State of Arkansas *As Engrossed: S2/24/11*
88th General Assembly **A Bill**
Regular Session, 2011 SENATE BILL 243

By: Senators Madison, D. Johnson
By: Representatives Williams, J. Edwards

For An Act To Be Entitled

AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 4 OF THE ARKANSAS CODE OF 1987 CONCERNING BUSINESS AND COMMERCE; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 4 OF THE ARKANSAS CODE OF 1987 CONCERNING BUSINESS AND COMMERCE.

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

SECTION 1. Arkansas Code § 4-56-104(a)(2)(A), regarding the hold harmless clause in construction contracts as unenforceable, is amended to add language to read as follows:

(2)(A) "Construction agreement" means the bargain of the parties in fact, as found in ~~their~~ the language of the parties or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 4-1-303.

SECTION *2.* Arkansas Code § 4-86-108 is repealed to be moved to another location in the Arkansas Code:

~~4-86-108. Distribution of drug samples .~~

~~(a) As used in this section:~~

~~(1) "Authorized distributors of record" means those distributors with whom a drug manufacturer has established an ongoing relationship to distribute the drug manufacturer's products;~~

~~(2) "Board" means the Arkansas State Board of Pharmacy;~~

~~(3) "Distribute" does not include the providing of a drug sample to a patient by a:~~

~~(A) Physician or practitioner licensed to prescribe the drug;~~

~~(B) Health care professional acting at the direction and under the supervision of a physician or practitioner; or~~

~~(C) Pharmacy that has been granted approval from the Arkansas State Board of Pharmacy to handle samples at the direction of a physician or practitioner and that received the sample under this subchapter;~~

~~(4) "Drug" includes all medicines and preparations recognized in the United States Pharmacopoeia or the National Formulary as substances intended to be used for the care, mitigation, or prevention of disease of either humans or other animals;~~

~~(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug;~~

~~(6) "Licensed pharmacist" means a person holding a license under § 17-92-101 et seq.;~~

~~(7) "Pharmacy" means the place licensed by the board in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail; and~~

~~(8) "Physician" means a practitioner of medicine licensed under the laws of this state or some other state.~~

~~(b) Except under subsections (c) and (d) of this section, a person shall not distribute a drug sample.~~

~~(c)(1) A drug manufacturer or authorized distributor of record of a drug may distribute a drug sample by mail, common carrier, or by direct distribution by an authorized company representative to physicians or practitioners licensed to prescribe the drugs.~~

~~(2)(A) A distribution of a drug sample under subdivision (c)(1) of this section shall be made only upon the written request of the licensed physician or practitioner.~~

~~(B) The written request shall contain:~~

~~(i) The name, address, professional designation, and signature of the physician or practitioner making the request;~~

~~(ii) The identity of the drug sample requested and~~

~~the quantity requested;~~

~~(iii) The name of the drug manufacturer of the drug sample requested; and~~

~~(iv) The date of the request.~~

~~(d)(1)(A) A drug manufacturer or authorized distributor of record may distribute drug samples to its authorized company representatives by common carrier.~~

~~(B) A drug sample that is distributed by common carrier shall be shipped in a manner which requires the signature of the recipient before delivery.~~

~~(C) The authorized company representative shall personally sign for this delivery.~~

~~(2) The drug manufacturer or authorized distributor of record does not violate this subsection if the common carrier fails to obtain the authorized company representative's signature.~~

~~(e)(1) The authorized company representative shall store the drug samples under conditions that will maintain the stability, integrity, and effectiveness of the drug samples and ensure that the drug samples will be free of contamination, deterioration, and adulteration as required under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.~~

~~(2) All compendial and labeling requirements for storage and handling of a particular prescription drug shall be followed.~~

~~(f)(1) The name and address of the individual responsible for responding to requests by the United States Food and Drug Administration regarding samples on behalf of a drug manufacturer or distributor shall be provided by the manufacturer to the board.~~

~~(2) The individual identified under subdivision (f)(1) of this section shall further serve as the initial contact person to the board concerning any alleged violations of this section.~~

~~(g)(1) A drug manufacturer or an authorized distributor of record shall maintain a list of:~~

~~(A) The name and address of each representative of the manufacturer or authorized distributor who distributes drug samples; and~~

~~(B) Each site where drug samples are stored.~~

~~(2) A record and a list maintained under this subsection shall be made available by the drug manufacturer or authorized distributor to the~~

~~board upon request.~~

~~(h) A drug manufacturer or an authorized distributor shall notify the board of any significant loss of drug samples and any known theft of drug samples.~~

~~(i) The board may report to the United States Food and Drug Administration any violation of this section.~~

~~(j) This section shall apply only to the distribution of drug samples within the State of Arkansas.~~

~~(k) A drug manufacturer that distributes drug samples in the State of Arkansas shall have a policy for drug screening of an employee who distributes drug samples in this state.~~

SECTION *3.* Arkansas Code Title 4, Chapter 86, is amended to move prior 4-86-108 by adding a new subchapter to read as follows:

4-86-201. Definitions.

As used in this subchapter:

(1) "Authorized distributors of record" means those distributors with whom a drug manufacturer has established an ongoing relationship to distribute the drug manufacturer's products;

(2) "Board" means the Arkansas State Board of Pharmacy;

(3)(A) "Distribute" means the distribution of drug samples.

(B) "Distribute" does not include the providing of a drug sample to a patient by a:

(i) Physician or practitioner licensed to prescribe the drug;

(ii) Health care professional acting at the direction and under the supervision of a physician or practitioner; or

(iii) Pharmacy that has been granted approval from the Arkansas State Board of Pharmacy to handle samples at the direction of a physician or practitioner and that received the sample under this subchapter;

(4) "Drug" means all medicines and preparations recognized in the United States Pharmacopoeia or the National Formulary as substances intended to be used for the care, mitigation, or prevention of disease of either humans or other animals;

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug;

(6) "Licensed pharmacist" means a person holding a license under § 17-92-101 et seq.;

(7) "Pharmacy" means the place licensed by the board in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail; and

(8) "Physician" means a practitioner of medicine licensed under the laws of this state or some other state.

4-86-202. Distribution of drug samples.

(a) Except under subsections (b) and (c) of this section, a person shall not distribute a drug sample.

(b)(1) A drug manufacturer or authorized distributor of record of a drug may distribute a drug sample by mail, common carrier, or by direct distribution by an authorized company representative to physicians or practitioners licensed to prescribe the drugs.

(2)(A) A distribution of a drug sample under subdivision (c)(1) of this section shall be made only upon the written request of the licensed physician or practitioner.

(B) The written request shall contain:

(i) The name, address, professional designation, and signature of the physician or practitioner making the request;

(ii) The identity of the drug sample requested, the strength of the drug, and the quantity requested;

(iii) The name of the drug manufacturer of the drug sample requested; and

(iv) The date of the request.

(c)(1)(A) A drug manufacturer or authorized distributor of record may distribute drug samples to its authorized company representatives by common carrier.

(B) A drug sample that is distributed by common carrier shall be shipped in a manner that requires the signature of the recipient before delivery.

(C) The authorized company representative shall personally sign for this delivery.

(2) The drug manufacturer or authorized distributor of record does not violate this subsection if the common carrier fails to obtain the

authorized company representative's signature.

(d)(1) The authorized company representative shall store the drug samples under conditions that will maintain the stability, integrity, and effectiveness of the drug samples and ensure that the drug samples will be free of contamination, deterioration, and adulteration as required under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.

(2) All compendial and labeling requirements for storage and handling of a particular prescription drug shall be followed.

(e)(1) The name and address of the individual responsible for responding to requests by the United States Food and Drug Administration regarding samples on behalf of a drug manufacturer or distributor shall be provided by the manufacturer to the board.

(2) The individual identified under subdivision (f)(1) of this section shall further serve as the initial contact person to the board concerning any alleged violations of this section.

(f)(1) A drug manufacturer or an authorized distributor of record shall maintain a list of:

(A) The name and address of each representative of the manufacturer or authorized distributor who distributes drug samples; and

(B) Each site where drug samples are stored.

(2) A record and a list maintained under this subsection shall be made available by the drug manufacturer or authorized distributor to the board upon request.

(g) A drug manufacturer or an authorized distributor shall notify the board of a significant loss of drug samples and known theft of drug samples.

(h) The board may report to the United States Food and Drug Administration any violation of this section.

(i) This section shall apply only to the distribution of drug samples within the State of Arkansas.

(j) A drug manufacturer that distributes drug samples in the State of Arkansas shall have a policy for drug screening of an employee who distributes drug samples in this state.

SECTION *4*. Arkansas Code § 4-88-502(a) and (b)(1) are amended for clarity to read as follows:

(a) ~~Nothing in this subchapter~~ This subchapter shall not be construed

to permit an activity otherwise prohibited by law.

(b)(1) ~~Any~~ A person who solicits advertisements for school calendars ~~must~~ shall disclose whether or not the school whose name, emblem, or mascot is used will receive any funds as a result of the solicitation and, if so, what percentage or amount of those funds the school will receive.

SECTION *5.* Arkansas Code § 4-113-103(a)(4) is amended to add language and delete language for clarification as follows:

(4)(A) ~~Recognizing~~ Recognize that ~~such~~ services such as geographical information system data delivery and high-definition television programs require increasingly huge demands in bandwidth ~~promote broadband backbone networks that will serve all of Arkansas with the bandwidth to support Arkansas home and business needs into the foreseeable future~~; and

(B) Promote broadband backbone networks that will serve all of Arkansas with the bandwidth to support Arkansas home and business needs into the foreseeable future.

SECTION *6.* DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Eighth General Assembly. All such acts shall have the full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987.

/s/Madison

APPROVED: 03/25/2011