

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S3/18/03

A Bill

Act 1092 of 2003
SENATE BILL 722

5 By: Senator Malone
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For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE PHARMACY
10 ACT, § 17-92-101 THROUGH 17-92-1007; TO ESTABLISH
11 A REGULATORY PROCESS TO RECOGNIZE PHARMACISTS WHO
12 HAVE BEEN LICENSED FOR 50 YEARS; TO PROVIDE
13 COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY
14 AND ACCOUNTABILITY ACT OF 1996 (HIPAA); TO ALLOW
15 CRIMINAL BACKGROUND CHECKS ON INDIVIDUALS
16 LICENSED OR PERMITTED BY THE ARKANSAS STATE BOARD
17 OF PHARMACY; AND FOR OTHER PURPOSES.

Subtitle

19 AN ACT TO AMEND VARIOUS PROVISIONS OF
20 THE ARKANSAS PHARMACY PRACTICE ACT.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 17-92-309(c), concerning registration and
27 certificates issued by the Arkansas State Board of Pharmacy, is amended to
28 add an additional subsection to read as follows:

29 (c) The board may provide by regulation for issuing and waving the
30 renewal fee for pharmacy certificates denoting special recognition for
31 pharmacists who have the following qualifications:

32 (1) The pharmacist graduated from a college of pharmacy approved
33 by the board fifty (50) or more years before the date on which the
34 certificate will be issued; or

35 (2)(A) The pharmacist has held an Arkansas Pharmacist License
36 for forty nine (49) continuous years before the date on which the certificate

1 will be issued without any lapse in the payment of licensure fees.

2 (B) However, a pharmacist who has paid fees to reinstate
3 an expired license shall not be deemed to have held a license for continuous
4 years.

5
6 SECTION 2. Arkansas Code § 17-92-205(c), concerning rules, regulations
7 and enforcement by the Arkansas State Board of Pharmacy, is amended to read
8 as follows:

9 ~~(c) The board's inspectors shall have the power and authority to~~
10 ~~inspect any store or business establishment, including any hospital pharmacy~~
11 ~~or any other facility holding a license or permit issued by the board, where~~
12 ~~drugs, medicines, chemicals, pharmaceuticals, or poisons regulated by the~~
13 ~~board are manufactured, sold, or dispensed.~~

14 (c)(1) The board's inspectors or other designated agents, upon written
15 authorization by the board, to conduct oversight activities authorized by
16 law, including, but not limited to, audits, investigations, inspections,
17 licensure, or disciplinary actions, civil, administrative, or criminal
18 proceedings or actions, or other activities necessary for appropriate
19 oversight of the regulated activities may enter any store, business
20 establishment, including any hospital pharmacy, or any other facility holding
21 a license, permit, or other authority issued by the board where drugs,
22 medicines, chemicals, pharmaceuticals, poisons, home medical equipment, or
23 services or other objects, services, or activities regulated by the board are
24 manufactured, sold, dispensed, or conducted to enforce this subchapter, the
25 Uniform Controlled Substances Act, § 5-64-101, et seq., or the Food, Drug and
26 Cosmetic Act, § 20-56-201, et seq.

27 (2)(A) The board's inspectors and other designated agents, upon
28 written authorization by the board, may obtain copies of any document,
29 prescription, drug order, or other record or physical object relevant to the
30 board's oversight of the regulated activity.

31 (B)(i) With regard to hospital pharmacies, the board's
32 inspectors and other designated agents may also view and make copies, at the
33 board's expense, of identifiable records relating to patients in patient
34 areas of the hospital if the records are relevant to an activity regulated by
35 the board.

36 (ii) However, should any such record be in active

1 use or storage at the time of the board's request to examine, obtain, or copy
2 the record, the entity having control or possession of the record shall state
3 in writing that the record will be made available to the board at a specific
4 date and time within two (2) working days after the board's request.

5 (C) For purposes of confidentiality, a record containing
6 patient health information in the possession of the board under this
7 subdivision (c)(2) shall be considered a medical record for purposes of the
8 Freedom of Information Act, § 25-19-101, et seq.

9 (3) In any investigation or official inquiry of a potential
10 violation of law or any administrative proceeding regarding an alleged
11 violation of law subject to its jurisdiction, the board may issue subpoenas
12 signed by its executive director or the director's designee, for any
13 document, prescription, drug order, or other record or physical object
14 identified or otherwise described in the subpoena if the item is relevant and
15 material to the inquiry, investigation, or proceeding.

16 (4) In any administrative proceeding arising from an alleged
17 violation of law within its jurisdiction, the board may order the disclosure
18 of any information that is relevant and material to the alleged violation.

19 (5)(A) If a person has been served with a subpoena or subpoena
20 duces tecum or has been ordered to disclose information in an administrative
21 proceeding under this chapter and fails to comply with the order, the board
22 may apply to the Circuit Court of Pulaski County or to the circuit court of
23 the county in which the board is conducting its investigation or hearing for
24 an order directing that:

25 (i) The person be brought before the court; and

26 (ii) After notice and opportunity for a hearing, the
27 person comply with the order.

28 (B) If the person violates the court's order, the court
29 may punish the person for civil contempt.

30 (C) If a person fails or refuses to make available to
31 board inspectors or agents under subdivision (c)(2) of this section any
32 document, prescription, drug order, or other record or physical object, the
33 board may file an action in the Circuit Court in Pulaski County or in the
34 circuit court of the county in which the board is conducting its oversight
35 activity to obtain an order, after notice and opportunity for hearing,
36 mandating that the person make the document, prescription, drug order, or

1 other record or physical object available to the board representatives.

2
3 SECTION 3. Arkansas Code Title 17, Chapter 92, Subchapter 3 is amended
4 to add an additional section to read as follows:

5 17-92-317. Criminal background checks.

6 (a)(1) Each applicant for a new intern or pharmacist license or a new
7 or reinstated registration as a pharmacy technician issued by the Arkansas
8 State Board of Pharmacy shall apply to the Identification Bureau of the
9 Department of Arkansas State Police for a state and national criminal
10 background check, to be conducted by the Federal Bureau of Investigation;

11 (2) However, the board may:

12 (A) Authorize the background checks obtained for a license
13 or registration to be used for a subsequent application for another new
14 license or registration issued by the board for a designated time period
15 after the date of the original license or registration; and

16 (B)(i) Exempt an applicant for a pharmacist license, who
17 upon licensure will not practice pharmacy while physically present in the
18 State of Arkansas, from obtaining criminal background checks.

19 (ii) However, before performing any practice of
20 pharmacy while physically present within the State of Arkansas, such an
21 applicant shall obtain the criminal background checks and be subject to the
22 provisions of this section.

23 (b) The check shall conform to the applicable federal standards, as in
24 effect on January 1, 2003, and shall include the taking of fingerprints.

25 (c) The applicant shall sign a release of information to the board and
26 shall be responsible to the Department of Arkansas State Police for the
27 payment of any fee associated with the criminal background check.

28 (d) Upon completion of the criminal background check, the
29 Identification Bureau of the Arkansas State Police shall forward to the board
30 all information obtained concerning the commission by the applicant of any
31 offense listed in subsection (e) of this section.

32 (e) Notwithstanding the provisions of § 17-1-103, no person shall be
33 eligible to receive or hold an intern or pharmacist license or pharmacy
34 technician registration issued by the board if that person has pleaded guilty
35 or nolo contendere to or has been found guilty of any of the following
36 offenses, regardless of whether an adjudication of guilt or sentencing or

1 imposition of sentence is withheld, by any court in the State of Arkansas or
2 of any similar offense by a court in another state or of any similar offense
3 by a federal court:

4 (1) Any felony;

5 (2) Any act involving moral turpitude, gross immorality,
6 dishonesty, or which is related to the qualifications, functions, and duties
7 of a person holding the license or registration; or

8 (3) Any violation of Arkansas pharmacy or drug law or
9 regulations, including, but not limited to, § 17-92-101 through 17-92-1007,
10 the Uniform Controlled Substances Act, § 5-64-101, et seq. and Food, Drug,
11 and Cosmetic Act § 20-56-201, et seq.

12 (f)(1)(A) The board may issue a nonrenewable, provisional license or
13 registration pending the results of the criminal background check.

14 (B) The nonrenewable, provisional license or registration
15 shall be valid for no more than six (6) months.

16 (2) Upon receipt of information from the Identification Bureau
17 of the Arkansas State Police that the person holding the nonrenewable,
18 provisional license or registration has pleaded guilty or nolo contendere to
19 or has been found guilty of any offense under subsection (e) of this section,
20 the board shall immediately revoke the nonrenewable, provisional license or
21 registration.

22 (g)(1) The provisions of subsection (e) and subdivision (f)(2) of this
23 section may be waived by the board upon the request of:

24 (A) An affected applicant for licensure or registration;
25 or

26 (B) The person holding a license or registration subject
27 to revocation.

28 (2) Circumstances for which a waiver may be granted shall
29 include, but not be limited to:

30 (A) The age at which the crime was committed;

31 (B) The circumstances surrounding the crime;

32 (C) The length of time since the crime;

33 (D) Subsequent work history;

34 (E) Employment references;

35 (F) Character references; and

36 (G) Other evidence demonstrating that the applicant does

1 not pose a threat to the public health, safety, or welfare.

2 (h)(1) Any information received by the board from the Identification
3 Bureau of the Arkansas State Police under this section shall not be available
4 for examination except by:

5 (A) The affected applicant or the applicant's authorized
6 representative; or

7 (B) The person whose license or registration is subject to
8 revocation or his or her authorized representative.

9 (2) No record, file, or document shall be removed from the
10 custody of the Department of Arkansas State Police.

11 (i) Only information pertaining to the person making the request may
12 be made available to the affected applicant or the person whose license or
13 registration is subject to revocation.

14 (j) Rights of privilege and confidentiality established in this
15 section shall not extend to any document created for purposes other than the
16 background check.

17 (k) The board shall adopt the necessary rules and regulations to fully
18 implement the provisions of this section.

19
20 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
21 General Assembly of the State of Arkansas that the new phases of the federal
22 Health Insurance Portability and Accountability Act of 1996 go into effect
23 April 14, 2003, that the continuing operation of pharmacies throughout the
24 state may be disrupted and that the health and safety of citizens of Arkansas
25 may be at risk if this act does not become effective before April 14, 2003.
26 Therefore, an emergency is declared to exist and this act being immediately
27 necessary for the preservation of the public peace, health, and safety shall
28 become effective on:

29 (1) The date of its approval by the Governor;

30 (2) If the bill is neither approved nor vetoed by the Governor,
31 the expiration of the period of time during which the Governor may veto the
32 bill; or

33 (3) If the bill is vetoed by the Governor and the veto is
34 overridden, the date the last house overrides the veto.

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36 */s/ Malone*

APPROVED: 4/4/2003