

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 274

5 By: Senator J. Petty
6 By: Representative Gazaway
7

For An Act To Be Entitled

9 AN ACT TO RESTRICT WHOLESALE DISTRIBUTORS OF
10 CONTROLLED SUBSTANCES AND LEGEND DRUGS FROM LIMITING
11 OR TERMINATING SALES OF CONTROLLED SUBSTANCES TO
12 CERTAIN LICENSED PROFESSIONALS; TO DECLARE AN
13 EMERGENCY; AND FOR OTHER PURPOSES.
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Subtitle

16 TO RESTRICT WHOLESALE DISTRIBUTORS OF
17 CONTROLLED SUBSTANCES AND LEGEND DRUGS
18 FROM LIMITING OR TERMINATING SALES OF
19 CONTROLLED SUBSTANCES TO CERTAIN LICENSED
20 PROFESSIONALS; AND TO DECLARE AN
21 EMERGENCY.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. DO NOT CODIFY. Legislative intent.

28 It is the intent of the General Assembly to:

29 (1) Provide clarity and data transparency requirements to the
30 pharmaceutical wholesaler distributors who reduce or eliminate distribution
31 of controlled substances to providers or pharmacies in this state,
32 particularly in the case of pharmaceutical wholesaler distributors subject to
33 federal injunctive relief that became effective on July 1, 2022;

34 (2) Ensure that the Arkansas State Board of Pharmacy, as the
35 licensing, regulatory, and oversight entity for pharmaceutical wholesalers in
36 this state, is involved in and understands business practices and specific



1 data elements that cause the pharmaceutical wholesaler distributors to desire
2 to reduce or eliminate distribution of controlled substances to providers or
3 pharmacies in this state; and

4 (3) Protect the providers and pharmacies by providing a
5 complaint-driven process with their respective licensing boards that provides
6 the provider or pharmacy with data, an opportunity to respond, and a known
7 administrative process that must be followed before any reduction or
8 termination of distribution of controlled substances to the provider or
9 pharmacy by the pharmaceutical wholesaler distributor.

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11 SECTION 2. Arkansas Code § 20-64-506, concerning whole distributors of
12 controlled substances and legend drugs and shipments to certain licensed
13 professionals, is amended to add additional subsections to read as follows:

14 (c) A wholesale distributor shall not limit or terminate the sale of
15 controlled substances, or materially alter pricing of any items or services
16 intended to limit or terminate sale of controlled substances, to any entity
17 identified in subsection (a) of this section except if:

18 (1)(A) The wholesale distributor:

19 (i) Suspects purchasing or dispensing behavior that
20 is an aberration compared to similar providers or pharmacies in the same
21 geographic region within this state; and

22 (ii) Files a written, formal complaint against the
23 provider or pharmacy with its licensing board containing specific allegations
24 and prescription-level details, such as National Provider Identifier numbers
25 of prescribers and dispensers, against the provider or pharmacy.

26 (B) Once a complaint is filed by the wholesale distributor
27 with a licensing board, the licensing board takes administrative action
28 against the licensee as a result of complaint filed by the wholesale
29 distributor;

30 (2) The provider or pharmacy voluntarily terminates the
31 relationship with the wholesale distributor and provides the wholesale
32 distributor with a minimum one hundred twenty (120) day written notice of
33 intent to terminate the distribution relationship;

34 (3) A wholesale distributor voluntarily terminates the
35 relationship with the provider or pharmacy and provides the provider or
36 pharmacy with a minimum one hundred twenty (120) day written notice of intent

1 to terminate the distribution relationship; or

2 (4)(A) The wholesale distributor may flag specific items on an
3 individual order as suspicious if the order exceeds clearly identified
4 thresholds and if the order is reported to the Arkansas State Board of
5 Pharmacy on the day the suspicious order is flagged stating the specific
6 reason the order is deemed suspicious.

7 (B) Subdivision (c)(4)(A) of this section may be used only
8 to limit the sale of controlled substances, and may not be used as a
9 rationale for terminating the distribution relationship.

10 (C) All standards and metrics that are used by a wholesale
11 distributor related to the duties, interpretation, or compliance with the
12 terms of the federal injunctive relief shall be communicated in writing to
13 the Arkansas State Board of Pharmacy every three (3) months or sooner if the
14 standards are changed by the wholesale distributor or upon request by the
15 Arkansas State Board of Pharmacy.

16 (d)(1) A violation of subsection (c) of this section shall be a
17 violation of this subchapter.

18 (2) The Arkansas State Board of Pharmacy shall take disciplinary
19 action against a wholesale distributor that violates subsection (c) of this
20 section with a minimum fine of one hundred thousand dollars (\$100,000) per
21 violation and may include revocation of a wholesale distributor license.

22 (e) The Arkansas State Board of Pharmacy shall adopt rules to
23 implement and clarify this section.

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25 SECTION 3. DO NOT CODIFY. Rules.

26 (a) When adopting the initial rules required under this act, the
27 Arkansas State Board of Pharmacy shall file the final rules with the
28 Secretary of State for adoption under § 25-15-204(f):

29 (1) On or before January 1, 2024; or

30 (2) If approval under § 10-3-309 has not occurred by January 1,
31 2024, as soon as practicable after approval under § 10-3-309.

32 (b) The board shall file the proposed rules with the Legislative
33 Council under § 10-3-309(c) sufficiently in advance of January 1, 2024, so
34 that the Legislative Council may consider the rules for approval before
35 January 1, 2024.

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1 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
 2 General Assembly of the State of Arkansas that the whole distribution of
 3 controlled substances in this state is of critical importance to the citizens
 4 of this state to maintain their health and safety; that wholesale
 5 distributors must follow certain practices before making any changes in the
 6 distribution of controlled substances in this state; that the changes in the
 7 distribution of controlled substances should be done only with the
 8 involvement of state licensing boards when a wholesale distributor suspects
 9 purchasing or dispensing behavior is an aberration compared to similar
 10 providers or pharmacies in the same geographic region within this state; and
 11 that this act is immediately necessary to ensure the safe distribution of
 12 controlled substances and legend drugs in this state and to protect the
 13 health and safety of the citizens of this state. Therefore, an emergency is
 14 declared to exist, and this act being immediately necessary for the
 15 preservation of the public peace, health, and safety shall become effective
 16 on:

- 17 (1) The date of its approval by the Governor;
- 18 (2) If the bill is neither approved nor vetoed by the Governor,
 19 the expiration of the period of time during which the Governor may veto the
 20 bill; or
- 21 (3) If the bill is vetoed by the Governor and the veto is
 22 overridden, the date the last house overrides the veto.

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