WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

Cons. Sub. No

HOUSE BILL No. 2492

(By Delegate Mr. Speaker, Mr. Chambers, and Delegate Ashley)

[By Request of the Executive]

Passed March 11, 1995

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2492

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)

[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to controlled substances monitoring and centralized information repository; establishing the controlled substances monitoring act; reporting system requirements; implementing the act; establishing a central repository for information collected; requiring certain information be reported; providing for confidentially of records; limiting access to records; reimbursing for certain costs associated with upgrading software; retaining records; limiting civil liability; requiring promulgation of rules; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.
§60A-9-1. Short title.

This article shall be referred to as the controlled substances monitoring act.

§60A-9-2. Establishment of program; purpose.

There is hereby established a controlled substances monitoring act the purpose of which is to require the recordation and retention in a single repository of information regarding the prescribing, dispensing and consumption of certain controlled substances.

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

(a) On or before the first day of May, one thousand nine hundred ninety-six, the board of pharmacy shall implement a program wherein a central repository is established and maintained which shall contain such information as is required by the provisions of this article regarding Schedule II controlled substances prescriptions written or filled in this state. In implementing this program, the board of pharmacy shall consult with the division of public safety, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The board of pharmacy shall allow reporting of the required information by electronic data transfer where feasible, and where such is infeasible, on reporting forms promulgated by the board of pharmacy. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than once in a two-month period.

(c) The program authorized by subsection (a) of this section shall also provide for the reimbursement in whole or in part of the costs reasonably and necessarily incurred
by pharmacists or pharmacies in modifying software in conformance with the reporting requirements of this article: Provided, That the total expenditures for reimbursements shall not exceed twenty-five thousand dollars. The board of pharmacy is hereby authorized to promulgate an emergency legislative rule to effectuate the reimbursement provisions of this section in accordance with the provisions of chapter twenty-nine-a of this code. The board of pharmacy shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

§60A-9-4. Required information.

Whenever a medical services provider dispenses a controlled substance listed in the provisions of section two hundred six, article two of this chapter, or whenever a prescription for such controlled substances is filled by (i) a pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist, licensed by the board of pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the board of pharmacy under this article, report the following information, as applicable:

1. The name, address, pharmacy prescription number and DEA controlled substance registration number of the dispensing pharmacy;
2. The name and address of the person for whom the prescription is written;
3. The name, address and drug enforcement administration controlled substances registration number of the practitioner writing the prescription;
4. The name and national drug code number of the Schedule II controlled substance dispensed;
(5) The quantity and dosage of the Schedule II controlled substance dispensed;

(6) The date the prescription was filled; and

(7) The number of refills, if any, authorized by the prescription.

The board of pharmacy may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II substance if, in the determination of the board, the administration of the requirements of this section would be facilitated.

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

The information required by this article to be kept by the board of pharmacy shall be confidential and shall be open to inspection only by inspectors and agents of the board of pharmacy, members of the division of public safety expressly authorized by the superintendent to have access to the information, duly authorized agents of licensing boards of practitioners authorized to prescribe Schedule II controlled substances and persons with an enforceable court order or regulatory agency administrative subpoena. The board shall maintain the information required by this article for a period of no less than five years. Notwithstanding any provisions of this code, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article shall be subject to a claim for civil damages or other civil relief for the reporting of information to the board of pharmacy as required under and in accordance with the provisions of this article.

§60A-9-6. Promulgation of rules.
The board of pharmacy shall promulgate legislative rules to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§60A-9-7. Criminal penalties.

(a) Any person who is required to submit information to the board of pharmacy pursuant to the provisions of this article who fails to do so as directed by the board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who is required to submit information to the board of pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit to the information required by this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than one thousand dollars, or both.

(c) Any person who is required by the provisions of this article to submit information to the board of pharmacy who knowingly submits thereto information known to that person to be false or fraudulent shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than five thousand dollars, or both.

(d) Any person granted access to the information required by the provisions of this article to be maintained by the board of pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within document this the 24th day of March, 1945.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/24/75
Time 3:50 P.M.