

1 HB393
2 137451-5
3 By Representatives Greer and Black
4 RFD: Boards, Agencies and Commissions
5 First Read: 23-FEB-12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ENROLLED, An Act,

To amend Sections 34-23-1 and 34-23-30, Code of Alabama 1975, relating to the practice of pharmacy and the operation of pharmacies; to define pharmacy services; to authorize the Alabama State Board of Pharmacy to provide by rule for the issuance, renewal, and fees relating to a pharmacy services permit; and to provide that the creation of a pharmacy services permit does not expand or limit the existing practice of pharmacy or medicine.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 34-23-1 of the Code of Alabama 1975, is amended to read as follows:

"§34-23-1.

"For the purpose of this chapter, the following words and phrases shall have the following meanings:

"(1) ASSOCIATION. The Alabama Pharmacy Association.

"(2) BOARD or STATE BOARD. The Alabama State Board of Pharmacy.

"(3) CHEMICAL. Any substance of a medicinal nature, whether simple or compound, obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

1 "(4) DISPENSE. To sell, distribute, administer,
2 leave with, give away, dispose of, deliver, or supply a drug
3 or medicine to the ultimate user or their agent.

4 "(5) DRUGS. All medicinal substances, preparations,
5 and devices recognized by the United States Pharmacopoeia and
6 National Formulary, or any revision thereof, and all
7 substances and preparations intended for external and internal
8 use in the cure, diagnosis, mitigation, treatment, or
9 prevention of disease in man or animal and all substances and
10 preparations other than food intended to affect the structure
11 or any function of the body of man or animal.

12 "(6) EXTERN. A candidate for licensure as a
13 pharmacist during the time prior to graduation from an
14 accredited college of pharmacy.

15 "(7) HOSPITAL. An institution for the care and
16 treatment of the sick and injured, licensed by the Alabama
17 State Board of Health and authorized to be entrusted with the
18 custody of drugs and medicines, the professional use of drugs
19 and medicines being under the direct supervision of a medical
20 practitioner or pharmacist.

21 "(8) INTERN. An individual who is currently licensed
22 by this state to engage in the practice of pharmacy while
23 under the personal supervision of a pharmacist and is
24 satisfactorily progressing toward meeting the requirements for
25 licensure as a pharmacist; or a graduate of an approved

1 college of pharmacy who is currently licensed by the State
2 Board of Pharmacy for the purpose of obtaining practical
3 experience as a requirement for licensure as a pharmacist; or
4 a qualified applicant awaiting examination for licensure.

5 "(9) LEGEND DRUG. Any drug, medicine, chemical, or
6 poison bearing on the label the words, "caution, federal law
7 prohibits dispensing without prescription," or similar wording
8 indicating that such drug, medicine, chemical, or poison may
9 be sold or dispensed only upon the prescription of a licensed
10 medical practitioner.

11 "(10) LICENSE. The grant of authority by the State
12 Board of Pharmacy to a person authorizing him or her to engage
13 in the practice of pharmacy in this state.

14 "(11) MANUFACTURER. A person, except a pharmacy, who
15 prepares, derives, produces, compounds, or packages any drug,
16 medicine, chemical, or poison.

17 "(12) MEDICAL PRACTITIONER. Any physician, dentist,
18 or veterinarian, or any other person authorized by law to
19 treat, use, or prescribe medicine and drugs for sick and
20 injured human beings or animals in this state.

21 "(13) MEDICINE. Any drug or combination of drugs
22 that has the property of curing, diagnosing, preventing,
23 treating, or mitigating diseases or that which may be used for
24 those purposes.

1 "(14) PATENT OR PROPRIETARY MEDICINES. Completely
 2 compounded nonprescription packaged drugs, medicines, and
 3 nonbulk chemicals which are sold, offered, promoted, or
 4 advertised by the manufacturer or primary distributor under a
 5 trademark, trade name, or other trade symbol, and the labeling
 6 of which conforms to the requirements of the Federal Food,
 7 Drug, and Cosmetic Act; provided, that this definition shall
 8 not include:

9 "a. Drugs which are only advertised and promoted
 10 professionally to licensed physicians, dentists, or
 11 veterinarians by manufacturers or primary distributors.

12 "b. A narcotic or drug containing a narcotic.

13 "c. A drug the label of which bears substantially
 14 either the statements "caution--federal law prohibits
 15 dispensing without prescription" or "warning--may be
 16 habit-forming".

17 "d. A drug intended for injection.

18 "(15) PERMIT. The grant of authority by the State
 19 Board of Pharmacy to any person, firm, or corporation
 20 authorizing the operation of a pharmacy, wholesale drug
 21 distributor, repackager, bottler, manufacturer, or packer of
 22 drugs, medicines, chemicals, or poisons for medicinal
 23 purposes. Nonresident wholesale drug distributors registered
 24 with the appropriate agency, in the state in which they are
 25 domiciled, and operating in compliance with Prescription Drug

1 Marketing Act standards, shall be allowed to do business in
2 this state. No permit shall be required of any physician
3 licensed to practice medicine for any act or conduct related
4 to or connected with his or her professional practice.

5 "(16) PERSON. Any individual, partnership,
6 corporation, association, trust, or other entity.

7 "(17) PHARMACIST. Any person licensed by the Alabama
8 State Board of Pharmacy to practice the profession of pharmacy
9 in the State of Alabama and whose license is in good standing.

10 "(18) PHARMACY. A place licensed by the Alabama
11 State Board of Pharmacy in which prescriptions, drugs,
12 medicines, medical devices, chemicals, and poisons are sold,
13 offered for sale, compounded, or dispensed, and shall include
14 all places whose title may imply the sale, offering for sale,
15 compounding, or dispensing of prescriptions, drugs, medicines,
16 chemicals, or poisons.

17 "(19) PHARMACY SERVICES PERMIT. Certain services
18 performed by a pharmacy, as defined by board rule, and
19 specifically excluding, the receipt or inventory of drugs,
20 medicines, chemicals, poisons, or medical devices. This
21 subdivision, and any rule promulgated by the board pursuant to
22 this subdivision, may not be interpreted to expand the
23 practice of pharmacy as the practice of pharmacy and permits
24 are limited by this section and Sections 34-23-11 and

1 34-23-70, or to restrict the practice of medicine as defined
2 in Section 34-24-50.

3 This subdivision, and any rule promulgated by the
4 board pursuant to this subdivision, is subject to the
5 restrictions contained in subsection (b) of Section 34-23-30.

6 This subdivision shall not be interpreted to allow
7 the board to promulgate any rule that would authorize a
8 pharmacist to sell, offer for sale, or dispense any
9 prescription drug except pursuant to the terms of a valid
10 prescription issued by a licensed practitioner authorized to
11 prescribe such drug or govern pharmacy benefit managers.

12 "(20) (19) POISON. Any substance other than
13 agricultural products and pesticides which when applied to,
14 introduced into, or developed within the body in relatively
15 small quantities by its inherent chemical action uniformly
16 produces serious bodily injury, disease, or death.

17 "(21) (20) PRECEPTOR. A person who is duly licensed
18 to practice pharmacy in the state and meets the requirements
19 as established by the State Board of Pharmacy.

20 "(22) (21) PRESCRIPTION. Any order for drug or
21 medical supplies, written or signed or transmitted by word of
22 mouth, telephone, telegraph, closed circuit television, or
23 other means of communication by a legally competent
24 practitioner, licensed by law to prescribe and administer such

1 drugs and medical supplies intended to be filled, compounded,
2 or dispensed by a pharmacist.

3 "(23) ~~(22)~~ PROFESSIONAL DEGREE. A degree in pharmacy
4 requiring a minimum of five academic years.

5 "(24) ~~(23)~~ REPACKAGER. A person who purchases or
6 acquires from a manufacturer or distributor, a drug, medicine,
7 chemical, or poison for the purpose of bottling, labeling, or
8 otherwise repackaging for sale or distribution. This
9 definition shall not apply to a physician licensed to practice
10 medicine who as a part of his or her professional practice
11 dispenses, administers, sells, or otherwise distributes any
12 drug to a patient.

13 "(25) ~~(24)~~ SALE. Barter, exchange, or gift, or offer
14 of barter, exchange, or gift, and shall include each
15 transaction made by any person, whether a principal,
16 proprietor, agent, servant, or employee.

17 "(26) ~~(25)~~ WHOLESALE DRUG DISTRIBUTORS. A person
18 engaged in the business of distributing drugs and medicines
19 for resale to pharmacies, hospitals, practitioners, government
20 agencies, or other lawful outlets permitted to sell drugs or
21 medicines. The sale, purchase, or trade of a drug by a retail
22 pharmacy to another retail pharmacy or practitioner, for
23 relief of temporary shortages, is exempt from this definition.
24 Also exempt from this definition shall be (a) intracompany
25 sales, (b) manufacturer and distributor sales representatives

1 who distribute drug samples, (c) charitable organizations
2 distributing to nonprofit affiliates of that organization, (d)
3 certain purchases by hospitals or other health care entities
4 that are members of a group purchasing organization, and (e)
5 the distributors of blood and blood components."

6 "§34-23-30.

7 "(a) Every pharmacy, hospital pharmacy, drugstore,
8 pharmacy department, prescription department, prescription
9 laboratory, dispensary, apothecary, or any other establishment
10 with a title implying the sale, offering for sale,
11 compounding, or dispensing of drugs in this state, or any
12 person performing pharmacy services in this state, shall
13 register biennially and receive a permit from the Board of
14 Pharmacy. Any person desiring to open, operate, maintain, or
15 establish a pharmacy or perform pharmacy services in this
16 state shall apply to the board for a permit at least 30 days
17 prior to the opening of the business. No pharmacy or entity
18 performing pharmacy services shall open for the transaction of
19 business until it has been registered, inspected, and a permit
20 issued by the board. The application for a permit shall be
21 made on a form prescribed and furnished by the board which
22 when properly executed shall indicate the ownership desiring
23 such permit and the names and license numbers of all licensed
24 pharmacists employed as well as the location of the pharmacy
25 or entity where pharmacy services are performed and other

1 information as the board may require. If more than one
2 pharmacy or entity where pharmacy services are performed is
3 operated by the same owner, a separate application for
4 registration shall be made and a separate permit issued for
5 each such establishment. All permits issued under this section
6 shall become due on October 31 and shall become null and void
7 on December 31 of even-numbered years. Every application for a
8 permit for a new pharmacy or entity where pharmacy services
9 are performed shall be accompanied by a fee to be determined
10 by the board, but the fee shall not be less than one hundred
11 dollars (\$100) nor more than two hundred dollars (\$200). Every
12 application for a renewal permit shall be accompanied by a fee
13 to be determined by the board, but the fee shall not be less
14 than fifty dollars (\$50) nor more than one hundred fifty
15 dollars (\$150). Every application for a permit due to transfer
16 of ownership shall be accompanied by a fee to be determined by
17 the board, but the fee shall not be less than fifty dollars
18 (\$50) nor more than one hundred fifty dollars (\$150). Each
19 application for the renewal of a permit shall be made on or
20 before October 31 of each even-numbered year, at which time
21 the previous permit shall become null and void on December 31
22 of even-numbered years. A penalty of twenty-five dollars (\$25)
23 for each overdue month shall be assessed in addition to the
24 permit fee for renewal of delinquent permits. The secretary of
25 the board shall issue a permit for each pharmacy or entity

1 where pharmacy services are performed whose application is
2 found to be satisfactory by the board. Permits issued under
3 this section shall not be transferable. Any change in the
4 control of ownership or licensed pharmacists shall be reported
5 to the board in writing within 10 days of such occurrence. If
6 the pharmacy or entity where pharmacy services are performed
7 is owned by a corporation, the permit shall be issued in the
8 name of the corporation. It shall be the duty of the owners of
9 pharmacies or the owners of entities where pharmacy services
10 are performed who are not licensed pharmacists to immediately
11 notify the board upon the termination of employment of
12 licensed pharmacists and to cause the surrender of permits as
13 indicated. The further operation of the pharmacy or entity
14 where pharmacy services are performed in the absence of
15 licensed pharmacists is forbidden; provided, that the
16 nonregistered owner shall have a period of 30 days within
17 which to comply with this provision. The next of kin of any
18 deceased licensed pharmacist owner shall have a period of 30
19 days within which to comply with the provisions of this
20 chapter, during which time no prescriptions shall be filled
21 unless a licensed pharmacist is on duty. No mail order
22 pharmacy shall transact business in this state without a
23 permit from the board.

1 "(b) Requirements for the grant of authority by the
2 board to any person who offers or performs pharmacy services
3 shall be by board rule.

4 ~~Nothing contained in this section shall be~~
5 ~~interpreted to delegate to the board the authority to~~
6 ~~promulgate regulations governing pharmacy benefit managers.~~

7 Nothing contained in this section related to
8 pharmacy services permits shall be interpreted to delegate to
9 the board the authority to promulgate regulations governing
10 pharmacy benefit managers.

11 "(c) Any person who violates this section shall be
12 guilty of a misdemeanor."

13 Section 2. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 14-MAR-2012, as amended.

Greg Pappas
Clerk

Senate	05-APR-12	Amended and Passed
House	10-APR-12	Concurred in Senate Amendment