

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 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 189

4
5 By: Senator Malone
6
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For An Act To Be Entitled

8
9 AN ACT TO AMEND THE ARKANSAS INTERNET
10 PRESCRIPTION CONSUMER PROTECTION ACT TO PROHIBIT
11 INTERNET SALES INTO ARKANSAS OF PRESCRIPTION
12 DRUGS IF THE PATIENT HAS NOT ACTUALLY CONSULTED A
13 PRESCRIBING PRACTITIONER, AND FOR OTHER PURPOSES.
14

Subtitle

15
16 AN ACT TO PROHIBIT INTERNET SALES INTO
17 ARKANSAS OF PRESCRIPTION DRUGS IF THE
18 PATIENT HAS NOT ACTUALLY CONSULTED A
19 PRESCRIBING PRACTITIONER.
20
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 17-92-1003 is amended to read as follows:
25 17-92-1003. Definitions.

26 ~~For purposes of~~ As used in this subchapter:

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

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

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

35 (4) "Electronic mail" means any message transmitted through the
36 international network of interconnected government, educational, and



1 commercial computer networks, including, but not limited to, messages
2 transmitted from or to any address affiliated with an Internet site;

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

6 (6) "Internet broker" means an entity that serves as an agent or
7 intermediary, or other capacity that causes the Internet to be used to bring
8 together a buyer and seller to engage in the dispensing of prescription-only
9 drugs;

10 ~~(6)(7)~~ "Internet site" means a specific location on the
11 international network of interconnected government, educational, and
12 commercial computer networks that is determined by Internet protocol numbers,
13 by a domain name, or by both, including, but not limited to, domain names
14 that use the designations ".com", ".edu", ".gov", ".org", and ".net";

15 ~~(7)(8)~~ "Person" means any individual, corporation, partnership,
16 limited liability company, limited liability partnership, limited
17 partnership, association, joint venture, or any other legal or commercial
18 entity, whether foreign or domestic;

19 ~~(8)(9)~~ "Pharmacist" means any natural person licensed under this
20 subchapter to practice pharmacy;

21 ~~(9)(10)~~ "Pharmacy", "drug store", or "apothecary" means
22 premises, laboratory, area, or other place:

23 (A) Where drugs are offered for sale, where the profession
24 of pharmacy is practiced, and where prescriptions are compounded and
25 dispensed;

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

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

32 ~~(10)(11)~~ "Practitioner" means:

33 (A) A person licensed to practice medicine and surgery,
34 dentistry, podiatry, veterinary medicine, or optometry licensed under the
35 optometry law as a therapeutic licensee or diagnostic and therapeutic
36 licensee; or

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

4 ~~(11)~~(12) "Premises" means the portion of any building or
 5 structure leased, used, or controlled by the licensee in the conduct of the
 6 business registered by the Arkansas State Board of Pharmacy at the address
 7 for which the registration was issued;

8 ~~(12)~~(13)(A) "Prescription-only drug" means any drug, whether
 9 intended for use by man or animal, required by federal or state law to be
 10 dispensed only pursuant to a written or oral prescription or order of a
 11 practitioner or that is restricted to use by practitioners only.

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

14 ~~(13)~~(14)(A) "Prescription order" means:

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

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

21 (B) In the absence of a prior and proper patient-
 22 practitioner relationship, "prescription order" does not include an order for
 23 a prescription-only drug issued solely in response to:

24 (i) An Internet questionnaire;

25 (ii) An Internet consultation; or

26 (iii) A telephonic consultation.

27 (15) "Proper physician-patient relationship" means that:

28 (A) The physician:

29 (i) Performs a history and physical examination of
 30 the patient adequate to establish a diagnosis and to identify underlying
 31 conditions or contraindications to the treatment recommended or provided;, or

32 (ii) Personally knows the patient and the patient's
 33 general health status through an "ongoing" personal or professional
 34 relationship;

35 (B) The physician provides appropriate follow-up at
 36 medically necessary intervals;

1 contrary to any applicable Arkansas law; and

2 ~~(4)(6)~~ Any practitioner who sells, dispenses, distributes, or
3 delivers the prescription-only drug is in compliance with all requirements of
4 relevant state law.

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

9 (c) A pharmacist practicing within or outside Arkansas may not fill a
10 prescription order to dispense a prescription-only drug to a patient if the
11 pharmacist knows or reasonably should have known under the circumstances that
12 the prescription order was issued:

13 (1) On the basis of:

14 (A) An Internet questionnaire;

15 (B) An Internet consultation; or

16 (C) A telephonic consultation; and

17 (2) Without a valid prior patient-practitioner relationship.

18 (d)(1) An Internet broker operating within or outside Arkansas may
19 participate in the sale of a prescription-only drug in this state only if the
20 internet broker knows that the pharmacist who dispenses the drug has complied
21 with the requirements of subsection (c) of this section.

22 (2) The board shall report to the Attorney General any
23 violations of subdivision (d)(1) of this section.

24
25 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that Internet sales of prescription
27 drugs have been made to Arkansas citizens by out-of-state pharmacies that are
28 not licensed or regulated in this state; that the unlicensed and unregulated
29 sale of prescription drugs threatens the health and safety of the citizens of
30 this state; and that this act is necessary because only the explicit
31 prohibition created by this act will allow the federal intervention necessary
32 to interdict unlicensed and unregulated Internet sales of prescription drugs
33 to Arkansas citizens. Therefore, an emergency is declared to exist and this
34 act being necessary for the preservation of the public peace, health, and
35 safety shall become effective on:

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

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

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

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