

FILED

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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 365

(SENATORS JENKINS, STOLLINGS,
TOMBLIN (MR. PRESIDENT), EDGELL,
FOSTER, PLYMALE AND PREZIOSO, *original sponsors*)

[Passed March 11, 2010; in effect ninety days from passage.]

SB 365

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OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

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EDGELL, FOSTER, PLYMALE AND PREZIOSO, *original sponsors*)

[Passed March 11, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Controlled Substances Monitoring Program database; requiring all prescribers or dispensers of Schedule II, III or IV controlled substances to have online access to the West Virginia Controlled Substances Monitoring Program database; authorizing persons or entities with access to the database to delegate access to database to others; limiting liability practitioners for good faith reliance on database; authorizing the Office of the Chief Medical Examiner access to the database; clarifying that practitioners have no duty to access database; authorizing rules for delegation of access; and rulemaking.

Be it enacted by the Legislature of West Virginia:

That §60A-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

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

1 (a) The information required by this article to be kept by
2 the State Board of Pharmacy is confidential and is open to
3 inspection only by inspectors and agents of the State
4 Board of Pharmacy, members of the West Virginia State
5 Police expressly authorized by the Superintendent of the
6 West Virginia State Police to have access to the informa-
7 tion, authorized agents of local law-enforcement agencies
8 as a member of a drug task force, authorized agents of the
9 federal Drug Enforcement Administration, duly autho-
10 rized agents of the Bureau for Medical Services and the
11 Workers' Compensation Commission, duly authorized
12 agents of the Office of the Chief Medical Examiner for use
13 in post-mortem examinations, duly authorized agents of
14 licensing boards of practitioners in this state and other
15 states authorized to prescribe Schedules II, III and IV
16 controlled substances, prescribing practitioners and
17 pharmacists and persons with an enforceable court order
18 or regulatory agency administrative subpoena: *Provided,*
19 That all information released by the State Board of
20 Pharmacy must be related to a specific patient or a
21 specific individual or entity under investigation by any of
22 the above parties except that practitioners who prescribe
23 controlled substances may request specific data related to
24 their Drug Enforcement Administration controlled
25 substance registration number or for the purpose of
26 providing treatment to a patient. The Board shall main-
27 tain the information required by this article for a period of
28 not less than five years. Notwithstanding any other
29 provisions of this code to the contrary, data obtained
30 under the provisions of this article may be used for

31 compilation of educational, scholarly or statistical pur-
32 poses as long as the identities of persons or entities remain
33 confidential. No individual or entity required to report
34 under section four of this article may be subject to a claim
35 for civil damages or other civil relief for the reporting of
36 information to the Board of Pharmacy as required under
37 and in accordance with the provisions of this article;

38 (b) All practitioners, as that term is defined in section
39 one hundred-one, article two of this chapter who prescribe
40 or dispense schedule II, III or IV controlled substances
41 shall, on or before July 1, 2011 have online or other form
42 of electronic access to the West Virginia Controlled
43 Substances Monitoring Program database;

44 (c) Persons or entities with access to the West Virginia
45 Controlled Substances Monitoring Program database
46 pursuant to this section may, pursuant to rules promul-
47 gated by the Board of Pharmacy, delegate appropriate
48 personnel to have access to said database;

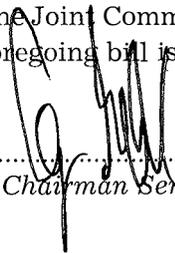
49 (d) Good faith reliance by a practitioner on information
50 contained in the West Virginia Controlled Substances
51 Monitoring Program database in prescribing or dispensing
52 or refusing or declining to prescribe or dispense a schedule
53 II, III or IV controlled substance shall constitute an
54 absolute defense in any civil or criminal action brought
55 due to prescribing or dispensing or refusing or declining to
56 prescribe or dispense; and

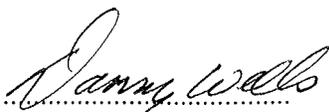
57 (e) The Board of Pharmacy is hereby authorized to
58 promulgate an emergency rule under chapter twenty-nine-
59 A to effectuate the amendments to this section enacted
60 during the 2010 Regular Session of the Legislature.

61 (f) Nothing in the article shall be construed to require a
62 practitioner to access the West Virginia Controlled
63 Substances Monitoring Program database.

Enr. Com. Sub. for Com. Sub. for S. B. No. 365] 4

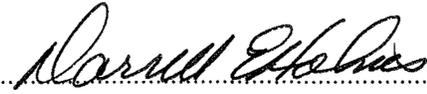
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

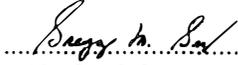

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Chairman Senate Committee

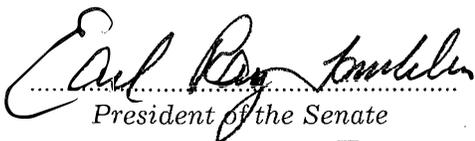

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Chairman House Committee

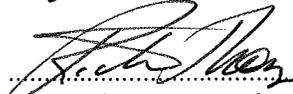
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 22nd
Day of March, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 1:00pm