

H. B. 4327

(By Delegates Tomblin, R. Phillips, Sponaugle,
Lynch, Skaff, Boggs, Caputo, Marcum, White,
Manchin and Mr. Speaker (Mr. Miley))

[Introduced January 24, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §30-3A-3 of the Code of West Virginia,
1931, as amended, relating to the management of intractable
pain act; providing a felony criminal penalty for a physician,
nurse or pharmacist prescribing, administering, or dispensing
a controlled substance in violation of this section; providing
fines collected for violations only be used for substance
abuse and rehabilitation facilities; and requiring indefinite
mandatory loss of license.

Be it enacted by the Legislature of West Virginia:

That §30-3A-3 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-3. Acts subject to discipline or prosecution.

(a) Nothing in this article ~~shall~~ prohibits disciplinary
action or criminal prosecution of a physician for:

1 (1) Failing to maintain complete, accurate, and current
2 records documenting the physical examination and medical history of
3 the patient, the basis for the clinical diagnosis of the patient,
4 and the treatment plan for the patient;

5 (2) Writing a false or fictitious prescription for a
6 controlled substance scheduled in article two, chapter sixty-a of
7 this code; or

8 (3) Prescribing, administering, or dispensing a controlled
9 substance in violation of the provisions of the federal
10 Comprehensive Drug Abuse Prevention and Control Act of 1970, 21
11 U.S.C. §§801, *et seq.* or chapter sixty-a of this code; or

12 (4) Diverting controlled substances prescribed for a patient
13 to the physician's own personal use.

14 (b) Nothing in this article shall prohibit disciplinary action
15 or criminal prosecution of a nurse or pharmacist for:

16 (1) Administering or dispensing a controlled substance in
17 violation of the provisions of the federal Comprehensive Drug Abuse
18 Prevention and Control Act of 1970, 21 U.S.C. §§801, *et seq.* or
19 chapter sixty-a of this code; or

20 (2) Diverting controlled substances prescribed for a patient
21 to the nurse's or pharmacist's own personal use.

22 (c) A physician, nurse or pharmacist who is convicted in a
23 criminal prosecution for violations of this section is guilty of a
24 felony and, in addition to a minimum fine imposed of \$250,000,

1 shall be imprisoned in a state correctional facility for not less
2 than five nor more than ten years. The license of such a
3 physician, nurse or pharmacist to practice in this state shall be
4 revoked indefinitely.

5 The fines collected from violations of this section shall only
6 be used for substance abuse and rehabilitation facilities.

NOTE: The purpose of this bill is to provide a felony criminal penalty for violations of provisions of this section by a physician, nurse or pharmacist convicted in a criminal prosecution; and require a mandatory loss of license for an indefinite period. The bill also requires that fines collected for violations only be used for substance abuse and rehabilitation facilities.

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