notwithstanding the provisions of ~~subdivision (a)(1)~~  
37 subdivision (1), subsection (a) of this section, any person  
38 convicted of a second or subsequent violation of the  
39 provisions of said subdivision or a statute or ordinance of the  
40 United States or another state which contains the same  
41 essential elements is guilty of a felony and, upon conviction,  
42 shall be imprisoned in a state correctional facility for not less  
43 than one nor more than five years, fined not more than  
44 \$25,000, or both imprisoned and fined.

45 (c) The provisions of subsection (a) of this section shall  
46 not apply to:

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

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

23 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

51 ~~(3) Drug products containing ephedrine, pseudoephedrine~~  
52 ~~or phenylpropanolamine, their salts or optical isomers or salts~~  
53 ~~of optical isomers or other designated precursor which have~~  
54 ~~been determined by the Board of Pharmacy to be in a form~~  
55 ~~which is not feasible for being used for the manufacture of~~  
56 ~~methamphetamine, or~~

57 ~~(4)~~ (3) Persons lawfully possessing drug products in their  
58 capacities as distributors, wholesalers, manufacturers,  
59 pharmacists, pharmacy interns, pharmacy technicians or  
60 health care professionals.

61 (d) Notwithstanding any provision of this code to the  
62 contrary, any person who knowingly possesses any amount  
63 of ephedrine, pseudoephedrine, phenylpropanolamine or  
64 other designated precursor with the intent to use it in the  
65 manufacture of methamphetamine, or who knowingly  
66 compensates, hires or provides other incentives for another  
67 person to purchase, obtain or transfer any amount of  
68 ephedrine, pseudoephedrine, phenylpropanolamine or other  
69 designated precursor with the intent to use it in the

70 manufacture of methamphetamine or who knowingly  
71 possesses a substance containing ephedrine, pseudoephedrine  
72 or phenylpropanolamine or their salts, optical isomers or salts  
73 of optical isomers in a state or form which is or has been  
74 altered or converted from the state or form in which these  
75 chemicals are, or were, commercially distributed is guilty of  
76 a felony and, upon conviction, shall be imprisoned in a state  
77 correctional facility for not less than two nor more than ten  
78 years, fined not more than \$25,000, or both imprisoned and  
79 fined.

80 (e) (1) Any pharmacy, wholesaler, manufacturer or  
81 distributor of drug products containing ephedrine,  
82 pseudoephedrine, phenylpropanolamine, their salts or optical  
83 isomers or salts of optical isomers or other designated  
84 precursor shall obtain a registration annually from the State  
85 Board of Pharmacy as described in section six of this article.  
86 Any such pharmacy, wholesaler, manufacturer or distributor  
87 shall keep complete records of all sales and transactions as  
88 provided in section eight of this article. The records shall be



25 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

89 gathered and maintained pursuant to legislative rule  
90 promulgated by the Board of Pharmacy.

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

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

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

1 (a) Whenever any person who has not previously been  
2 convicted of a violation of chapter sixty-a of this code or a  
3 violation of the provisions of this article or under any statute  
4 of the United States or any state relating to controlled  
5 substances or methamphetamine precursors is charged with  
6 possession of ephedrine, pseudoephedrine or  
7 phenylpropanolamine in violation of subdivision (1),

8 subsection (a), section four of this article, he or she may  
9 move the court to defer further proceedings and to be placed  
10 on probation under such terms and conditions as the court  
11 deems appropriate. Should the court find that the person  
12 possessed three and six-tenths grams of ephedrine,  
13 pseudoephedrine or phenylpropanolamine or less which had  
14 been lawfully purchased in the jurisdiction of sale and that  
15 the person possessed the ephedrine, pseudoephedrine or  
16 phenylpropanolamine with the intent that it be used in the  
17 manner and form intended by the manufacturer, the court  
18 shall defer further proceedings and place the person on  
19 probation.

20 (b) Upon violation of a term or condition, the court may  
21 enter an adjudication of guilt and proceed as otherwise  
22 provided. Upon fulfillment of the terms and conditions, the  
23 court shall discharge the person and dismiss the proceedings  
24 against him or her. Discharge and dismissal under this  
25 section shall be without adjudication of guilt and is not a  
26 conviction for purposes of this section or for purposes of

27 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6  
27 disqualifications or disabilities or sentencing enhancements  
28 imposed by law upon conviction of a crime. The effect of the  
29 dismissal and discharge shall be to restore the person in  
30 contemplation of law to the status he or she occupied prior to  
31 arrest. No person as to whom a dismissal and discharge have  
32 been effected shall be thereafter held to be guilty of perjury,  
33 false swearing or otherwise giving a false statement by  
34 reason of his or her failure to disclose or acknowledge his or  
35 her arrest or trial in response to any inquiry made of him or  
36 her for any purpose. There may be only one discharge and  
37 dismissal under this section with respect to any person.

38 (c) After a period of not less than six months, which shall  
39 begin to run immediately upon the expiration of a term of  
40 probation imposed upon any person under this chapter, the  
41 person may apply to the court for an order to expunge from  
42 all official records all recordations of his or her arrest, trial  
43 and conviction, pursuant to this section. If the court  
44 determines after a hearing that the person during the period  
45 of his or her probation and during the period of time prior to

46 his or her application to the court under this section has not  
47 been guilty of any serious or repeated violation of the  
48 conditions of his or her probation, it shall order the  
49 expungement.

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

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

10 (b) All storage of drug products regulated by the  
11 provisions of this section shall be in a controlled and locked  
12 access location that is not accessible by the general public  
13 and shall maintain strict inventory control standards and

29 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6  
14 complete records of quantity of the product maintained in  
15 bulk form: Provided, That wholesale drug distributors  
16 required to be licensed by the Board of Pharmacy which are  
17 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  
20 physical security of controlled substances containing  
21 ephedrine, pseudoephedrine or phenylpropanolamine which  
22 are more stringent than those imposed by the U. S. Drug  
23 Enforcement Administration.

24 (c) No pharmacy may sell, deliver or provide any drug  
25 product regulated by the provisions of this section to any  
26 person who is under the age of eighteen.

27 (d) If a drug product regulated by the provisions of this  
28 section is transferred, sold or delivered, the individual,  
29 pharmacy or retail establishment transferring, selling or  
30 delivering the drug product shall offer to have a pharmacist  
31 provide patient counseling, as defined by article five, chapter  
32 thirty of this code and the rules of the Board of Pharmacy, to

33 the person purchasing, receiving or acquiring the drug  
34 product in order to improve the proper use of the drug  
35 product and to discuss contraindications.

36 (e) If a drug product regulated by the provisions of this  
37 section which the Board of Pharmacy has determined is in an  
38 extraction- or conversion-resistant form is transferred, sold or  
39 delivered, the individual or pharmacy ~~or retail establishment~~  
40 transferring, selling or delivering the drug product shall  
41 require the person purchasing, receiving or otherwise  
42 acquiring the drug product to (1) ~~Produce~~ produce a valid  
43 government-issued photo identification showing his or her  
44 date of birth; and

45 ~~(2) Sign a logbook, in either paper or electronic format,~~  
46 ~~containing the information set forth in subsection (b), section~~  
47 ~~eight of this article and attesting to the validity of the~~  
48 ~~information.~~

49 (f) Any person who knowingly makes a false  
50 representation or statement pursuant to the requirements of  
51 this section is guilty of a misdemeanor and, upon conviction,

31 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6

52 be confined in a jail for not more than six months, fined not  
53 more than \$5,000, or both fined and confined.

54 (g) (1) The pharmacist, pharmacy intern or pharmacy  
55 technician processing the transaction shall determine that the  
56 name entered in the logbook corresponds to the name  
57 provided on the identification.

58 (2) Beginning January 1, 2013, a pharmacy or retail  
59 establishment shall, before completing a sale under this  
60 section, electronically submit the information required by  
61 section eight of this article to the Multi-State Real-Time  
62 Tracking System (MSRTTS) administered by the National  
63 Association of Drug Diversion Investigators (NADDI):  
64 *Provided*, That the system is available to retailers in the state  
65 without a charge for accessing the system. This system shall  
66 be capable of generating a stop-sale alert, which shall be a  
67 notification that completion of the sale would result in the  
68 seller or purchaser violating the quantity limits set forth in  
69 this article. The seller may not complete the sale if the  
70 system generates a stop-sale alert. The system shall contain

71 an override function that may be used by a dispenser of a  
72 drug product who has a reasonable fear of imminent bodily  
73 harm if he or she does not complete a sale. Each instance in  
74 which the override function is utilized shall be logged by the  
75 system. Absent negligence, wantonness, recklessness or  
76 deliberate misconduct, any retailer utilizing the Multi-State  
77 Real-Time Tracking System in accordance with this  
78 subdivision may not be civilly liable as a result of any act or  
79 omission in carrying out the duties required by this  
80 subdivision and is immune from liability to any third party  
81 unless the retailer has violated any provision of this  
82 subdivision in relation to a claim brought for the violation.

83 (3) If a pharmacy or retail establishment selling a  
84 nonprescription product containing ephedrine,  
85 pseudoephedrine or phenylpropanolamine experiences  
86 mechanical or electronic failure of the Multi-State Real-Time  
87 Tracking System and is unable to comply with the electronic  
88 sales tracking requirement, the pharmacy or retail  
89 establishment shall maintain a written log or an alternative



33 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6  
90 electronic record-keeping mechanism until such time as the  
91 pharmacy or retail establishment is able to comply with the  
92 electronic sales tracking requirement.

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

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

100 (j) The provisions of this section supersede and preempt  
101 all local laws, ordinances, rules and regulations pertaining to  
102 the sale of any compounds, mixtures or preparation  
103 containing ephedrine, pseudoephedrine or  
104 phenylpropanolamine.

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

1 (a) On or before July 1, ~~2005~~ 2014, the Board of  
2 Pharmacy shall promulgate emergency and legislative rules

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

17 (1) A process whereby pharmacies are made aware of all  
18 drug products that contain ephedrine, pseudoephedrine and  
19 phenylpropanolamine that will be listed as a Schedule ~~IV~~ IV  
20 substance. ~~and must be sold, transferred or dispensed from~~  
21 ~~behind a pharmacy counter.~~ This process shall specifically

35 [Eng. Com. Sub. for Com. Sub. for S. B. No. 6  
22 state which products have been determined by the Board of  
23 Pharmacy to be in a form which is extraction or conversion  
24 resistant and may, therefore, be sold without a prescription.  
25 The process shall specify that all other drug products which  
26 have not been determined by the Board of Pharmacy to be  
27 extraction or conversion resistant shall be distributed by  
28 prescription only;

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

34 (b) At any time after July 1, 2005, the Board of  
35 Pharmacy, upon the recommendation of the Superintendent  
36 of the State Police, shall promulgate emergency and  
37 legislative rules pursuant to the provision of article three,  
38 chapter twenty-nine-a of this code to implement an updated  
39 supplemental list of products containing the controlled  
40 substances ephedrine, pseudoephedrine or

41    phenylpropanolamine as an active ingredient or any other  
42    drug used as a precursor in the manufacture of  
43    methamphetamine, which the Superintendent of the State  
44    Police has demonstrated by empirical evidence is being used  
45    in the manufacture of methamphetamine. This list shall also  
46    note any products containing ephedrine, pseudoephedrine or  
47    phenylpropanolamine but which has been determined by the  
48    Board of Pharmacy to be in a form which is extraction or  
49    conversion resistant. This listing process shall comport with  
50    the requirements of subsection (a) of this section.

51        (c) The repeal of section eight, article ten, chapter sixty-a  
52    of this code, and the amendments to sections two hundred ten  
53    and two hundred twelve, article two, chapter sixty-a and  
54    sections two, three, four, five and seven, article ten, chapter  
55    sixty-a of this code during the 2014 Regular Session of the  
56    Legislature shall be effective September 1, 2014.