

**Senate Bill No. 438**

(By Senators Foster, Hall, Laird, Green, Miller, Browning, Unger,  
Klempa, Palumbo, Wills and Yost)

[Introduced January 27, 2012; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]

A BILL to amend and reenact §60A-9-5 of the Code of West Virginia,  
1931, as amended, relating to adding 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;  
and granting rule-making authority.

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

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

**ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

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

(a) The information required by this article to be kept by the  
State Board of Pharmacy is confidential and is open to inspection

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

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

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

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

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

1 or refusing or declining to prescribe or dispense.

2 (e) The Board of Pharmacy is ~~hereby~~ authorized to promulgate  
3 an emergency rule under chapter twenty-nine-a to effectuate the  
4 amendments to this section enacted during the 2010 and 2012 Regular  
5 ~~Session~~ Sessions of the Legislature.

6 (f) Nothing in the article ~~shall be construed to require~~  
7 requires a practitioner to access the West Virginia Controlled  
8 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.