

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
4

As Engrossed: S2/5/07

A Bill

SENATE BILL 189

5 By: Senators Malone, Crumbly, Hill, Capps, G. Jeffress, J. Jeffress, R. Thompson, Bryles, Broadway,
6 Argue, Hendren, Trusty, Miller, B. Pritchard, Critcher, Luker, Salmon, Madison, Wilkinson, Steele,
7 Glover, Brown, Horn, Laverty, Wilkins, Bookout
8 By: Representatives J. Roebuck, Saunders, Maloch, Rainey, Reep, Davis, Allen, T. Bradford, Burris,
9 Cash, Cheatham, Cornwell, D. Creekmore, Dickinson, Edwards, Everett, R. Green, Hall, Harris, D.
10 Hutchinson, Hyde, Jeffrey, J. Johnson, Kidd, Lowery, Pierce, Powers, S. Prater, Sample, Shelby, Stewart,
11 Thyer, Wagner, Webb, Wyatt
12
13

For An Act To Be Entitled

14 AN ACT TO AMEND THE ARKANSAS INTERNET
15 PRESCRIPTION CONSUMER PROTECTION ACT TO PROHIBIT
16 INTERNET SALES INTO ARKANSAS OF PRESCRIPTION
17 DRUGS IF THE PATIENT HAS NOT ACTUALLY CONSULTED A
18 PRESCRIBING PRACTITIONER, AND FOR OTHER PURPOSES.
19

Subtitle

20 AN ACT TO PROHIBIT INTERNET SALES INTO
21 ARKANSAS OF PRESCRIPTION DRUGS IF THE
22 PATIENT HAS NOT ACTUALLY CONSULTED A
23 PRESCRIBING PRACTITIONER.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. Arkansas Code § 17-92-1003 is amended to read as follows:
31 17-92-1003. Definitions.

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

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

36 (2) "Dispense" means to deliver prescription medication to the



1 ultimate user or research subject pursuant to the lawful order of a
2 practitioner or pursuant to the prescription of a mid-level practitioner;

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

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

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

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

16 ~~(6)~~(7) "Internet site" means a specific location on the
17 international network of interconnected government, educational, and
18 commercial computer networks that is determined by Internet protocol numbers,
19 by a domain name, or by both, including, but not limited to, domain names
20 that use the designations ".com", ".edu", ".gov", ".org", and ".net";

21 ~~(7)~~(8) "Person" means any individual, corporation, partnership,
22 limited liability company, limited liability partnership, limited
23 partnership, association, joint venture, or any other legal or commercial
24 entity, whether foreign or domestic;

25 ~~(8)~~(9) "Pharmacist" means any natural person licensed under this
26 subchapter to practice pharmacy;

27 ~~(9)~~(10) "Pharmacy", "drug store", or "apothecary" means
28 premises, laboratory, area, or other place:

29 (A) Where drugs are offered for sale, where the profession
30 of pharmacy is practiced, and where prescriptions are compounded and
31 dispensed;

32 (B) Which has displayed upon it or within it the words
33 "pharmacist", "pharmaceutical chemist", "pharmacy", "apothecary",
34 "drugstore", "druggist", "drugs", "drug sundries", or any of these words or
35 combination of these words; or

36 (C) Where the characteristic symbols of pharmacy or the

1 characteristic prescription sign "Rx" may be exhibited;

2 ~~(10)~~(11) "Practitioner" means:

3 (A) A person licensed to practice medicine and surgery,
4 dentistry, podiatry, veterinary medicine, or optometry licensed under the
5 optometry law as a therapeutic licensee or diagnostic and therapeutic
6 licensee; or

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

10 ~~(11)~~(12) "Premises" means the portion of any building or
11 structure leased, used, or controlled by the licensee in the conduct of the
12 business registered by the Arkansas State Board of Pharmacy at the address
13 for which the registration was issued;

14 ~~(12)~~(13)(A) "Prescription-only drug" means any drug, whether
15 intended for use by man or animal, required by federal or state law to be
16 dispensed only pursuant to a written or oral prescription or order of a
17 practitioner or that is restricted to use by practitioners only.

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

20 ~~(13)~~(14)(A) "Prescription order" means:

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

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

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

30 (i) An Internet questionnaire;

31 (ii) An Internet consultation; or

32 (iii) A telephonic consultation.

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

34 (A) The physician:

35 (i) Performs a history and physical examination of
36 the patient adequate to establish a diagnosis and to identify underlying

1 conditions or contraindications to the treatment recommended or provided;, or
2 (ii) Personally knows the patient and the patient's
3 general health status through an "ongoing" personal or professional
4 relationship;

5 (B) The physician provides appropriate follow-up at
6 medically necessary intervals;

7 (C) The physician provides treatment in consultation with
8 or upon referral by another physician who has an ongoing relationship with
9 the patient and who has agreed to supervise the patient's treatment,
10 including follow-up care and the use of prescribed medications; or

11 (D) The physician interacts with the patient through an
12 on-call or cross-coverage situation.

13
14 SECTION 2. Arkansas Code § 17-92-1004 is amended to read as follows:
15 17-92-1004. Requirements for Internet sales.

16 (a) A pharmacy operating within or outside Arkansas shall not sell,
17 dispense, distribute, deliver, or participate in the sale, dispensing,
18 distribution, or delivery of ~~any~~ a prescription-only drug to any consumer in
19 this state through an Internet site or by electronic mail unless:

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

24 (2)(A) The pharmacy that sells, dispenses, distributes, or
25 delivers the prescription-only drug is in compliance with all requirements of
26 relevant state law.

27 (B) The pharmacy shall be properly regulated by the
28 Arkansas State Board of Pharmacy to engage in the practice of pharmacy
29 pursuant to § 17-92-101 et seq.;

30 (3) The pharmacist who fills the prescription order is in
31 compliance with subsection (c) of this section;

32 (4)(A) Any pharmacy that participates in the sale of a
33 prescription-only drug is in compliance with subsection (d) of this section.

34 (B) Any pharmacy that participates in the sale of a
35 prescription-only drug is in compliance with an Arkansas prescription drug
36 monitoring program, if an Arkansas prescription drug monitoring program

1 exists;

2 ~~(3)(A)(5)(A)~~ The pharmacy, if a foreign entity, is registered
3 with the Secretary of State and is in compliance with all requirements for
4 foreign corporations provided in any applicable state law.

5 (B) Nothing in this subdivision ~~(a)(3)(a)(5)~~ shall be
6 construed to authorize any corporation to engage in the practice of medicine
7 contrary to any applicable Arkansas law; and

8 ~~(4)(6)~~ Any practitioner who sells, dispenses, distributes, or
9 delivers the prescription-only drug is in compliance with all requirements of
10 relevant state law.

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

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

19 (1) On the basis of:

20 (A) An Internet questionnaire;

21 (B) An Internet consultation; or

22 (C) A telephonic consultation; and

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

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

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

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31 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that Internet sales of prescription
33 drugs have been made to Arkansas citizens by out-of-state pharmacies that are
34 not licensed or regulated in this state; that the unlicensed and unregulated
35 sale of prescription drugs threatens the health and safety of the citizens of
36 this state; and that this act is necessary because only the explicit

1 prohibition created by this act will allow the federal intervention necessary
2 to interdict unlicensed and unregulated Internet sales of prescription drugs
3 to Arkansas citizens. Therefore, an emergency is declared to exist and this
4 act being necessary for the preservation of the public peace, health, and
5 safety shall become effective on:

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

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

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

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13 */s/ Malone*
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