

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1372

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Pharmacy

DATE: February 6, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AHS</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires an “Internet pharmacy” to receive a permit in order to sell medicinal drugs to persons in Florida. The bill requires any person who desires to operate an Internet pharmacy to apply to the Florida Department of Health for an Internet pharmacy permit. The bill defines “Internet pharmacy” and provides requirements for such pharmacies. A permit may not be issued to an “Internet pharmacy” unless a licensed pharmacist is designated as the prescription department manager for dispensing medicinal drugs to persons in Florida. The bill requires the Internet pharmacy and the pharmacist designated by that pharmacy to serve as prescription department manager or its equivalent to be licensed in the state of location in order to dispense drugs in Florida.

The bill makes a pharmacist subject to disciplinary action for dispensing any medicinal drug based upon a communication that purports to be a prescription when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship. A pharmacy is subject to disciplinary action for aiding and abetting the dispensing of any medicinal drug based upon a communication that purports to be a prescription when the pharmacy knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

The bill creates a criminal offense that prohibits an Internet pharmacy from distributing a medicinal drug to any person in Florida without being permitted as a pharmacy in Florida. A violation of this prohibition is a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000. The bill makes other minor technical changes to provisions that specify requirements for the issuance of special pharmacy permits by the Florida Department of Health to conform to an existing definition of “special pharmacy” in the pharmacy practice act.

The bill adds the newly created criminal offense that prohibits an “Internet pharmacy” from distributing a medicinal drug to any person in Florida without being permitted as a pharmacy in Florida to the racketeering provisions so that the offense may be prosecuted as racketeering in appropriate cases, thereby allowing harsher sentencing for the criminal conduct and the further use of civil racketeering sanctions.

The bill revises requirements for pharmacists to display the expiration date on the outside of the container of each medicinal drug dispensed. A pharmacist is given the option of providing the purchaser either the expiration date when provided by the manufacturer, repackager, or other distributor of the drug, or an earlier beyond-use date for expiration of up to 1 year from the date of dispensing. The dispensing pharmacist or practitioner must provide information concerning the expiration date to the purchaser upon request and must provide appropriate instructions regarding the proper use and storage of the drug.

The bill provides an additional condition under which a pharmacist is not prohibited from filling or refilling a valid prescription which is on file in a pharmacy located in Florida or in another state and that has been transferred from one pharmacy to another by any means, including electronic means. The additional condition under which a pharmacist may fill or refill a transferred prescription, for purposes of this section, includes a mail order pharmacy that uses a common database to perform automated prescription fulfillment functions. The pharmacy is authorized to process a prescription for a controlled substance using that common database to perform prescription fulfillment functions in compliance with federal law and regulation.

This bill amends sections 465.003, 465.0156, 465.016, 456.0196, 465.023, 465.0255, 465.026, and 895.02, Florida Statutes.

This bill creates ss. 465.0161 and 465.0197, F.S.

II. Present Situation:

Internet Pharmacies

An Internet pharmacy sells pharmaceutical products to consumers through its World Wide Web site. The number of prescription drug web sites has grown dramatically in recent years. Internet pharmacies have been described as fitting into one of three categories: (1) pharmacies that only dispense prescriptions that are written by a patient’s physician; (2) pharmacies that have the patient complete a cyber consultation for a fee and then write a prescription for the patient; and (3) pharmacies that dispense prescription drugs without a physician’s prescription.¹

The National Association of Boards of Pharmacies (NABP) considers the use of on-line consultation without a valid physician-patient relationship to be illegal and believes that no additional laws are needed to regulate internet pharmacies. In lieu of additional laws the NABP focuses on the need for existing state regulators to cooperate more fully to police Internet pharmacies. The NABP established the Verified Internet Pharmacy Practice Sites program, a voluntary, private certification program for Internet pharmacies, to assist the public in identifying

¹ See Rost, Kerry Toth, “Policing the ‘Wild West’ World of Internet Pharmacies,” 76 Chicago-Kent Law Review 1333 (2000).

properly licensed Internet pharmacies. To join the program a pharmacy must comply with licensing and inspection requirements of their state and each state to which they dispense drugs, and if there is a conflict between any state laws, the pharmacy agrees to comply with the more stringent law.

The Federal Trade Commission (FTC) has jurisdiction to take action against claims that constitute health fraud on the Internet. The FTC may take action against the owners of a web site for false or misleading claims regarding the safety or effectiveness of any pharmaceuticals offered, but does not make any effort to police the practice of medicine or pharmacy.

Pharmacy

Under ch. 465, F.S., the Florida Board of Pharmacy regulates the practice of pharmacy in Florida. "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, and a special pharmacy. "Community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. "Institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold. "Nuclear pharmacy" includes every location where radioactive drugs and chemicals with the classification of medicinal drugs are compounded, dispensed, stored or sold. "Special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in ch. 465, F.S.

Every pharmacy must receive a permit and each pharmacy is subject to disciplinary action for violations of applicable state or federal law relating to pharmacy.² Pharmacies are subject to inspection by the Department of Health. Any pharmacy that is located outside of Florida and that ships, mails, or delivers, in any manner, a dispensed medicinal drug into this state is considered a nonresident pharmacy, and must register with the Florida Board of Pharmacy and make specified disclosures to the board.³ Such disclosures include: the location, names, and titles of all principal corporate officers and the pharmacist who serves as the prescription department manager for dispensing medicinal drugs to Florida residents. Nonresident pharmacies require the pharmacist who serves as the prescription department manager of nonresident pharmacies to be licensed.⁴ Pharmacists and permitted pharmacies may be subject to disciplinary action for violating provisions of the pharmacy practice act.⁵

Section 465.015(3)(b), F.S., makes it unlawful for any person other than an owner of a registered pharmacy to display any sign or take any other action that would lead the public to believe that such person is engaged in the business of compounding, dispensing, or retailing any

² See ss. 465.018, 465.022, 465.196, and 465.023, F.S.

³ See s. 465.0156, F.S.

⁴ The Board of Pharmacy under s. 465.005, F.S., has rulemaking authority to adopt rules to implement duties conferred upon it by ch. 465. F.S. Rule 64B16-28.840(2), F.A.C., relating to nonresident pharmacies, appears to contravene s. 465.003(10) that defines "pharmacist" as a Florida-licensed pharmacist. The rule provides that "The pharmacy and the pharmacist designated as the prescription department manager or equivalent, for dispensing into Florida, must be licensed in the state of location."

⁵ See s. 465.016, F.S., for pharmacists, and s 465.023, F.S., for permitted pharmacies.

medicinal drugs. The violation of s. 465.015(3)(b), F.S., constitutes a first degree misdemeanor punishable by imprisonment for up to 1 year or a fine of up to \$1,000.

Section 465.0255, F.S., requires each pharmacist for a community pharmacy and each practitioner dispensing medicinal drugs on an outpatient basis to display on the outside of the container of each medicinal drug dispensed, or in other written form to the purchaser, the expiration date when provided by the manufacturer, repackager, or other distributor of the drug and appropriate instructions for proper use and storage of the drug. The Board of Pharmacy has adopted administrative rules requiring pharmacists to include along with other specified information to the purchaser on the label affixed to the container of dispensed non-controlled substances, an expiration date of the drug provided by the drug manufacturer, repackager, or distributor or an earlier expiration date when in the pharmacist's professional judgment such date is necessary for the safe use of the product.⁶ Section 465.026, F.S., specifies conditions under which a pharmacist is not prohibited from filling or refilling a valid prescription that is on file in a pharmacy located in Florida or in another state and that has been transferred from one pharmacy to another by any means, including electronic means.

Medicine and Osteopathic Medicine

The Board of Medicine regulates the practice of medicine in Florida.⁷ The Board of Osteopathic Medicine regulates the practice of osteopathic medicine in Florida.⁸ Each board has established standards for the physicians under that board for telemedicine practice. The Board of Osteopathic Medicine has adopted an administrative rule that provides that prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by reasonably prudent osteopathic physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of an osteopathic physician's professional practice. Such practice constitutes grounds for which an osteopathic physician may be disciplined.⁹

Except for emergencies, an osteopathic physician is prohibited from providing treatment recommendations, including a prescription, via electronic or other means unless: a documented patient evaluation is made, including history and physical examination, adequate to establish the diagnosis for which any drug is prescribed; sufficient dialogue has occurred between the physician and patient regarding treatment options and risks and benefits of treatment; and contemporaneous medical records have been maintained. "Emergency" situation means those situations in which the prescribing physician determines that immediate administration of the medication is necessary for the proper treatment of the patient, and that it is not reasonably possible for the prescribing physician to comply with the telemedicine rule before providing such prescription. The Board of Medicine has adopted a similar rule regarding standards of practice for telemedicine applicable to medical physicians.¹⁰

⁶ See Rule 64B16-28.402, F.A.C.

⁷ See ch. 458, F.S.

⁸ See ch. 459, F.S.

⁹ See Rule 64B15-14.008, Florida Administrative Code.

¹⁰ See Rule 64B8-9.014, F.A.C.

III. Effect of Proposed Changes:

Section 1. Amends s. 465.003, F.S., to define “Internet pharmacy” to include locations that are not otherwise defined in the definition of “pharmacy” in the pharmacy practice act where medicinal drugs are compounded, dispensed, or stored and subsequently sold primarily or exclusively to consumers over the Internet.

Section 2. Amends s. 465.0156, F.S., to provide that the registration requirements, applicable to any pharmacy that is located outside of Florida and that ships, mails, or delivers, in any manner, a dispensed medicinal drug into this state as a nonresident pharmacy, do not apply to permitted Internet pharmacies. The registered nonresident pharmacy and the pharmacist designated by that pharmacy to serve as prescription department manager or its equivalent are required to be licensed in the state of location in order to dispense drugs in Florida.

Section 3. Amends s. 465.016, F.S., to make a pharmacist subject to disciplinary action for dispensing any medicinal drug based upon a communication that purports to be a prescription when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

Section 4. Creates s. 465.0161, F.S., to establish a criminal offense that prohibits an Internet pharmacy from distributing a medicinal drug to any person in Florida without receiving a permit in Florida. A violation of this prohibition is a second degree felony punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

Section 5. Amends s. 465.0196, F.S., to make other minor technical changes to provisions that specify requirements for the issuance of special pharmacy permits by the Florida Department of Health to conform to an existing definition of “special pharmacy” in the pharmacy practice act.

Section 6. Creates s. 465.0197, F.S., to require any person who desires to operate an Internet pharmacy to apply to the Florida Department of Health for an Internet pharmacy permit. If the Florida Board of Pharmacy certifies that the Internet pharmacy permit application complies with the applicable laws and rules of the board governing the practice of the profession of pharmacy, the department must issue the permit. A permit may not be issued unless a licensed pharmacist is designated as the prescription department manager for dispensing medicinal drugs to persons in Florida. The licensed pharmacist must be responsible for maintaining all drug records and for providing for the security of the area in the facility in which the compounding, storing, and dispensing of medicinal drugs to persons in Florida occurs. The permitted Internet pharmacy must notify the Florida Department of Health within 30 days of any change of the licensed pharmacist responsible for maintaining all drug records and for providing for the security of the area in the facility in which the compounding, storing, and dispensing of medicinal drugs to persons in Florida occurs.

The bill requires an Internet pharmacy to provide pharmacy services at a high level of protection and competence. The Internet pharmacy must disclose to the Florida Board of Pharmacy the following information:

- That the Internet pharmacy maintains at all times a valid, unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which the dispensing facility is located and from which the medicinal drugs must be dispensed.
- The location, names, and titles of all principal corporate officers and the pharmacist who serves as the prescription department manager for dispensing medicinal drugs to persons in Florida. The disclosure must be made within 30 days after any change of location, principal corporate officer, or pharmacist serving as the prescription department manager for dispensing medicinal drugs to persons in Florida.
- That the Internet pharmacy complies with all lawful directions and requests for information from the regulatory or licensing agency of all states in which it is licensed as well as with all requests for information made by the Florida Board of Pharmacy. The Internet pharmacy must respond directly to all communications from the Florida Board of Pharmacy concerning emergency circumstances arising from errors in the dispensing of medicinal drugs to persons in Florida.
- That the Internet pharmacy maintains its records of medicinal drugs dispensed to patients in Florida so that the records are readily retrievable from the other business records of the pharmacy and from the records of other medicinal drugs dispensed.
- That during the Internet pharmacy's regular hours of operation but not less than 6 days per week, for a minimum of 40 hours per week, the pharmacy must provide a toll-free telephone service to facilitate communication between patients in Florida and a pharmacist at the pharmacy who has access to the patient's records. The Internet pharmacy must disclose this toll-free number on the label affixed to each container of dispensed medicinal drugs.

The bill requires the Internet pharmacy and the pharmacist designated by that pharmacy to serve as prescription department manager or its equivalent to be licensed in the state of location in order to dispense drugs in Florida.

Section 7. Amends s. 465.023, F.S., to make a pharmacy subject to disciplinary action for aiding and abetting the dispensing of any medicinal drug based upon a communication that purports to be a prescription when the pharmacy knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

Section 8. Amends s. 465.0255, F.S., to revise requirements for pharmacists to display the expiration date on the outside of the container of each medicinal drug dispensed. A pharmacist is given the option of providing the purchaser either the expiration date when provided by the manufacturer, repackager, or other distributor of the drug, or an earlier beyond-use date for expiration of up to 1 year from the date of dispensing. The dispensing pharmacist or practitioner must provide information concerning the expiration date to the purchaser upon request and must provide appropriate instructions regarding the proper use and storage of the drug.

Section 9. Amends s. 465.026, F.S., to provide an additional condition under which a pharmacist is not prohibited from filling or refilling a valid prescription which is on file in a pharmacy located in Florida or in another state and that has been transferred from one pharmacy to another

by any means, including electronic means. The additional condition under which a pharmacist may fill or refill a transferred prescription, for purposes of this section, includes a mail order pharmacy that uses a common database to perform automated prescription fulfillment functions. The pharmacy is authorized to process a prescription for a controlled substance using that common database to perform prescription fulfillment functions in compliance with federal law and regulation.

Section 10. Amends s. 895.02, F.S., to add the newly created criminal offense that prohibits an Internet pharmacy from distributing a medicinal drug to any person in Florida without receiving a permit as a pharmacy in Florida to the racketeering provisions so that the offense may be prosecuted as racketeering in appropriate cases, thereby allowing harsher sentencing for the criminal conduct and the further use of civil racketeering sanctions.

Section 11. Provides a July 1, 2004 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Internet pharmacies would have to pay the Department of Health a fee for a permit.

C. Government Sector Impact:

The Department of Health will incur costs to implement the requirements of the bill to regulate Internet pharmacies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Health reports that the definition of “Internet pharmacy” is vague and indicates that the department may face enforcement challenges because the definition: does not specify whether it includes locations within and outside of Florida; does not differentiate between pharmacies that solely or primarily use the Internet to communicate with patients and those permit holders that allow current patients to order refills over the Internet; and does not clearly designate that the activities contained within the definition comprise the practice of pharmacy according to s. 465.003(13), F.S. The Department of Health notes that an “Internet pharmacy” could be located in another jurisdiction or country, posing additional enforcement issues.

The bill provides an additional condition under which a pharmacist is not prohibited from filling or refilling a valid prescription which is on file in a pharmacy located in Florida or in another state and that has been transferred from one pharmacy to another by any means, including electronic means. It is unclear what constitutes an “automated prescription fulfillment function,” for purposes of the condition as used in the bill.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
