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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015

HB 2733



ENROLLED

House Bill No. 2733

(By Delegate(s) Ellington
and Householder)



Passed March 12, 2015

In effect ninety days from passage.

FILED

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SECRETARY OF STATE

H. B. 2733

(BY DELEGATE(S) ELLINGTON
AND HOUSEHOLDER)

[Passed March 12, 2015;
in effect ninety days from passage.]

AN ACT to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-9-3, §60A-9-4, §60A-9-4a and §60A-9-5 of said code; and to amend and reenact §60A-10-16 of said code, all relating to removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law; updating the controlled substances monitoring law and extending the expiration date of provisions relating to the Multi-/State Real-Time Tracking System.

Be it enacted by the Legislature of West Virginia:

That §60A-2-208 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-9-3, §60A-9-4, §60A-9-4a and §60A-9-5 of said code be amended and reenacted; and that §60A-10-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.**§60A-2-208. Schedule III.**

1 (a) Schedule III consists of the drugs and other substances,
2 by whatever official name, common or usual name, chemical
3 name or brand name designated, listed in this section.

4 (b) *Stimulants*. — Unless specifically excepted or unless
5 listed in another schedule, any material, compound, mixture or
6 preparation which contains any quantity of the following
7 substances having a stimulant effect on the central nervous
8 system, including its salts, isomers (whether optical, position or
9 geometric) and salts of such isomers whenever the existence of
10 the salts, isomers and salts of isomers is possible within the
11 specific chemical designation:

12 (1) Those compounds, mixtures or preparations in dosage
13 unit form containing any stimulant substances listed in Schedule
14 II which compounds, mixtures or preparations were listed on
15 August 25, 1971, as excepted compounds under 21 C.F.R.
16 §C.F.R. §1308.32, and any other drug of the quantitative
17 composition shown in that list for those drugs or which is the
18 same except that it contains a lesser quantity of controlled
19 substances;

20 (2) Benzphetamine;

21 (3) Chlorphentermine;

22 (4) Clortermine;

23 (5) Phendimetrazine.

24 (c) *Depressants*. — Unless specifically excepted or unless
25 listed in another schedule, any material, compound, mixture or
26 preparation which contains any quantity of the following

27 substances having a depressant effect on the central nervous
28 system:

29 (1) Any compound, mixture or preparation containing:

30 (A) Amobarbital;

31 (B) Secobarbital;

32 (C) Pentobarbital; or any salt of pentobarbital and one or
33 more other active medicinal ingredients which are not listed in
34 any schedule;

35 (2) Any suppository dosage form containing:

36 (A) Amobarbital;

37 (B) Secobarbital;

38 (C) Pentobarbital; or any salt of any of these drugs and
39 approved by the food and drug administration for marketing only
40 as a suppository;

41 (3) Any substance which contains any quantity of a
42 derivative of barbituric acid or any salt of barbituric acid;

43 (4) Aprobarbital;

44 (5) Butobarbital (secbutobarbital);

45 (6) Butalbital (including, but not limited to, Fioricet);

46 (7) Butobarbital (butethal);

47 (8) Chlorhexadol;

48 (9) Embutramide;

49 (10) Gamma Hydroxybutyric Acid preparations;

50 (11) Ketamine, its salts, isomers and salts of isomers [Some
51 other names for ketamine: (+-)-2-(2-chlorophenyl)-2-
52 (methylamino)-cyclohexanone];

53 (12) Lysergic acid;

54 (13) Lysergic acid amide;

55 (14) Methyprylon;

56 (15) Sulfondiethylmethane;

57 (16) Sulfonethylmethane;

58 (17) Sulfonmethane;

59 (18) Thiamylal;

60 (19) Thiopental;

61 (20) Tiletamine and zolazepam or any salt of tiletamine and
62 zolazepam; some trade or other names for a
63 tiletamine-zolazepam combination product: Telazol; some trade
64 or other names for tiletamine: 2-(ethylamino)-2-
65 (2-thienyl)-cyclohexanone; some trade or other names for
66 zolazepam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3,
67 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one,
68 flupyrazapon; and

69 (21) Vinbarbital.

70 (d) Nalorphine.

71 (e) *Narcotic drugs*. — Unless specifically excepted or unless
72 listed in another schedule:

73 (1) Any material, compound, mixture or preparation
74 containing any of the following narcotic drugs, or their salts

75 calculated as the free anhydrous base or alkaloid, in limited
76 quantities as set forth below:

77 (A) Not more than 1.8 grams of codeine per 100 milliliters
78 and not more than 90 milligrams per dosage unit, with an equal
79 or greater quantity of an isoquinoline alkaloid of opium;

80 (B) Not more than 1.8 grams of codeine per 100 milliliters
81 or not more than 90 milligrams per dosage unit, with one or
82 more active, nonnarcotic ingredients in recognized therapeutic
83 amounts;

84 (C) Not more than 1.8 grams of dihydrocodeine per 100
85 milliliters and not more than 90 milligrams per dosage unit, with
86 one or more active, nonnarcotic ingredients in recognized
87 therapeutic amounts;

88 (D) Not more than 300 milligrams of ethylmorphine per 100
89 milliliters or not more than 15 milligrams per dosage unit, with
90 one or more active, nonnarcotic ingredients in recognized
91 therapeutic amounts;

92 (E) Not more than 500 milligrams of opium per 100
93 milliliters or per 100 grams or not more than 25 milligrams per
94 dosage unit, with one or more active, nonnarcotic ingredients in
95 recognized therapeutic amounts;

96 (F) Not more than 50 milligrams of morphine per 100
97 milliliters or per 100 grams, with one or more active,
98 nonnarcotic ingredients in recognized therapeutic amounts.

99 (2) Any material, compound, mixture or preparation
100 containing buprenorphine or its salts (including, but not limited
101 to, Suboxone).

102 (f) *Anabolic steroids*. — Unless specifically excepted or
103 unless listed in another schedule, any material, compound,

104 mixture, or preparation containing any quantity of anabolic
105 steroids, including its salts, isomers and salts of isomers
106 whenever the existence of the salts of isomers is possible within
107 the specific chemical designation.

108 (g) Human growth hormones.

109 (h) Dronabinol (synthetic) in sesame oil and encapsulated in
110 a soft gelatin capsule in a United States food and drug
111 administration approved drug product. (Some other names for
112 dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6,
113 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or
114 (-)-delta-9-(trans)-tetrahydrocannabinol).

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

1 (a) The Board of Pharmacy shall implement a program
2 wherein a central repository is established and maintained which
3 shall contain such information as is required by the provisions of
4 this article regarding Schedule II, III, and IV controlled
5 substance prescriptions written or filled in this state. In
6 implementing this program, the Board of Pharmacy shall consult
7 with the West Virginia State Police, the licensing boards of
8 practitioners affected by this article and affected practitioners.

9 (b) The program authorized by subsection (a) of this section
10 shall be designed to minimize inconvenience to patients,
11 prescribing practitioners and pharmacists while effectuating the
12 collection and storage of the required information. The board
13 shall allow reporting of the required information by electronic
14 data transfer where feasible, and where not feasible, on reporting
15 forms promulgated by the board. The information required to be
16 submitted by the provisions of this article shall be required to be
17 filed no more frequently than within twenty-four hours.

104 mixture, or preparation containing any quantity of anabolic
105 steroids, including its salts, isomers and salts of isomers
106 whenever the existence of the salts of isomers is possible within
107 the specific chemical designation.

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109 (h) Dronabinol (synthetic) in sesame oil and encapsulated in
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15 forms promulgated by the board. The information required to be
16 submitted by the provisions of this article shall be required to be
17 filed no more frequently than within twenty-four hours.

18 (c) (1) The board shall provide for the electronic
19 transmission of the information required to be provided by this
20 article by and through the use of a toll-free telephone line.

21 (2) A dispenser, who does not have an automated
22 record-keeping system capable of producing an electronic report
23 in the established format may request a waiver from electronic
24 reporting. The request for a waiver shall be made to the board in
25 writing and shall be granted if the dispenser agrees in writing to
26 report the data by submitting a completed "Pharmacy Universal
27 Claim Form" as defined by legislative rule.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance listed in Schedule II, III or IV as established
3 under the provisions of article two of this chapter or whenever
4 a prescription for the controlled substance is filled by: (i) A
5 pharmacist or pharmacy in this state; (ii) a hospital, or other
6 health care facility, for out-patient use; or (iii) a pharmacy or
7 pharmacist licensed by the Board of Pharmacy, but situated
8 outside this state for delivery to a person residing in this state,
9 the medical services provider, health care facility, pharmacist or
10 pharmacy shall, in a manner prescribed by rules promulgated by
11 the board under this article, report the following information, as
12 applicable:

13 (1) The name, address, pharmacy prescription number and
14 Drug Enforcement Administration controlled substance
15 registration number of the dispensing pharmacy or the
16 dispensing physician or dentist;

17 (2) The full legal name, address and birth date of the person
18 for whom the prescription is written;

19 (3) The name, address and Drug Enforcement
20 Administration controlled substances registration number of the
21 practitioner writing the prescription;

22 (4) The name and national drug code number of the Schedule
23 II, III, and IV controlled substance dispensed;

24 (5) The quantity and dosage of the Schedule II, III, and IV
25 controlled substance dispensed;

26 (6) The date the prescription was written and the date filled;

27 (7) The number of refills, if any, authorized by the
28 prescription;

29 (8) If the prescription being dispensed is being picked up by
30 someone other than the patient on behalf of the patient, the first
31 name, last name and middle initial, address and birth date of the
32 person picking up the prescription as set forth on the person's
33 government-issued photo identification card shall be retained in
34 either print or electronic form until such time as otherwise
35 directed by rule promulgated by the board; and

36 (9) The source of payment for the controlled substance
37 dispensed.

38 (b) The board may prescribe by rule promulgated under this
39 article the form to be used in prescribing a Schedule II, III, and
40 IV substance if, in the determination of the board, the
41 administration of the requirements of this section would be
42 facilitated.

43 (c) Products regulated by the provisions of article ten of this
44 chapter shall be subject to reporting pursuant to the provisions of
45 this article to the extent set forth in said article.

46 (d) Reporting required by this section is not required for a
47 drug administered directly to a patient by a practitioner.
48 Reporting is, however, required by this section for a drug
49 dispensed to a patient by a practitioner: *Provided*, That the
50 quantity dispensed may not exceed an amount adequate to treat

51 the patient for a maximum of seventy-two hours with no greater
52 than two seventy-two-hour cycles dispensed in any fifteen-day
53 period of time.

§60A-9-4a. Verification of identity.

1 Prior to releasing a Schedule II, III, or IV controlled
2 substance sold at retail, a pharmacist or pharmacy shall verify
3 the full legal name, address and birth date of the person picking
4 up the controlled substance dispensed by requiring the
5 presentation of a valid government-issued photo identification
6 card. This information shall be reported in accordance with the
7 provisions of this article.

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

1 (a) (1) The information required by this article to be kept by
2 the board is confidential and not subject to the provisions of
3 chapter twenty-nine-b of this code or obtainable as discovery in
4 civil matters absent a court order and is open to inspection only
5 by inspectors and agents of the board members of the West
6 Virginia State Police expressly authorized by the Superintendent
7 of the West Virginia State Police to have access to the
8 information, authorized agents of local law-enforcement
9 agencies as members of a federally affiliated drug task force,
10 authorized agents of the federal Drug Enforcement
11 Administration, duly authorized agents of the Bureau for
12 Medical Services, duly authorized agents of the Office of the
13 Chief Medical Examiner for use in post-mortem examinations,
14 duly authorized agents of licensing boards of practitioners in this
15 state and other states authorized to prescribe Schedules II, III,
16 and IV controlled substances, prescribing practitioners and
17 pharmacists and persons with an enforceable court order or
18 regulatory agency administrative subpoena: *Provided*, That all
19 law-enforcement personnel who have access to the Controlled

20 Substances Monitoring Program database shall be granted access
21 in accordance with applicable state laws and the board's
22 legislative rules, shall be certified as a West Virginia
23 law-enforcement officer and shall have successfully completed
24 training approved by the board. All information released by the
25 board must be related to a specific patient or a specific
26 individual or entity under investigation by any of the above
27 parties except that practitioners who prescribe or dispense
28 controlled substances may request specific data related to their
29 Drug Enforcement Administration controlled substance
30 registration number or for the purpose of providing treatment to
31 a patient: *Provided, however,* That the West Virginia Controlled
32 Substances Monitoring Program Database Review Committee
33 established in subsection (b) of this section is authorized to
34 query the database to comply with said subsection.

35 (2) Subject to the provisions of subdivision (1) of this
36 subsection, the board shall also review the West Virginia
37 Controlled Substance Monitoring Program database and issue
38 reports that identify abnormal or unusual practices of patients
39 who exceed parameters as determined by the advisory committee
40 established in this section. The board shall communicate with
41 prescribers and dispensers to more effectively manage the
42 medications of their patients in the manner recommended by the
43 advisory committee. All other reports produced by the board
44 shall be kept confidential. The board shall maintain the
45 information required by this article for a period of not less than
46 five years. Notwithstanding any other provisions of this code to
47 the contrary, data obtained under the provisions of this article
48 may be used for compilation of educational, scholarly or
49 statistical purposes, and may be shared with the West Virginia
50 Department of Health and Human Resources for those purposes,
51 as long as the identities of persons or entities and any personally
52 identifiable information, including protected health information,
53 contained therein shall be redacted, scrubbed or otherwise

54 irreversibly destroyed in a manner that will preserve the
55 confidential nature of the information. No individual or entity
56 required to report under section four of this article may be
57 subject to a claim for civil damages or other civil relief for the
58 reporting of information to the board as required under and in
59 accordance with the provisions of this article.

60 (3) The board shall establish an advisory committee to
61 develop, implement and recommend parameters to be used in
62 identifying abnormal or unusual usage patterns of patients in this
63 state. This advisory committee shall:

64 (A) Consist of the following members: A physician licensed
65 by the West Virginia Board of Medicine, a dentist licensed by
66 the West Virginia Board of Dental Examiners, a physician
67 licensed by the West Virginia Board of Osteopathy, a licensed
68 physician certified by the American Board of Pain Medicine, a
69 licensed physician board certified in medical oncology
70 recommended by the West Virginia State Medical Association,
71 a licensed physician board certified in palliative care
72 recommended by the West Virginia Center on End of Life Care,
73 a pharmacist licensed by the West Virginia Board of Pharmacy,
74 a licensed physician member of the West Virginia Academy of
75 Family Physicians, an expert in drug diversion and such other
76 members as determined by the board.

77 (B) Recommend parameters to identify abnormal or unusual
78 usage patterns of controlled substances for patients in order to
79 prepare reports as requested in accordance with subsection (a),
80 subdivision (2) of this section.

81 (C) Make recommendations for training, research and other
82 areas that are determined by the committee to have the potential
83 to reduce inappropriate use of prescription drugs in this state,
84 including, but not limited to, studying issues related to diversion
85 of controlled substances used for the management of opioid
86 addiction.

87 (D) Monitor the ability of medical services providers, health
88 care facilities, pharmacists and pharmacies to meet the
89 twenty-four hour reporting requirement for the Controlled
90 Substances Monitoring Program set forth in section three of this
91 article, and report on the feasibility of requiring real-time
92 reporting.

93 (E) Establish outreach programs with local law enforcement
94 to provide education to local law enforcement on the
95 requirements and use of the Controlled Substances Monitoring
96 Program database established in this article.

97 (b) The board shall create a West Virginia Controlled
98 Substances Monitoring Program Database Review Committee of
99 individuals consisting of two prosecuting attorneys from West
100 Virginia counties, two physicians with specialties which require
101 extensive use of controlled substances and a pharmacist who is
102 trained in the use and abuse of controlled substances. The review
103 committee may determine that an additional physician who is an
104 expert in the field under investigation be added to the team when
105 the facts of a case indicate that the additional expertise is
106 required. The review committee, working independently, may
107 query the database based on parameters established by the
108 advisory committee. The review committee may make
109 determinations on a case-by-case basis on specific unusual
110 prescribing or dispensing patterns indicated by outliers in the
111 system or abnormal or unusual usage patterns of controlled
112 substances by patients which the review committee has
113 reasonable cause to believe necessitates further action by law
114 enforcement or the licensing board having jurisdiction over the
115 prescribers or dispensers under consideration. The review
116 committee shall also review notices provided by the chief
117 medical examiner pursuant to subsection (h), section ten, article
118 twelve, chapter sixty-one of this code and determine on a
119 case-by-case basis whether a practitioner who prescribed or
120 dispensed a controlled substance resulting in or contributing to

121 the drug overdose may have breached professional or
122 occupational standards or committed a criminal act when
123 prescribing the controlled substance at issue to the decedent.
124 Only in those cases in which there is reasonable cause to believe
125 a breach of professional or occupational standards or a criminal
126 act may have occurred, the review committee shall notify the
127 appropriate professional licensing agency having jurisdiction
128 over the applicable prescriber or dispenser and appropriate
129 law-enforcement agencies and provide pertinent information
130 from the database for their consideration. The number of cases
131 identified shall be determined by the review committee based on
132 a number that can be adequately reviewed by the review
133 committee. The information obtained and developed may not be
134 shared except as provided in this article and is not subject to the
135 provisions of chapter twenty-nine-b of this code or obtainable as
136 discovering in civil matters absent a court order.

137 (c) The board is responsible for establishing and providing
138 administrative support for the advisory committee and the West
139 Virginia Controlled Substances Monitoring Program Database
140 Review Committee. The advisory committee and the review
141 committee shall elect a chair by majority vote. Members of the
142 advisory committee and the review committee may not be
143 compensated in their capacity as members but shall be
144 reimbursed for reasonable expenses incurred in the performance
145 of their duties.

146 (d) The board shall promulgate rules with advice and consent
147 of the advisory committee, in accordance with the provisions of
148 article three, chapter twenty-nine-a of this code. The legislative
149 rules must include, but shall not be limited to, the following
150 matters:

151 (1) Identifying parameters used in identifying abnormal or
152 unusual prescribing or dispensing patterns;

153 (2) Processing parameters and developing reports of
154 abnormal or unusual prescribing or dispensing patterns for
155 patients, practitioners and dispensers;

156 (3) Establishing the information to be contained in reports
157 and the process by which the reports will be generated and
158 disseminated; and

159 (4) Setting up processes and procedures to ensure that the
160 privacy, confidentiality, and security of information collected,
161 recorded, transmitted and maintained by the review committee
162 is not disclosed except as provided in this section.

163 (e) All practitioners, as that term is defined in section one
164 hundred-one, article two of this chapter who prescribe or
165 dispense schedule II, III, or IV controlled substances shall have
166 online or other form of electronic access to the West Virginia
167 Controlled Substances Monitoring Program database;

168 (f) Persons or entities with access to the West Virginia
169 Controlled Substances Monitoring Program database pursuant to
170 this section may, pursuant to rules promulgated by the board,
171 delegate appropriate personnel to have access to said database;

172 (g) Good faith reliance by a practitioner on information
173 contained in the West Virginia Controlled Substances
174 Monitoring Program database in prescribing or dispensing or
175 refusing or declining to prescribe or dispense a schedule II, III,
176 or IV controlled substance shall constitute an absolute defense
177 in any civil or criminal action brought due to prescribing or
178 dispensing or refusing or declining to prescribe or dispense; and

179 (h) A prescribing or dispensing practitioner may notify law
180 enforcement of a patient who, in the prescribing or dispensing
181 practitioner's judgment, may be in violation of section four
182 hundred ten, article four of this chapter, based on information

183 obtained and reviewed from the controlled substances
184 monitoring database. A prescribing or dispensing practitioner
185 who makes a notification pursuant to this subsection is immune
186 from any civil, administrative or criminal liability that otherwise
187 might be incurred or imposed because of the notification if the
188 notification is made in good faith.

189 (i) Nothing in the article may be construed to require a
190 practitioner to access the West Virginia Controlled Substances
191 Monitoring Program database except as provided in section
192 five-a of this article.

193 (j) The board shall provide an annual report on the West
194 Virginia Controlled Substance Monitoring Program to the
195 Legislative Oversight Commission on Health and Human
196 Resources Accountability with recommendations for needed
197 legislation no later than January 1 of each year.

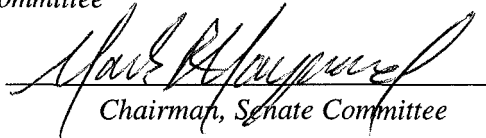
ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-16. Expiration of enactments made during 2012 regular session.

1 The provisions of this article enacted during the 2012 regular
2 legislative session establishing the Multi-State Real-Time
3 Tracking System shall expire on June 30, 2017.

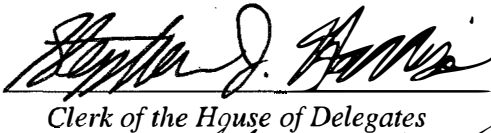
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

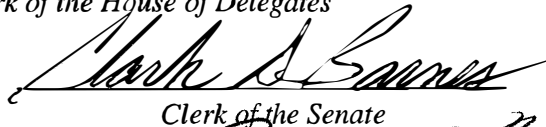

Chairman, House Committee

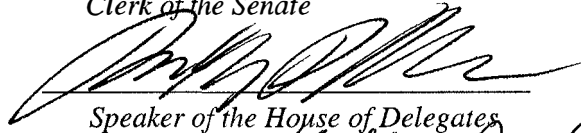

Chairman, Senate Committee

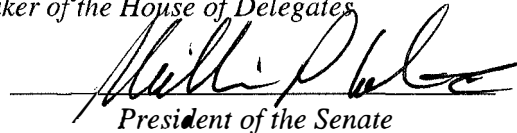
Originating in the House.

In effect ninety days from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 18th
day of April, 2015.


Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 5:30 pm