

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

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 34-23-1 of the Code of Alabama
18 1975, is amended to read as follows:

19 "§34-23-1.

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

22 "(1) ASSOCIATION. The Alabama Pharmacy Association.

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

25 "(3) CHEMICAL. Any substance of a medicinal nature,
26 whether simple or compound, obtained through the process of

1 the science and art of chemistry, whether of organic or
2 inorganic origin.

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

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

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

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

23 "(8) INTERN. An individual who is currently licensed
24 by this state to engage in the practice of pharmacy while
25 under the personal supervision of a pharmacist and is
26 satisfactorily progressing toward meeting the requirements for
27 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.

25 "(14) PATENT OR PROPRIETARY MEDICINES. Completely
26 compounded nonprescription packaged drugs, medicines, and
27 nonbulk chemicals which are sold, offered, promoted, or

1 advertised by the manufacturer or primary distributor under a
2 trademark, trade name, or other trade symbol, and the labeling
3 of which conforms to the requirements of the Federal Food,
4 Drug, and Cosmetic Act; provided, that this definition shall
5 not include:

6 "a. Drugs which are only advertised and promoted
7 professionally to licensed physicians, dentists, or
8 veterinarians by manufacturers or primary distributors.

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

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

14 "d. A drug intended for injection.

15 "(15) PERMIT. The grant of authority by the State
16 Board of Pharmacy to any person, firm, or corporation
17 authorizing the operation of a pharmacy, wholesale drug
18 distributor, repackager, bottler, manufacturer, or packer of
19 drugs, medicines, chemicals, or poisons for medicinal
20 purposes. Nonresident wholesale drug distributors registered
21 with the appropriate agency, in the state in which they are
22 domiciled, and operating in compliance with Prescription Drug
23 Marketing Act standards, shall be allowed to do business in
24 this state. No permit shall be required of any physician
25 licensed to practice medicine for any act or conduct related
26 to or connected with his or her professional practice.

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

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

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

13 "(19) PHARMACY SERVICES PERMIT. Certain services
14 performed by a pharmacy, as defined by board rule, and
15 specifically excluding, the receipt or inventory of drugs,
16 medicines, chemicals, poisons, or medical devices. This
17 subdivision, and any rule promulgated by the board pursuant to
18 this subdivision, may not be interpreted to expand the
19 practice of pharmacy as the practice of pharmacy and permits
20 are limited by this section and Sections 34-23-11 and
21 34-23-70, or to restrict the practice of medicine as defined
22 in Section 34-24-50.

23 This subdivision shall not be interpreted to allow
24 the board to promulgate any rule that would authorize a
25 pharmacist to sell, offer for sale, or dispense any
26 prescription drug except pursuant to the terms of a valid

1 prescription issued by a licensed practitioner authorized to
2 prescribe such drug or govern pharmacy benefit managers.

3 "(20) ~~(19)~~ POISON. Any substance other than
4 agricultural products and pesticides which when applied to,
5 introduced into, or developed within the body in relatively
6 small quantities by its inherent chemical action uniformly
7 produces serious bodily injury, disease, or death.

8 "(21) ~~(20)~~ PRECEPTOR. A person who is duly licensed
9 to practice pharmacy in the state and meets the requirements
10 as established by the State Board of Pharmacy.

11 "(22) ~~(21)~~ PRESCRIPTION. Any order for drug or
12 medical supplies, written or signed or transmitted by word of
13 mouth, telephone, telegraph, closed circuit television, or
14 other means of communication by a legally competent
15 practitioner, licensed by law to prescribe and administer such
16 drugs and medical supplies intended to be filled, compounded,
17 or dispensed by a pharmacist.

18 "(23) ~~(22)~~ PROFESSIONAL DEGREE. A degree in pharmacy
19 requiring a minimum of five academic years.

20 "(24) ~~(23)~~ REPACKAGER. A person who purchases or
21 acquires from a manufacturer or distributor, a drug, medicine,
22 chemical, or poison for the purpose of bottling, labeling, or
23 otherwise repackaging for sale or distribution. This
24 definition shall not apply to a physician licensed to practice
25 medicine who as a part of his or her professional practice
26 dispenses, administers, sells, or otherwise distributes any
27 drug to a patient.

1 "(25) ~~(24)~~ SALE. Barter, exchange, or gift, or offer
2 of barter, exchange, or gift, and shall include each
3 transaction made by any person, whether a principal,
4 proprietor, agent, servant, or employee.

5 "(26) ~~(25)~~ WHOLESALE DRUG DISTRIBUTORS. A person
6 engaged in the business of distributing drugs and medicines
7 for resale to pharmacies, hospitals, practitioners, government
8 agencies, or other lawful outlets permitted to sell drugs or
9 medicines. The sale, purchase, or trade of a drug by a retail
10 pharmacy to another retail pharmacy or practitioner, for
11 relief of temporary shortages, is exempt from this definition.
12 Also exempt from this definition shall be (a) intracompany
13 sales, (b) manufacturer and distributor sales representatives
14 who distribute drug samples, (c) charitable organizations
15 distributing to nonprofit affiliates of that organization, (d)
16 certain purchases by hospitals or other health care entities
17 that are members of a group purchasing organization, and (e)
18 the distributors of blood and blood components."

19 "§34-23-30.

20 "(a) Every pharmacy, hospital pharmacy, drugstore,
21 pharmacy department, prescription department, prescription
22 laboratory, dispensary, apothecary, or any other establishment
23 with a title implying the sale, offering for sale,
24 compounding, or dispensing of drugs in this state, or any
25 person performing pharmacy services in this state, shall
26 register biennially and receive a permit from the Board of
27 Pharmacy. Any person desiring to open, operate, maintain, or

1 establish a pharmacy or perform pharmacy services in this
2 state shall apply to the board for a permit at least 30 days
3 prior to the opening of the business. No pharmacy or entity
4 performing pharmacy services shall open for the transaction of
5 business until it has been registered, inspected, and a permit
6 issued by the board. The application for a permit shall be
7 made on a form prescribed and furnished by the board which
8 when properly executed shall indicate the ownership desiring
9 such permit and the names and license numbers of all licensed
10 pharmacists employed as well as the location of the pharmacy
11 or entity where pharmacy services are performed and other
12 information as the board may require. If more than one
13 pharmacy or entity where pharmacy services are performed is
14 operated by the same owner, a separate application for
15 registration shall be made and a separate permit issued for
16 each such establishment. All permits issued under this section
17 shall become due on October 31 and shall become null and void
18 on December 31 of even-numbered years. Every application for a
19 permit for a new pharmacy or entity where pharmacy services
20 are performed shall be accompanied by a fee to be determined
21 by the board, but the fee shall not be less than one hundred
22 dollars (\$100) nor more than two hundred dollars (\$200). Every
23 application for a renewal permit shall be accompanied by a fee
24 to be determined by the board, but the fee shall not be less
25 than fifty dollars (\$50) nor more than one hundred fifty
26 dollars (\$150). Every application for a permit due to transfer
27 of ownership shall be accompanied by a fee to be determined by

1 the board, but the fee shall not be less than fifty dollars
2 (\$50) nor more than one hundred fifty dollars (\$150). Each
3 application for the renewal of a permit shall be made on or
4 before October 31 of each even-numbered year, at which time
5 the previous permit shall become null and void on December 31
6 of even-numbered years. A penalty of twenty-five dollars (\$25)
7 for each overdue month shall be assessed in addition to the
8 permit fee for renewal of delinquent permits. The secretary of
9 the board shall issue a permit for each pharmacy or entity
10 where pharmacy services are performed whose application is
11 found to be satisfactory by the board. Permits issued under
12 this section shall not be transferable. Any change in the
13 control of ownership or licensed pharmacists shall be reported
14 to the board in writing within 10 days of such occurrence. If
15 the pharmacy or entity where pharmacy services are performed
16 is owned by a corporation, the permit shall be issued in the
17 name of the corporation. It shall be the duty of the owners of
18 pharmacies or the owners of entities where pharmacy services
19 are performed who are not licensed pharmacists to immediately
20 notify the board upon the termination of employment of
21 licensed pharmacists and to cause the surrender of permits as
22 indicated. The further operation of the pharmacy or entity
23 where pharmacy services are performed in the absence of
24 licensed pharmacists is forbidden; provided, that the
25 nonregistered owner shall have a period of 30 days within
26 which to comply with this provision. The next of kin of any
27 deceased licensed pharmacist owner shall have a period of 30

1 days within which to comply with the provisions of this
2 chapter, during which time no prescriptions shall be filled
3 unless a licensed pharmacist is on duty. No mail order
4 pharmacy shall transact business in this state without a
5 permit from the board.

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

9 ~~Nothing contained in this section shall be~~
10 ~~interpreted to delegate to the board the authority to~~
11 ~~promulgate regulations governing pharmacy benefit managers.~~

12 Nothing contained in this section related to
13 pharmacy services permits shall be interpreted to delegate to
14 the board the authority to promulgate regulations governing
15 pharmacy benefit managers.

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

18 Section 2. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Boards, Agencies
and Commissions..... 23-FEB-12

Read for the second time and placed
on the calendar 1 amendment 01-MAR-12

Read for the third time and passed
as amended.....14-MAR-12

Yeas 91, Nays 0, Abstains 0

Greg Pappas
Clerk