

1 **H. B. 4285**

2
3 (By Delegates Swartzmiller, Moye, Sumner,
4 Hall and Skaff)

5 [By Request of the West Virginia Sheriffs'
6 Association]

7 [Introduced January 25, 2012; referred to the
8 Committee on Health and Human Resources then the Judiciary.]

9
10 A BILL to amend and reenact §60A-9-5 of the Code of West Virginia,
11 1931, as amended, relating to adding the county sheriff, or
12 his or her designee, to those law-enforcement officials who
13 are granted access to certain confidential pharmaceutical
14 information to identify unusual or abnormal drug practices;
15 and granting rule-making authority.

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

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

19 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

20 **§60A-9-5. Confidentiality; limited access to records; period of**
21 **retention; no civil liability for required reporting.**

22 (a) The information required by this article to be kept by the
23 State Board of Pharmacy is confidential and is open to inspection
24 only by inspectors and agents of the State Board of Pharmacy,
25 members of the West Virginia State Police expressly authorized by

1 the Superintendent of the West Virginia State Police to have access
2 to the information, the elected sheriff of each county or his or
3 her designee, authorized agents of local law-enforcement agencies
4 as a member of a drug task force, authorized agents of the federal
5 Drug Enforcement Administration, duly authorized agents of the
6 Bureau for Medical Services and the Workers' Compensation
7 Commission, duly authorized agents of the Office of the Chief
8 Medical Examiner for use in post-mortem examinations, duly
9 authorized agents of licensing boards of practitioners in this
10 state and other states authorized to prescribe Schedules II, III
11 and IV controlled substances, prescribing practitioners and
12 pharmacists and persons with an enforceable court order or
13 regulatory agency administrative subpoena. *Provided,* That all
14 information released by the State Board of Pharmacy must be related
15 to a specific patient or a specific individual or entity under
16 investigation by any of the above parties except that practitioners
17 who prescribe controlled substances may request specific data
18 related to their Drug Enforcement Administration controlled
19 substance registration number or for the purpose of providing
20 treatment to a patient. The board shall maintain the information
21 required by this article for a period of not less than five years.
22 Notwithstanding any other provisions of this code to the contrary,
23 data obtained under the provisions of this article may be used for
24 compilation of educational, scholarly or statistical purposes as

1 long as the identities of persons or entities remain confidential.
2 No individual or entity required to report under section four of
3 this article ~~may be~~ is subject to a claim for civil damages or
4 other civil relief for the reporting of information to the Board of
5 Pharmacy as required under and in accordance with the provisions of
6 this article.

7 (b) All practitioners, as that term is defined in section one
8 hundred-one, article two of this chapter who prescribe or dispense
9 schedule II, III or IV controlled substances shall, on or before
10 July 1, 2011, have online or other form of electronic access to the
11 West Virginia Controlled Substances Monitoring Program database.

12 (c) Persons or entities with access to the West Virginia
13 Controlled Substances Monitoring Program database pursuant to this
14 section may, pursuant to rules promulgated by the Board of
15 Pharmacy, delegate appropriate personnel to have access to said
16 database.

17 (d) Good faith reliance by a practitioner on information
18 contained in the West Virginia Controlled Substances Monitoring
19 Program database in prescribing or dispensing or refusing or
20 declining to prescribe or dispense a schedule II, III or IV
21 controlled substance ~~shall constitute~~ is an absolute defense in any
22 civil or criminal action brought due to prescribing or dispensing
23 or refusing or declining to prescribe or dispense.

24 (e) The Board of Pharmacy is ~~hereby~~ authorized to promulgate

1 an emergency rule under chapter twenty-nine-a to effectuate the
2 amendments to this section enacted during the 2010 and 2012 Regular
3 ~~Session~~ Sessions of the Legislature.

4 (f) Nothing in the article ~~shall be construed to require~~
5 requires a practitioner to access the West Virginia Controlled
6 Substances Monitoring Program database.

NOTE: The purpose of this bill is to add the county sheriff, or his or her designee, to those law-enforcement officials who are granted access to certain confidential pharmaceutical information to identify unusual or abnormal drug practices. The bill also grants rule-making authority.

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