

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4372**

BY DELEGATES SOBONYA, C. MILLER, C. ROMINE, FRICH,  
BUTLER, SUMMERS, ROWAN, WARD AND HOUSEHOLDER

[Introduced January 31, 2018; Referred  
to the Committee on Health and Human Resources  
then the Judiciary.]

1 A BILL to amend and reenact §30-5-6 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §30-5-25a, all relating  
 3 generally to requiring the Board of Pharmacy to review, investigate, and make appropriate  
 4 referrals of reports of suspicious orders of controlled substances; authorizing the board to  
 5 investigate suspicious orders by controlled substances registrants and to conduct  
 6 hearings on the denial, suspension or revocation of registrations; directing the board to  
 7 maintain a log of reports of suspicious orders; requiring reports to be reviewed by the  
 8 Attorney General; and directing reports of suspicious orders to be referred to agencies  
 9 and authorities with appropriate jurisdiction.

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

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS,  
AND PHARMACIES.**

**§30-5-6. Powers and duties of the board.**

1 The board has all the powers and duties set forth in this article, by rule, in §30-1-1 *et seq.*  
2 of this code and elsewhere in law, including the power to:

- 3 (a) Hold meetings;
- 4 (b) Establish additional requirements for a license, permit and registration;
- 5 (c) Establish procedures for submitting, approving and rejecting applications for a license,  
6 permit and registration;
- 7 (d) Determine the qualifications of any applicant for a license, permit and registration;
- 8 (e) Establish a fee schedule;
- 9 (f) Issue, renew, deny, suspend, revoke or reinstate a license, permit, and registration;
- 10 (g) Prepare, conduct, administer and grade written, oral or written and oral examinations  
11 for a license and registration and establish what constitutes passage of the examination;
- 12 (h) Contract with third parties to administer the examinations required under the provisions

13 of this article;

14 (i) Maintain records of the examinations the board or a third party administers, including  
15 the number of persons taking the examination and the pass and fail rate;

16 (j) Regulate mail order pharmacies;

17 (k) Maintain an office and hire, discharge, establish the job requirements and fix the  
18 compensation of employees and contract with persons necessary to enforce the provisions of this  
19 article. Inspectors shall be licensed pharmacists;

20 (l) Investigate alleged violations of the provisions of this article, legislative rules, orders  
21 and final decisions of the board;

22 (m) Conduct disciplinary hearings of persons regulated by the board;

23 (n) Determine disciplinary action and issue orders;

24 (o) Institute appropriate legal action for the enforcement of the provisions of this article;

25 (p) Maintain an accurate registry of names and addresses of all persons regulated by the  
26 board;

27 (q) Keep accurate and complete records of its proceedings, and certify the same as may  
28 be necessary and appropriate;

29 (r) Propose rules in accordance with §29A-3-1 *et seq.* of this code to implement the  
30 provisions of this article;

31 (s) Sue and be sued in its official name as an agency of this state;

32 (t) Confer with the Attorney General or his or her assistant in connection with legal matters  
33 and questions; and

34 (u) Investigate reports of suspicious orders of controlled substances that occur at any point  
35 in the distribution chain from the manufacturer to the end consumer;

36 (v) Conduct hearings for the denial, suspension or revocation of a controlled substance  
37 registration pursuant to §60A-304 (a) and §60A-304 (b) of this code; and

38 ~~(u)~~ (w) Take all other actions necessary and proper to effectuate the purposes of this

39 article.

**§30-5-25a. Reports of suspicious orders of controlled substances; logging, review and referral.**

1 (a) The board shall maintain a log of suspicious orders for controlled substances occurring  
2 at any point in the distribution chain from the manufacturer to the end consumer. The board shall,  
3 at a minimum, record the date the board receives a report of a suspicious order, the parties  
4 allegedly involved and the date that the board forwards the report to the Attorney General.

5 (b) Upon receipt of any report or statement indicating that a suspicious order or orders for  
6 controlled substances has or have occurred, the board shall immediately log the receipt of the  
7 report and forward the report to the Attorney General for review. The purpose of the review is  
8 solely to determine whether the report should be referred to another authority with jurisdiction  
9 over the matters appearing in the report or whether the board itself has jurisdiction.

10 (c) After review of a report, the Attorney General shall refer the report and related  
11 information to the appropriate authority or authorities as listed below:

12 (1) If the report describes or indicates a suspicious order or orders that appear to have  
13 been perpetrated by a controlled substance registrant other than a pharmacist or pharmacy  
14 technician licensed by the board, then the Attorney General shall refer the report and related  
15 information to a law-enforcement agency with jurisdiction over that registrant and to the United  
16 States Drug Enforcement Agency;

17 (2) If the report describes or indicates a suspicious order or orders that appear to have  
18 been perpetrated by a pharmacist or pharmacy technician licensed by the board, then the  
19 Attorney General shall notify the board and the board may treat the report and related information  
20 as a complaint of unprofessional conduct by a licensee and pursue an investigation of the alleged  
21 conduct pursuant to the provisions of this article and the rules of the board;

22 (3) If the report describes or indicates a suspicious order or orders that appear to have  
23 been perpetrated by a medical professional who is licensed by another board of this state, then

24 the Attorney General shall refer the report and related information to the appropriate professional  
25 licensing board to determine if unprofessional conduct has occurred under the standards of that  
26 profession;

27 (4) If the report describes or indicates a suspicious order or orders that appear to involve  
28 a patient or consumer who is obtaining or has obtained similar controlled substances or  
29 antagonistic medications from multiple prescribers at the same time, then the Attorney General  
30 shall inform the board and the board shall notify the prescribers of the orders received and shall  
31 also notify each professional licensing board with jurisdiction over the prescribers involved; and

32 (5) If the report and related information does not, on its face, describe a suspicious order  
33 or orders, or if there is sufficient, credible reason and justification for the order or orders reported,  
34 then the Attorney General shall inform the board and the board may close its file in this matter  
35 with no referral: *Provided*, That closure of the file may not bar reconsideration of the material by  
36 the board if other, similar orders involving the same party or parties arise within two years of the  
37 closure of the board's file for the original report.

NOTE: The purpose of this bill is to require the Board of Pharmacy to log reports of suspicious transactions in controlled substances, to refer all reports to the Attorney General to determine which agencies may have jurisdiction to investigate and pursue appropriate proceedings, and then make referral to appropriate enforcement authorities.

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