

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H2/14/97

A Bill

ACT 493 OF 1997
HOUSE BILL 1292

5 By: Representative Malone
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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED 17-80-106 TO
10 AUTHORIZE THE DIVISION OF PHARMACY SERVICES AND DRUG
11 CONTROL OF THE DEPARTMENT OF HEALTH TO COLLECT COSTS FROM
12 VARIOUS BOARDS OF THE HEALING ARTS FOR CONDUCTING
13 INVESTIGATIONS; AND FOR OTHER PURPOSES."

Subtitle

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15 "TO AUTHORIZE THE DIVISION OF PHARMACY
16 SERVICES AND DRUG CONTROL OF THE
17 DEPARTMENT OF HEALTH TO COLLECT COSTS
18 FROM VARIOUS BOARDS OF THE HEALING ARTS
19 FOR CONDUCTING INVESTIGATIONS."
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code Annotated § 17-80-106 is amended to read as
25 follows:

26 §17-80-106. Investigations and inspections of alleged wrongdoing.

27 (a) The Arkansas State Medical Board, the Arkansas State Board of
28 Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical
29 Examining Board, and the Arkansas State Podiatry Examining Board are
30 authorized to utilize as their employees, as the ~~sole~~ investigators for the
31 purposes described in this section, the investigators and inspectors of the
32 Division of Pharmacy Services and Drug Control of the Department of Health.

33 (b) The Department of Health is directed to make investigators and
34 inspectors of the Division of Pharmacy Services and Drug Control available for
35 such purposes and for as long as they may conduct investigations and
36 inspections of alleged wrongdoing of those individuals licensed or permitted

1 by the Arkansas State Medical Board, the Arkansas State Board of Dental
2 Examiners, the Arkansas State Board of Nursing, the Veterinary Medical
3 Examining Board, and the Arkansas State Podiatry Examining Board.

4 (c) The investigators, upon written request of a person ~~licensed~~
5 authorized by the respective licensing board and with authorization by the
6 Director of the Division of Pharmacy Services and Drug Control pursuant to
7 appropriate authority from the board, may investigate, inspect, and make
8 copies of medical records, dental records, nursing records, drug orders,
9 prescriptions, veterinary records, and podiatry records, wherever located, of
10 all persons licensed by the medical, dental, nursing, veterinary, and ~~podiatry~~
11 podiatric boards in order for the respective licensing board to determine
12 whether or not any persons have:

13 (1) Violated the laws of the State of Arkansas or the United
14 States respecting the prescribing, administering, and use of narcotics and
15 potentially dangerous drugs; or

16 (2) Practiced their profession in such a way as to endanger the
17 general health and welfare of the public; or

18 (3) Otherwise violated the practice act or rules and regulations
19 of that respective board.

20 (d) Copies of records, prescriptions, or orders shall not become public
21 records by reason of their use in disciplinary proceedings held by the
22 licensing board, nor shall the patients' or licensed medical professions'
23 property rights to said prescriptions, orders, or records be extinguished by
24 such use.

25 (e)(1) The investigators may obtain copies of said prescriptions,
26 orders, and records as admissible evidence without the necessity of the
27 issuance of an administrative inspection warrant or search warrant as
28 authorized by § 5-64-502, as amended.

29 (2) Said investigators must have in their possession, however, an
30 authorization by the Director of the Division of Pharmacy Services and Drug
31 Control.

32 (3) The licensee may refuse the request of the investigator and
33 not tender copies of the records.

34 (4)(A) If prescriptions, orders, or records are to be used in
35 criminal proceedings they shall be obtained by investigators only on an
36 administrative inspection warrant.

1 (B) No inspection warrant is necessary where prescriptions,
2 orders, or records are to be used solely for board disciplinary purposes.

3 (f) Each of the boards will have the power, in lieu of a letter of
4 authority, to issue to the investigators a subpoena to obtain copies of the
5 records referred to herein, and the investigators will have the authority to
6 serve said subpoena and collect said records.

7 (g) In the event a witness served with a subpoena fails to honor the
8 subpoena, then the particular board issuing the subpoena may apply to the
9 circuit court for remedies as provided in the Arkansas Rules of Civil
10 Procedure. The court shall have the power to punish the disobedient witness
11 for contempt as now provided by law in the trial of civil cases.

12 (h) The Division of Pharmacy Services and Drug Control of the
13 Department of Health shall have the authority to collect from the individual
14 board utilizing the services delineated herein up to thirty-five dollars
15 (\$35.00) per hour with a maximum of two thousand dollars (\$2,000.00) in hourly
16 costs per case. The Division of Pharmacy Services and Drug Control of the
17 Department of Health shall also have the authority to collect from the
18 individual board utilizing the services delineated herein for:

19 (1) Travel expenses at the level for state employees; and

20 (2) Other out-of-pocket costs incurred by the division in
21 carrying out its investigative task ~~from the individual board utilizing the~~
22 ~~services delineated herein.~~

23 (i) The Arkansas State Medical Board, the Arkansas State Board of Dental
24 Examiners, the Arkansas State Board of Nursing, the Veterinary Medical
25 Examining Board, and the Arkansas State Podiatry Examining Board are
26 authorized to collect costs incurred under subsection (h) from the licensees
27 being investigated by the Division of Pharmacy Services and Drug Control of
28 the Department of Health.

29 (j) All funds collected under subsection (h) are declared to be special
30 revenue and shall be deposited in the State Treasury and credited to the
31 Public Health Fund to be used exclusively by the Division of Pharmacy Services
32 and Drug Control for investigations conducted under A.C.A. 17-80-106.

33 (k) Subject to such rules and regulations as may be implemented by the
34 Chief Fiscal Officer of the State, the disbursing officer for the Department
35 of Health is authorized to transfer all unexpended funds collected under
36 A.C.A. 17-80-106 as certified by the Chief Fiscal Officer of the State to be

1 carried forward and made available for expenditures for the same purpose for
2 any following fiscal year.

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4 SECTION 2. Arkansas Code Annotated § 17-95-304 is amended to read as
5 follows:

6 "17-95-304. Inspectors - Use of prescriptions, orders, or records.

7 (a) The board shall utilize as its employees the investigators and
8 inspectors of the Division of Pharmacy Services, Bureau of Health Resources,
9 Arkansas Department of Health.

10 (b)(1) The Department of Health is directed to make investigators and
11 inspectors available for such purposes and for as long as they may conduct
12 investigations and inspections of prescriptions ~~and~~. Such investigators may
13 obtain copies of prescriptions, orders, and records as admissible evidence
14 without the necessity of the issuance of an administrative inspection warrant
15 or search warrant. However, investigators must have in their possession an
16 authorization by the Director of the Division of Pharmacy Services and Drug
17 Control.

18 (2) The inspectors shall have the duty and authority upon written
19 direction by the secretary of the board to investigate, inspect, and make
20 copies of the records, orders, and prescriptions, wherever located, of all
21 persons licensed by the board in order to determine whether or not the persons
22 have:

23 (A) violated the laws of the State of Arkansas or the United
24 States respecting the prescribing and use of narcotics and potentially
25 dangerous drugs;

26 (B) practiced their profession in such a way as to endanger
27 the general health and welfare of the public; and whether or not the persons
28 have or

29 (C) violated the provisions of subchapters 2-4 of this
30 chapter.

31 (3) The licensee may refuse the request of the investigator and
32 not tender copies of the records.

33 (c)(1) The copies of prescriptions, orders, or records shall not become
34 public records by reason of their use in disciplinary proceedings held by the
35 board, nor shall the patient's or physician's property right to the
36 prescriptions be extinguished by such use.

1 (2) If the prescriptions, orders, or records are to be used in
2 criminal proceedings, they shall be obtained by the inspectors only on an
3 administrative inspection warrant as authorized by § 5-64-502, as amended.
4 However, no administrative inspection warrant is necessary where the
5 prescriptions, orders, or records are to be used solely for board disciplinary
6 purposes.

7 (d) The board shall have the power, in lieu of a letter of authority,
8 to issue to the investigators a subpoena to obtain copies of the records
9 referred to herein, and the investigators will have the authority to serve
10 said subpoena and collect said records.

11 (e) In the event a witness served with a subpoena fails to honor the
12 subpoena, then the board may apply to the circuit court for remedies as
13 provided in the Arkansas Rules of Civil Procedure. The court shall have the
14 power to punish the disobedient witness for contempt as now provided by law in
15 the trial of civil cases.

16 (f) The Division of Pharmacy Services and Drug Control of the
17 Department of Health shall have the authority to collect from the individual
18 board utilizing the services delineated herein up to thirty-five dollars
19 (\$35.00) per hour with a maximum of two thousand dollars (\$2,000.00) in hourly
20 costs per case. The Division of Pharmacy Services and Drug Control of the
21 Department of Health shall also have the authority to collect from the
22 individual board utilizing the services delineated herein for:

23 (1) Travel expenses at the level for state employees; and

24 (2) Other out-of-pocket costs incurred by the division in
25 carrying out its investigative task.

26 (g) The board may collect costs incurred under subsection (h) from the
27 licensees being investigated by the Division of Pharmacy Services and Drug
28 Control of the Department of Health."

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30 SECTION 3. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 4. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect
36 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 5. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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/s/Rep. Malone

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APPROVED:3-13-97

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