

H. B. 2754

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(By Delegates Swartzmiller and M. Poling)
[Introduced January 21, 2011; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §60A-9-5 of the Code of West Virginia,
11 1931, as amended, relating to allowing sheriffs and their
12 designees access to information maintained by the Board of
13 Pharmacy under the Controlled Substances Monitoring Act.

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

15 That §60A-9-5 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

18 **§60A-9-5. Confidentiality; limited access to records; period of**
19 **retention; no civil liability for required reporting.**

20 (a) The information required by this article to be kept by
21 state Board of Pharmacy is confidential and is open to inspection
22 only by inspectors and agents of the state Board of Pharmacy,
23 members of the West Virginia State Police expressly authorized by
24 the Superintendent of the West Virginia State Police to have access
25 to the information, the sheriff of each county or the sheriff's
26 designees, authorized agents of local law-enforcement agencies as
27 a member of a drug task force, authorized agents of the federal Drug

1 Enforcement Administration, duly authorized agents of the Bureau for
2 Medical Services and the ~~Workers' Compensation Commission Insurance~~
3 Commissioner, duly authorized agents of the Office of the Chief
4 Medical Examiner for use in post-mortem examinations, duly
5 authorized agents of licensing boards of practitioners in this state
6 and other states authorized to prescribe Schedules II, III and IV
7 controlled substances, prescribing practitioners and pharmacists and
8 persons with an enforceable court order or regulatory agency
9 administrative subpoena: *Provided*, That all information released
10 by the state Board of Pharmacy must be related to a specific patient
11 or a specific individual or entity under investigation by any of the
12 above parties except that practitioners who prescribe controlled
13 substances may request specific data related to their Drug
14 Enforcement Administration controlled substance registration number
15 or for the purpose of providing treatment to a patient. The board
16 shall maintain the information required by this article for a period
17 of not less than five years. Notwithstanding any other provisions
18 of this code to the contrary, data obtained under the provisions of
19 this article may be used for compilation of educational, scholarly
20 or statistical purposes as long as the identities of persons or
21 entities remain confidential. No individual or entity required to
22 report under section four of this article ~~may be~~ is subject to a
23 claim for civil damages or other civil relief for the reporting of
24 information to the Board of Pharmacy as required under and in
25 accordance with the provisions of this article.

26 (b) All practitioners, as that term is defined in section one
27 hundred one, article two of this chapter who prescribe or dispense

1 Schedule II, III or IV controlled substances shall, on or before
2 July 1, 2011, have online or other form of electronic access to the
3 West Virginia Controlled Substances Monitoring Program database.

4 (c) Persons or entities with access to the West Virginia
5 Controlled Substances Monitoring Program database pursuant to this
6 section may, pursuant to rules promulgated by the Board of Pharmacy,
7 delegate appropriate personnel to have access to ~~said~~ the database.

8 (d) Good faith reliance by a practitioner on information
9 contained in the West Virginia Controlled Substances Monitoring
10 Program database in prescribing or dispensing or refusing or
11 declining to prescribe or dispense a Schedule II, III or IV
12 controlled substance ~~shall constitute~~ is an absolute defense in any
13 civil or criminal action brought due to prescribing or dispensing
14 or refusing or declining to prescribe or dispense. ~~and~~

15 (e) The Board of Pharmacy is ~~hereby~~ authorized to promulgate
16 an emergency rule under chapter twenty-nine-a to effectuate the
17 amendments to this section enacted during the 2010 Regular Session
18 of the Legislature.

19 (f) ~~Nothing in the article shall be construed to~~ This article
20 does not require a practitioner to access the West Virginia
21 Controlled Substances Monitoring Program database.

NOTE: The purpose of this bill is to allow sheriffs and their designees access to information maintained by the Board of Pharmacy under the Controlled Substances Monitoring Act.

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