

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.

Act 128 of the Regular Session

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  
20

**Subtitle**

21 AN ACT TO PROHIBIT INTERNET SALES INTO  
22 ARKANSAS OF PRESCRIPTION DRUGS IF THE  
23 PATIENT HAS NOT ACTUALLY CONSULTED A  
24 PRESCRIBING PRACTITIONER.  
25  
26  
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
29

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;



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  
5 or 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  
11 company, or other body corporate ~~if~~ organized under the law of any  
12 jurisdiction other than the State of Arkansas;

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

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

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

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

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

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

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

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

3 ~~(10)~~(11) "Practitioner" means:

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

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

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

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

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

21 ~~(13)~~(14)(A) "Prescription order" means:

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

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

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

31 (i) An Internet questionnaire;

32 (ii) An Internet consultation; or

33 (iii) A telephonic consultation.

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

35 (A) The physician:

36 (i) Performs a history and physical examination of

1 the patient adequate to establish a diagnosis and to identify underlying  
2 conditions or contraindications to the treatment recommended or provided;, or

3 (ii) Personally knows the patient and the patient's  
4 general health status through an "ongoing" personal or professional  
5 relationship;

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

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

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

14  
15 SECTION 2. Arkansas Code § 17-92-1004 is amended to read as follows:  
16 17-92-1004. Requirements for Internet sales.

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

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

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

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

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

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

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

1 monitoring program, if an Arkansas prescription drug monitoring program  
2 exists;

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

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

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

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

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

20 (1) On the basis of:

21 (A) An Internet questionnaire;

22 (B) An Internet consultation; or

23 (C) A telephonic consultation; and

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

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

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

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

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

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

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

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

13  
14 /s/ Malone

15  
16 APPROVED: 2/21/2007  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36