

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4267

BY DELEGATES REED, FOSTER, ROHRBACH, STEELE,
BOOTH, WORRELL, MANDT, DEAN, PAYNTER, WARD, B.,
AND RILEY

[Introduced January 19, 2022; referred
to the Committee on Health and Human Resources
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §30-5A-1, §30-5A-2, §30-5A-3, and §30-5A-4, all relating to creating the
 3 Productivity Quota Prohibitions Act; providing for legislative findings; establishing the act
 4 and terms of the act; providing for enforcement actions; and laying out terms for
 5 severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. PRODUCTIVITY QUOTA PROHIBITIONS ACT.

§30-5A-1. Findings

1 The West Virginia Legislature finds and declares all of the following:

2 (a) West Virginia’s pharmacists and pharmacy technicians employed by multibillion dollar,
 3 publicly-traded, pharmacy chain stores will imminently be called upon to accomplish something
 4 unprecedented: To vaccinate hundreds of thousands of patients on top of their already
 5 overwhelming workloads.

6 (b) However, widespread, profit-driven, and long-decried performance quotas imposed by
 7 these chains upon their licensed professional employees place at risk the ability of pharmacists
 8 and pharmacy technicians safely to vaccinate West Virginians properly while at the same time
 9 performing their already life-or-death duties.

10 (c) Documents and data obtained by investigative reporters, public prosecutors, and
 11 researchers have established that large, publicly-traded pharmacy chains impose performance
 12 quotas on licensed pharmacists and pharmacy technicians that place at risk the health and well-
 13 being of patients. For example:

14 (1) More than one half of the chain and retail pharmacists reported high stress work
 15 environments from “having to meet quotas.”

16 (2) Eighty-three percent of pharmacists reported in one survey that “performance metrics
 17 contributed to dispensing errors.”

18 (3) An investigative report by The Los Angeles Times documented enormous pressure

19 placed upon pharmacy employees by vast drug chains to meet quotas. One pharmacist is quoted
 20 as saying, “Everyone knows that if we don’t hit our quotas, people can lose their jobs,” and The
 21 Times writes “[c]ompany documents . . . have shown that CVS workers are expected to enroll at
 22 least 40 percent of patients into the [automatic prescription renewal] program. Failure to do so
 23 can result in loss of raises or bonuses. Other drugstores, notably Target, Rite Aid and Walgreens,
 24 have similar quotas [.]”

25 (d) Performance quotas in normal times pose a risk to the public health. When
 26 implemented during a time when pharmacists and pharmacy technicians will have imposed upon
 27 them for an indefinite period significant new and vital public health duties, quotas are
 28 unacceptable.

§30-5A-2. Quotas prohibited.

1 (a) A chain community pharmacy shall not establish a quota related to the duties for which
 2 a pharmacist or pharmacy technician license is required.

3 (b) A chain community pharmacy shall not, through employees, contractors, or third
 4 parties, communicate the existence of quotas, that are illegal pursuant to this section, to
 5 pharmacists or pharmacy technicians who are employees of the chain community pharmacy or
 6 with whom the chain community pharmacy contracts.

7 (c) (1) For purposes of this section, “quota” means a fixed number or formula related to
 8 the duties for which a pharmacist or pharmacy technician license is required, against which the
 9 chain community pharmacy or its agent measures or evaluates the number of times either an
 10 individual pharmacist or pharmacy technician performs tasks or provides services while on duty.

11 “Quota” includes a fixed number or formula related to any of the following:

- 12 (A) Prescriptions filled.
- 13 (B) Services rendered to patients.
- 14 (C) Programs offered to patients.
- 15 (D) Revenue obtained.

16 (2) For purposes of this section, “quota” does not mean any of the following:

17 (A) A measurement of the revenue earned by a particular licensed chain community
18 pharmacy not calculated in relation to, or measured by, the tasks performed, or services provided
19 by, individual pharmacists or pharmacy technicians.

20 (B) Any evaluation or measurement of the competence, performance, or quality of care
21 provided to patients of a pharmacist or pharmacy technician if the evaluation does not use quotas,
22 as defined in paragraph (1).

23 (C) Any performance metric required by state or federal regulators that does not use
24 quotas, as defined in paragraph (1).

25 (d) This section does not prohibit a chain community pharmacy from establishing policies
26 and procedures that assist in assessing the competency and performance of a pharmacist or
27 pharmacy technician in providing care to patients if the measurements used are not, or do not
28 include, quotas, as defined in subdivision (c).

§30-5A-3. Enforcement actions.

1 The West Virginia Pharmaceutical Board may take an enforcement action against a chain
2 community pharmacy that violates any provision of this article, unless, by clear and convincing
3 evidence, the chain community pharmacy demonstrates that the violation was contrary to its
4 policy.

§30-5A-4. Severability.

1 The provisions of this act are severable. If any provision of this act or its application is held
2 invalid, that invalidity shall not affect other provisions or applications that can be given effect
3 without the invalid provision or application.

NOTE: The purpose of this bill is to establish the Productivity Quota Prohibitions Act. The bill sets out legislative findings regarding the purpose of the act. The bill establishes the act and defines certain terms therein. The bill provides for an enforcement mechanism. Finally, the bill provides for severability.

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