

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 *As Engrossed: S3/12/01 H3/27/01 H3/29/01*

2 83rd General Assembly

# A Bill

3 Regular Session, 2001

SENATE BILL 828

4

5 By: Senators P. Malone, J. Jeffress

6 *By: Representative Teague*

7

8

9

## For An Act To Be Entitled

10 AN ACT TO CREATE THE ARKANSAS INTERNET  
11 PRESCRIPTION CONSUMER PROTECTION ACT; AND FOR  
12 OTHER PURPOSES.

13

14

### Subtitle

15 TO CREATE THE ARKANSAS INTERNET  
16 PRESCRIPTION CONSUMER PROTECTION ACT.

17

18

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

20

21 SECTION 1. Title.

22 This act may be known and cited as "The Arkansas Internet Prescription  
23 Consumer Protection Act."

24

25 SECTION 2. Purpose.

26 The purpose of this act is to require Internet pharmacies to make  
27 certain disclosures on their web sites, to list the principals, pharmacists,  
28 and physicians associated with the site, and to include amending licensing  
29 requirements for pharmacists and physicians to address prescribing and  
30 dispensing medication via the Internet.

31

32 SECTION 3. Definitions.

33 For purposes of this act:

34 (1) "Deliver" means the actual, constructive, or attempted transfer  
35 from one (1) person to another of any drug whether or not an agency  
36 relationship exists;

1           (2) "Dispense" means to deliver prescription medication to the  
2 ultimate user or research subject pursuant to the lawful order of a  
3 practitioner or pursuant to the prescription of a mid-level practitioner;

4           (3) "Distribute" means to deliver, other than by administering or  
5 dispensing, any drug;

6           (4) "Electronic mail" means any message transmitted through the  
7 international network of interconnected government, educational, and  
8 commercial computer networks, including but not limited to messages  
9 transmitted from or to any address affiliated with an Internet site;

10           (5) "Foreign entity" means any corporation, limited liability company,  
11 or other body corporate if organized under the law of any jurisdiction other  
12 than the State of Arkansas;

13           (6) "Internet site" means a specific location on the international  
14 network of interconnected government, educational, and commercial computer  
15 networks that is determined by Internet protocol numbers, by a domain name,  
16 or by both, including but not limited to domain names that use the  
17 designations ".com", ".edu", ".gov", ".org", and ".net";

18           (7) "Person" means any individual, corporation, partnership, limited  
19 liability company, limited liability partnership, limited partnership,  
20 association, joint venture, or any other legal or commercial entity, whether  
21 foreign or domestic;

22           (8) "Pharmacist" means any natural person licensed under this act to  
23 practice pharmacy;

24           (9) "Pharmacy", "drug store" or "apothecary" means premises,  
25 laboratory, area or other place:

26           (A) Where drugs are offered for sale where the profession of  
27 pharmacy is practiced and where prescriptions are compounded and dispensed;

28           (B) Which has displayed upon it or within it the words  
29 pharmacist, pharmaceutical chemist, pharmacy, apothecary, drugstore,  
30 druggist, drugs, drug sundries, or any of these words or combination of these  
31 words; or

32           (C) Where the characteristic symbols of pharmacy or the  
33 characteristic prescription sign "Rx" may be exhibited;

34           (10) "Practitioner" means a person licensed to practice medicine and  
35 surgery, dentistry, podiatry, veterinary medicine, optometry licensed under  
36 the optometry law as a therapeutic licensee or diagnostic and therapeutic

1 licensee, or scientific investigator or other person authorized by law to use  
2 a prescription-only drug in teaching or chemical analysis or to conduct  
3 research with respect to a prescription-only drug;

4 (11) "Premises" mean the portion of any building or structure leased,  
5 used or controlled by the licensee in the conduct of the business registered  
6 by the board at the address for which the registration was issued;

7 (12)(A) "Prescription-only drug" means any drug whether intended for  
8 use by man or animal, required by federal or state law to be dispensed only  
9 pursuant to a written or oral prescription, order of a practitioner, or is  
10 restricted to use by practitioners only.

11 (B) "Prescription-only drug" does not mean contact lenses; and

12 (13) "Prescription order" means:

13 (A) An order to be filled by a pharmacist for prescription  
14 medication issued and signed by a practitioner or a mid-level practitioner in  
15 the authorized course of professional practice; or

16 (B) An order transmitted to a pharmacist through word of mouth,  
17 note, telephone, or other means of communication directed by the practitioner  
18 or mid-level practitioner.

19  
20 SECTION 4. Requirements for Internet sales.

21 (a) A pharmacy shall not sell, dispense, distribute, deliver, or  
22 participate in the sale, dispensing, distribution, or delivery of any  
23 prescription-only drug to any consumer in this state through an Internet site  
24 or by electronic mail unless:

25 (1) All Internet sites and electronic mail used by the person  
26 for purposes of sales or delivery of a prescription-only drug are in  
27 compliance with all requirements of federal law applicable to the site or  
28 electronic mail;

29 (2)(A) The pharmacy who sells, dispenses, distributes, or  
30 delivers the prescription-only drug, is in compliance with *all requirements*  
31 *of relevant state law.*

32 (B) *The pharmacy shall be properly regulated by the*  
33 *Arkansas Board of Pharmacy to engage in the practice of pharmacy pursuant to*  
34 *Arkansas Code 17-92-101 through 17-92-990;*

35 (3)(A) The pharmacy, if a foreign entity, is registered with the  
36 Secretary of State and is in compliance with all requirements for foreign

1 corporations provided in any applicable state law.

2 (B) Nothing in this subdivision (a)(3) shall be construed  
3 to authorize any corporation to engage in the practice of medicine contrary  
4 to any applicable Arkansas law; and

5 (4) Any practitioner who sells, dispenses, distributes, or  
6 delivers the prescription-only drug is in compliance with all requirements of  
7 relevant state law.

8 (b) Any practitioner who writes a prescription order through an  
9 Internet site or electronic mail for a consumer physically located in this  
10 state who is not an established patient, shall be licensed by the applicable  
11 licensing board and in compliance with all applicable laws.

12  
13 SECTION 5. Requirements for Internet sites.

14 No pharmacy shall sell, dispense, distribute, deliver, or participate  
15 in the sale, dispensing, distribution, or delivery of any prescription-only  
16 drug to any consumer in this state if any part of the transaction was  
17 conducted through an Internet site, unless the Internet site displays, in a  
18 clear and conspicuous manner the:

19 (1) Name of each pharmacy that causes the sale, dispensing, or  
20 delivery of a prescription-only drug to any consumer in this state;

21 (2) Address of the principal place of business of each pharmacy that  
22 causes the sale, dispensing, or delivery of a prescription-only drug to any  
23 consumer in this state;

24 (3) Telephone number of each pharmacy that causes the sale,  
25 dispensing, or delivery of a prescription-only drug to any consumer or other  
26 person in this state; and

27 (4)(A) Pharmacy's permit number assigned by the Arkansas State Board  
28 of Pharmacy; or

29 (B) Certification by the National Association of Boards of  
30 Pharmacy (NABP) as a Verified Internet Pharmacy Practice Sites (VIPPS) site  
31 and displays the VIPPS seal with a link to the NABP's verification site.

32  
33 SECTION 6. Disclaimers or limitations of liabilities.

34 (a) No pharmacy that sells, dispenses, distributes, delivers,  
35 prescribes, or participates in the sale, dispensing, or delivery of any  
36 prescription-only drug to any consumer in this state, if the consumer

1 submitted the purchase order for the prescription-only drug through an  
2 Internet site or by *electronic mail*, may disclaim, limit, or waive any  
3 liability to which the pharmacy otherwise is subject under law for the act or  
4 practice of selling, dispensing, or delivering prescription-only drugs:

5 (b) Any disclaimer, limitation, or waiver in violation of this section  
6 is void.

7 (c) Any attempt to make any disclaimer, limitation, or waiver in  
8 violation of this section is a violation of this act.

9  
10 SECTION 7. Enforcement.

11 Any violation of this act is an unconscionable act or practice under §  
12 4-88-113.

13 */s/ P. Malone, et al.*  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36