

E N G R O S S E D

H. B. 2733

(BY DELEGATE(S) ELLINGTON
AND HOUSEHOLDER)

[Introduced February 13, 2015; referred to the
Committee on Health and Human Resources; and then
to the Committee on the Judiciary.]

A BILL 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) Butabarbital (secbutabarbital);

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 ~~(3) Not more than 300 milligrams of dihydrocodeinone~~
85 ~~(hydrocodone) per 100 milliliters or not more than 15 milligrams~~
86 ~~per dosage unit, with a fourfold or greater quantity of an~~
87 ~~isoquinoline alkaloid of opium: *Provided, That* a prescription for~~
88 ~~this may not be filled for more than a one month supply or filled~~
89 ~~or refilled more than three months after the date of the original~~
90 ~~prescription. Such prescription may not be refilled more than~~
91 ~~twice;~~

92 ~~(4) Not more than 300 milligrams of dihydrocodeinone~~
93 ~~(hydrocodone) per 100 milliliters or not more than 15 milligrams~~
94 ~~per dosage unit, with one or more active, nonnarcotic ingredients~~
95 ~~in recognized therapeutic amounts: *Provided, That* a prescription~~
96 ~~for this product may not be filled for more than a one month~~
97 ~~supply or filled or refilled more than three months after the date~~
98 ~~of the original prescription. Such prescription may not be refilled~~
99 ~~more than twice;~~

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

104 (D) Not more than 300 milligrams of ethylmorphine per 100
105 milliliters or not more than 15 milligrams per dosage unit, with
106 one or more active, nonnarcotic ingredients in recognized
107 therapeutic amounts;

108 (E) Not more than 500 milligrams of opium per 100
109 milliliters or per 100 grams or not more than 25 milligrams per
110 dosage unit, with one or more active, nonnarcotic ingredients in
111 recognized therapeutic amounts;

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

115 (2) Any material, compound, mixture or preparation
116 containing buprenorphine or its salts (including, but not limited
117 to, Suboxone).

118 (f) *Anabolic steroids*. — Unless specifically excepted or
119 unless listed in another schedule, any material, compound,
120 mixture, or preparation containing any quantity of anabolic
121 steroids, including its salts, isomers and salts of isomers
122 whenever the existence of the salts of isomers is possible within
123 the specific chemical designation.

124 (g) Human growth hormones.

125 (h) Dronabinol (synthetic) in sesame oil and encapsulated in
126 a soft gelatin capsule in a United States food and drug
127 administration approved drug product. (Some other names for
128 dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6,
129 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or
130 (-)-delta-9-(trans)-tetrahydrocannabinol).

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**§60A-9-3. Reporting system requirements; implementation; central repository requirement.**

1 (a) ~~On or before September 1, 2002,~~ The Board of Pharmacy
2 shall implement a program wherein a central repository is
3 established and maintained which shall contain such information
4 as is required by the provisions of this article regarding Schedule
5 II, III, and IV controlled substance prescriptions written or filled
6 in this state. In implementing this program, the Board of
7 Pharmacy shall consult with the West Virginia State Police, the
8 licensing boards of practitioners affected by this article and
9 affected practitioners.

10 (b) The program authorized by subsection (a) of this section
11 shall be designed to minimize inconvenience to patients,
12 prescribing practitioners and pharmacists while effectuating the
13 collection and storage of the required information. The ~~State~~
14 ~~board of Pharmacy~~ shall allow reporting of the required
15 information by electronic data transfer where feasible, and where
16 not feasible, on reporting forms promulgated by the board. ~~of~~
17 ~~Pharmacy~~. The information required to be submitted by the

18 provisions of this article shall be required to be filed no more
19 frequently than within twenty-four hours.

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

24 (2) A dispenser, who does not have an automated
25 record-keeping system capable of producing an electronic report
26 in the established format may request a waiver from electronic
27 reporting. The request for a waiver shall be made to the ~~State~~
28 ~~board of Pharmacy~~ in writing and shall be granted if the
29 dispenser agrees in writing to report the data by submitting a
30 completed "Pharmacy Universal Claim Form" as defined by
31 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 of Pharmacy under this article, report the following
12 information, as 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 full~~
31 ~~legal name~~ the first name, last name and middle initial, address
32 and birth date of the person picking up the prescription as set
33 forth on the person's government-issued photo identification
34 card shall be retained in either print or electronic form until such
35 time as otherwise directed by rule promulgated by the board; ~~of~~
36 ~~pharmacy~~ and

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

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

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

47 (d) Reporting required by this section is not required for a
48 drug administered directly to a patient by a practitioner.
49 Reporting is, however, required by this section for a drug
50 dispensed to a patient by a practitioner: *Provided*, That the
51 quantity dispensed may not exceed an amount adequate to treat
52 the patient for a maximum of seventy-two hours with no greater
53 than two seventy-two-hour cycles dispensed in any fifteen-day
54 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
4 ~~receiving or otherwise acquiring~~ picking up the controlled
5 substance dispensed by requiring the presentation of a valid
6 government-issued photo identification card. This information
7 shall be reported in accordance with the provisions of this article.
8 ~~information shall be retained in either print or electronic form~~
9 ~~until such time as otherwise directed by rule promulgated by the~~
10 ~~board of pharmacy.~~

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

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

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

58 confidential nature of the information. No individual or entity
59 required to report under section four of this article may be
60 subject to a claim for civil damages or other civil relief for the
61 reporting of information to the ~~Board of Pharmacy~~ board as
62 required under and in accordance with the provisions of this
63 article.

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

68 (A) Consist of the following members: A physician licensed
69 by the West Virginia Board of Medicine, a dentist licensed by
70 the West Virginia Board of Dental Examiners, a physician
71 licensed by the West Virginia Board of Osteopathy, a licensed
72 physician certified by the American Board of Pain Medicine, a
73 licensed physician board certified in medical oncology
74 recommended by the West Virginia State Medical Association,
75 a licensed physician board certified in palliative care
76 recommended by the West Virginia Center on End of Life Care,
77 a pharmacist licensed by the West Virginia Board of Pharmacy,

78 a licensed physician member of the West Virginia Academy of
79 Family Physicians, an expert in drug diversion and such other
80 members as determined by the board.

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

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

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

97 (E) Establish outreach programs with local law enforcement
98 to provide education to local law enforcement on the
99 requirements and use of the Controlled Substances Monitoring
100 Program database established in this article.

101 (b) The ~~Board of Pharmacy~~ board shall create a West
102 Virginia Controlled Substances Monitoring Program Database
103 Review Committee of individuals consisting of two prosecuting
104 attorneys from West Virginia counties, two physicians with
105 specialties which require extensive use of controlled substances
106 and a pharmacist who is trained in the use and abuse of
107 controlled substances. The review committee may determine that
108 an additional physician who is an expert in the field under
109 investigation be added to the team when the facts of a case
110 indicate that the additional expertise is required. The review
111 committee, working independently, may query the database
112 based on parameters established by the advisory committee. The
113 review committee may make determinations on a case-by-case
114 basis on specific unusual prescribing or dispensing patterns
115 indicated by outliers in the system or abnormal or unusual usage
116 patterns of controlled substances by patients which the review

117 committee has reasonable cause to believe necessitates further
118 action by law enforcement or the licensing board having
119 jurisdiction over the prescribers or dispensers under
120 consideration. The review committee shall also review notices
121 provided by the chief medical examiner pursuant to subsection
122 (h), section ten, article twelve, chapter sixty-one of this code and
123 determine on a case-by-case basis whether a practitioner who
124 prescribed or dispensed a controlled substance resulting in or
125 contributing to the drug overdose may have breached
126 professional or occupational standards or committed a criminal
127 act when prescribing the controlled substance at issue to the
128 decedent. Only in those cases in which there is reasonable cause
129 to believe a breach of professional or occupational standards or
130 a criminal act may have occurred, the review committee shall
131 notify the appropriate professional licensing agency having
132 jurisdiction over the applicable prescriber or dispenser and
133 appropriate law-enforcement agencies and provide pertinent
134 information from the database for their consideration. The
135 number of cases identified shall be determined by the review
136 committee based on a number that can be adequately reviewed

137 by the review committee. The information obtained and
138 developed may not be shared except as provided in this article
139 and is not subject to the provisions of chapter twenty-nine-b of
140 this code or obtainable as discovering in civil matters absent a
141 court order.

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

151 (d) The board shall promulgate rules with advice and consent
152 of the advisory committee, in accordance with the provisions of
153 article three, chapter twenty-nine-a of this code. ~~on or before~~
154 ~~June 1, 2013~~. The legislative rules must include, but shall not be
155 limited to, the following matters:

156 (1) Identifying parameters used in identifying abnormal or
157 unusual prescribing or dispensing patterns;

158 (2) Processing parameters and developing reports of
159 abnormal or unusual prescribing or dispensing patterns for
160 patients, practitioners and dispensers;

161 (3) Establishing the information to be contained in reports
162 and the process by which the reports will be generated and
163 disseminated; and

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

168 (e) All practitioners, as that term is defined in section one
169 hundred-one, article two of this chapter who prescribe or
170 dispense schedule II, III, or IV controlled substances shall ~~on or~~
171 ~~before July 1, 2011~~, have online or other form of electronic
172 access to the West Virginia Controlled Substances Monitoring
173 Program database;

174 (f) Persons or entities with access to the West Virginia
175 Controlled Substances Monitoring Program database pursuant to

176 this section may, pursuant to rules promulgated by the ~~Board of~~
177 Pharmacy board, delegate appropriate personnel to have access
178 to said database;

179 (g) Good faith reliance by a practitioner on information
180 contained in the West Virginia Controlled Substances
181 Monitoring Program database in prescribing or dispensing or
182 refusing or declining to prescribe or dispense a schedule II, III,
183 or IV controlled substance shall constitute an absolute defense
184 in any civil or criminal action brought due to prescribing or
185 dispensing or refusing or declining to prescribe or dispense; and

186 (h) A prescribing or dispensing practitioner may notify law
187 enforcement of a patient who, in the prescribing or dispensing
188 practitioner's judgment, may be in violation of section four
189 hundred ten, article four of this chapter, based on information
190 obtained and reviewed from the controlled substances
191 monitoring database. A prescribing or dispensing practitioner
192 who makes a notification pursuant to this subsection is immune
193 from any civil, administrative or criminal liability that otherwise
194 might be incurred or imposed because of the notification if the
195 notification is made in good faith.

196 (i) Nothing in the article may be construed to require a
197 practitioner to access the West Virginia Controlled Substances
198 Monitoring Program database except as provided in section
199 five-a of this article.

200 (j) The ~~Board of Pharmacy~~ board shall provide an annual
201 report on the West Virginia Controlled Substance Monitoring
202 Program to the Legislative Oversight Commission on Health and
203 Human Resources Accountability with recommendations for
204 needed 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, 2015~~. June 30, 2017.

NOTE: The purpose of this bill is to remove certain drugs from Schedule III of the controlled substances law; update the requirements of the Control Substance Monitoring Program and extend the expiration date of law relating to the Multi-State Real-Time Tracking System.

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