

By the Committee on Health, Aging, and Long-Term Care; and  
Senator Saunders

317-1737-04

1                                   A bill to be entitled  
2           An act relating to pharmacy; amending s.  
3           465.003, F.S.; defining the term "Internet  
4           pharmacy"; amending s. 465.0156, F.S.;  
5           exempting Internet pharmacies from registration  
6           requirements applicable to nonresident  
7           pharmacies; requiring the registered  
8           nonresident pharmacy and the pharmacist  
9           designated by that pharmacy to serve as the  
10          prescription department manager or its  
11          equivalent to be licensed in the state of  
12          location; amending s. 465.016, F.S.; providing  
13          for disciplinary action for dispensing a  
14          medicinal drug when the pharmacist knows or has  
15          reason to believe the prescription is not based  
16          on a valid practitioner-patient relationship;  
17          creating s. 465.0161, F.S.; prohibiting the  
18          distribution of medicinal drugs by an Internet  
19          pharmacy without a permit; providing penalties;  
20          amending s. 465.0196, F.S., relating to special  
21          pharmacy permits, to conform; creating s.  
22          465.0197, F.S.; requiring Internet pharmacies  
23          to be permitted and providing requirements  
24          therefor; requiring the Internet pharmacy and  
25          the pharmacist designated by that pharmacy to  
26          serve as the prescription department manager or  
27          its equivalent to be licensed in the state of  
28          location; amending s. 465.023, F.S.; providing  
29          an additional ground for which the Board of  
30          Pharmacy may take action against a permitted  
31          pharmacy; amending s. 465.0255, F.S.; revising

1 requirements for pharmacists to deliver  
2 specified disclosures to purchasers when  
3 dispensing a medicinal drug; amending s.  
4 465.026, F.S.; creating an exception to the  
5 requirements for filling or refilling a  
6 transferred prescription; amending s. 895.02,  
7 F.S.; including violation of s. 465.0161, F.S.,  
8 in the definition of the term "racketeering  
9 activity" for prosecution under ch. 895, F.S.;  
10 providing an effective date.

11

12 Be It Enacted by the Legislature of the State of Florida:

13

14 Section 1. Paragraph (a) of subsection (11) of section  
15 465.003, Florida Statutes, is amended to read:

16 465.003 Definitions.--As used in this chapter, the  
17 term:

18 (11)(a) "Pharmacy" includes a community pharmacy, an  
19 institutional pharmacy, a nuclear pharmacy, ~~and~~ a special  
20 pharmacy, and an Internet pharmacy.

21 1. The term "community pharmacy" includes every  
22 location where medicinal drugs are compounded, dispensed,  
23 stored, or sold or where prescriptions are filled or dispensed  
24 on an outpatient basis.

25 2. The term "institutional pharmacy" includes every  
26 location in a hospital, clinic, nursing home, dispensary,  
27 sanitarium, extended care facility, or other facility,  
28 hereinafter referred to as "health care institutions," where  
29 medicinal drugs are compounded, dispensed, stored, or sold.

30 3. The term "nuclear pharmacy" includes every location  
31 where radioactive drugs and chemicals within the

1 classification of medicinal drugs are compounded, dispensed,  
2 stored, or sold. The term "nuclear pharmacy" does not include  
3 hospitals licensed under chapter 395 or the nuclear medicine  
4 facilities of such hospitals.

5 4. The term "special pharmacy" includes every location  
6 where medicinal drugs are compounded, dispensed, stored, or  
7 sold if such locations are not otherwise defined in this  
8 subsection.

9 5. The term "Internet pharmacy" includes locations  
10 that are not otherwise defined in this subsection where  
11 medicinal drugs are compounded, dispensed, or stored and  
12 subsequently sold primarily or exclusively to consumers over  
13 the Internet.

14 Section 2. Subsections (7) and (8) are added to  
15 section 465.0156, Florida Statutes, to read:

16 465.0156 Registration of nonresident pharmacies.--

17 (7) This section does not apply to Internet pharmacies  
18 required to be permitted under s. 465.0197.

19 (8) Notwithstanding s. 465.003(10), for purposes of  
20 this section, the registered pharmacy and the pharmacist  
21 designated by the registered pharmacy as the prescription  
22 department manager or the equivalent must be licensed in the  
23 state of location in order to dispense into this state.

24 Section 3. Paragraph (s) is added to subsection (1) of  
25 section 465.016, Florida Statutes, to read:

26 465.016 Disciplinary actions.--

27 (1) The following acts constitute grounds for denial  
28 of a license or disciplinary action, as specified in s.  
29 456.072(2):

30 (s) Dispensing any medicinal drug based upon a  
31 communication that purports to be a prescription as defined by

1 s. 465.003(14) or s. 893.02(20) when the pharmacist knows or  
2 has reason to believe that the purported prescription is not  
3 based upon a valid practitioner-patient relationship.

4 Section 4. Section 465.0161, Florida Statutes, is  
5 created to read:

6 465.0161 Distribution of medicinal drugs without a  
7 permit.--An Internet pharmacy that distributes a medicinal  
8 drug to any person in this state without being permitted as a  
9 pharmacy under this chapter commits a felony of the second  
10 degree, punishable as provided in s. 775.082, s. 775.083, or  
11 s. 775.084.

12 Section 5. Section 465.0196, Florida Statutes, is  
13 amended to read:

14 465.0196 Special pharmacy permits.--Any person  
15 desiring a permit to operate a special pharmacy ~~which does not~~  
16 ~~fall within the definitions set forth in s. 465.003(11)(a)1.,~~  
17 ~~2., and 3.~~ shall apply to the department for a special  
18 pharmacy permit. If the board certifies that the application  
19 complies with the applicable laws and rules of the board  
20 governing the practice of the profession of pharmacy, the  
21 department shall issue the permit. No permit shall be issued  
22 unless a licensed pharmacist is designated to undertake the  
23 professional supervision of the compounding and dispensing of  
24 all drugs dispensed by the pharmacy. The licensed pharmacist  
25 shall be responsible for maintaining all drug records and for  
26 providing for the security of the area in the facility in  
27 which the compounding, storing, and dispensing of medicinal  
28 drugs occurs. The permittee shall notify the department within  
29 10 days of any change of the licensed pharmacist responsible  
30 for such duties. Every permittee that employs or otherwise  
31 utilizes pharmacy technicians shall have a written policy and

1 procedures manual specifying those duties, tasks, and  
2 functions which a pharmacy technician is allowed to perform.

3 Section 6. Section 465.0197, Florida Statutes, is  
4 created to read:

5 465.0197 Internet pharmacy permits.--

6 (1) Any person desiring a permit to operate an  
7 Internet pharmacy shall apply to the department for an  
8 Internet pharmacy permit. If the board certifies that the  
9 application complies with the applicable laws and rules of the  
10 board governing the practice of the profession of pharmacy,  
11 the department shall issue the permit. No permit shall be  
12 issued unless a licensed pharmacist is designated as the  
13 prescription department manager for dispensing medicinal drugs  
14 to persons in this state. The licensed pharmacist shall be  
15 responsible for maintaining all drug records and for providing  
16 for the security of the area in the facility in which the  
17 compounding, storing, and dispensing of medicinal drugs to  
18 persons in this state occurs. The permittee shall notify the  
19 department within 30 days of any change of the licensed  
20 pharmacist responsible for such duties. Every permittee that  
21 employs or otherwise utilizes pharmacy technicians shall have  
22 a written policy and procedures manual specifying those  
23 duties, tasks, and functions which a pharmacy technician is  
24 allowed to perform.

25 (2) An Internet pharmacy must be permitted under this  
26 section to sell medicinal drugs to persons in this state.

27 (3) An Internet pharmacy shall provide pharmacy  
28 services at a high level of protection and competence and  
29 shall disclose to the board the following specific  
30 information:

31

1       (a) That it maintains at all times a valid, unexpired  
2 license, permit, or registration to operate the pharmacy in  
3 compliance with the laws of the state in which the dispensing  
4 facility is located and from which the medicinal drugs shall  
5 be dispensed.

6       (b) The location, names, and titles of all principal  
7 corporate officers and the pharmacist who serves as the  
8 prescription department manager for dispensing medicinal drugs  
9 to persons in this state. This disclosure shall be made within  
10 30 days after any change of location, principal corporate  
11 officer, or pharmacist serving as the prescription department  
12 manager for dispensing medicinal drugs to persons in this  
13 state.

14       (c) That it complies with all lawful directions and  
15 requests for information from the regulatory or licensing  
16 agency of all states in which it is licensed as well as with  
17 all requests for information made by the board pursuant to  
18 this section. It shall respond directly to all communications  
19 from the board concerning emergency circumstances arising from  
20 errors in the dispensing of medicinal drugs to persons in this  
21 state.

22       (d) That it maintains its records of medicinal drugs  
23 dispensed to patients in this state so that the records are  
24 readily retrievable from the other business records of the  
25 pharmacy and from the records of other medicinal drugs  
26 dispensed.

27       (e) That during its regular hours of operation but not  
28 less than 6 days per week, for a minimum of 40 hours per week,  
29 a toll-free telephone service shall be provided to facilitate  
30 communication between patients in this state and a pharmacist  
31 at the pharmacy who has access to the patient's records. This

1 toll-free number must be disclosed on the label affixed to  
2 each container of dispensed medicinal drugs.

3 (4) Notwithstanding s. 465.003(10), for purposes of  
4 this section, the Internet pharmacy and the pharmacist  
5 designated by the Internet pharmacy as the prescription  
6 department manager or the equivalent must be licensed in the  
7 state of location in order to dispense into this state.

8 Section 7. Subsection (1) of section 465.023, Florida  
9 Statutes, is amended to read:

10 465.023 Pharmacy permittee; disciplinary action.--

11 (1) The department or the board may revoke or suspend  
12 the permit of any pharmacy permittee, and may fine, place on  
13 probation, or otherwise discipline any pharmacy permittee who  
14 has:

15 (a) Obtained a permit by misrepresentation or fraud or  
16 through an error of the department or the board;

17 (b) Attempted to procure, or has procured, a permit  
18 for any other person by making, or causing to be made, any  
19 false representation;

20 (c) Violated any of the requirements of this chapter  
21 or any of the rules of the Board of Pharmacy; of chapter 499,  
22 known as the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss.  
23 301-392, known as the "Federal Food, Drug, and Cosmetic Act";  
24 of 21 U.S.C. ss. 821 et seq., known as the Comprehensive Drug  
25 Abuse Prevention and Control Act; or of chapter 893; ~~or~~

26 (d) Been convicted or found guilty, regardless of  
27 adjudication, of a felony or any other crime involving moral  
28 turpitude in any of the courts of this state, of any other  
29 state, or of the United States; ~~or~~

30 (e) Aided or abetted in dispensing any medicinal drug  
31 based upon a communication that purports to be a prescription

1 as defined by s. 465.003(14) or s. 893.02(20) when the  
2 permittee knows or has reason to believe that the purported  
3 prescription is not based upon a valid practitioner-patient  
4 relationship.

5 Section 8. Section 465.0255, Florida Statutes, is  
6 amended to read:

7 465.0255 Expiration date of medicinal drugs; display;  
8 related use and storage instructions.--

9 (1) The manufacturer, repackager, or other distributor  
10 of any medicinal drug shall display the expiration date of  
11 each drug in a readable fashion on the container and on its  
12 packaging. The term "readable" means conspicuous and bold.

13 (2) Each pharmacist for a community pharmacy  
14 dispensing medicinal drugs and each practitioner dispensing  
15 medicinal drugs on an outpatient basis shall display on the  
16 outside of the container of each medicinal drug dispensed, or  
17 in other written form delivered to the purchaser:7

18 (a) The expiration date when provided by the  
19 manufacturer, repackager, or other distributor of the drug; or  
20 and

21 (b) An earlier beyond-use date for expiration, which  
22 may be up to 1 year after the date of dispensing.

23  
24 The dispensing pharmacist or practitioner must provide  
25 information concerning the expiration date to the purchaser  
26 upon request and must provide appropriate instructions  
27 regarding the proper use and storage of the drug.

28 (3) ~~Nothing in~~ This section does not ~~shall~~ impose  
29 liability on the dispensing pharmacist or practitioner for  
30 damages related to, or caused by, a medicinal drug that loses  
31



1 its effectiveness prior to the expiration date displayed by  
2 the dispensing pharmacist or practitioner.

3 ~~(4)~~(3) The provisions of this section are intended to  
4 notify the patient receiving a medicinal drug of the  
5 information required by this section, and the dispensing  
6 pharmacist or practitioner shall not be liable for the  
7 patient's failure to heed such notice or to follow the  
8 instructions for storage.

9 Section 9. Subsection (7) is added to section 465.026,  
10 Florida Statutes, to read:

11 465.026 Filling of certain prescriptions.--Nothing  
12 contained in this chapter shall be construed to prohibit a  
13 pharmacist licensed in this state from filling or refilling a  
14 valid prescription which is on file in a pharmacy located in  
15 this state or in another state and has been transferred from  
16 one pharmacy to another by any means, including any electronic  
17 means, under the following conditions:

18 (7) For purposes of this section, a mail order  
19 pharmacy that uses a common database to perform automated  
20 prescription fulfillment functions may process a prescription  
21 for a controlled substance using that common database to  
22 perform prescription fulfillment functions in compliance with  
23 federal law and regulation.

24 Section 10. Paragraph (a) of subsection (1) of section  
25 895.02, Florida Statutes, is amended to read:

26 895.02 Definitions.--As used in ss. 895.01-895.08, the  
27 term:

28 (1) "Racketeering activity" means to commit, to  
29 attempt to commit, to conspire to commit, or to solicit,  
30 coerce, or intimidate another person to commit:

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1 (a) Any crime which is chargeable by indictment or  
2 information under the following provisions of the Florida  
3 Statutes:

4 1. Section 210.18, relating to evasion of payment of  
5 cigarette taxes.

6 2. Section 403.727(3)(b), relating to environmental  
7 control.

8 ~~3.4.~~ Section 409.920, relating to Medicaid provider  
9 fraud.

10 ~~4.3.~~ Section 414.39, relating to public assistance  
11 fraud.

12 5. Section 440.105 or s. 440.106, relating to workers'  
13 compensation.

14 6. Section 465.0161, relating to distribution of  
15 medicinal drugs without a permit as an Internet pharmacy.

16 ~~7.6.~~ Sections 499.0051, 499.0052, 499.0053, 499.0054,  
17 and 499.0691, relating to crimes involving contraband and  
18 adulterated drugs.

19 ~~8.7.~~ Part IV of chapter 501, relating to  
20 telemarketing.

21 ~~9.8.~~ Chapter 517, relating to sale of securities and  
22 investor protection.

23 ~~10.9.~~ Section 550.235, s. 550.3551, or s. 550.3605,  
24 relating to dogracing and horseracing.

25 ~~11.10.~~ Chapter 550, relating to jai alai frontons.

26 ~~12.11.~~ Chapter 552, relating to the manufacture,  
27 distribution, and use of explosives.

28 ~~13.12.~~ Chapter 560, relating to money transmitters, if  
29 the violation is punishable as a felony.

30 ~~14.13.~~ Chapter 562, relating to beverage law  
31 enforcement.

1           ~~15.14.~~ Section 624.401, relating to transacting  
2 insurance without a certificate of authority, s.  
3 624.437(4)(c)1., relating to operating an unauthorized  
4 multiple-employer welfare arrangement, or s. 626.902(1)(b),  
5 relating to representing or aiding an unauthorized insurer.  
6           ~~16.15.~~ Section 655.50, relating to reports of currency  
7 transactions, when such violation is punishable as a felony.  
8           ~~17.16.~~ Chapter 687, relating to interest and usurious  
9 practices.  
10           ~~18.17.~~ Section 721.08, s. 721.09, or s. 721.13,  
11 relating to real estate timeshare plans.  
12           ~~19.18.~~ Chapter 782, relating to homicide.  
13           ~~20.19.~~ Chapter 784, relating to assault and battery.  
14           ~~21.20.~~ Chapter 787, relating to kidnapping.  
15           ~~22.21.~~ Chapter 790, relating to weapons and firearms.  
16           ~~23.22.~~ Section 796.03, s. 796.04, s. 796.05, or s.  
17 796.07, relating to prostitution.  
18           ~~24.23.~~ Chapter 806, relating to arson.  
19           ~~25.24.~~ Section 810.02(2)(c), relating to specified  
20 burglary of a dwelling or structure.  
21           ~~26.25.~~ Chapter 812, relating to theft, robbery, and  
22 related crimes.  
23           ~~27.26.~~ Chapter 815, relating to computer-related  
24 crimes.  
25           ~~28.27.~~ Chapter 817, relating to fraudulent practices,  
26 false pretenses, fraud generally, and credit card crimes.  
27           ~~29.28.~~ Chapter 825, relating to abuse, neglect, or  
28 exploitation of an elderly person or disabled adult.  
29           ~~30.29.~~ Section 827.071, relating to commercial sexual  
30 exploitation of children.  
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1           ~~31.30~~ Chapter 831, relating to forgery and  
2 counterfeiting.  
3           ~~32.31~~ Chapter 832, relating to issuance of worthless  
4 checks and drafts.  
5           ~~33.32~~ Section 836.05, relating to extortion.  
6           ~~34.33~~ Chapter 837, relating to perjury.  
7           ~~35.34~~ Chapter 838, relating to bribery and misuse of  
8 public office.  
9           ~~36.35~~ Chapter 843, relating to obstruction of  
10 justice.  
11           ~~37.36~~ Section 847.011, s. 847.012, s. 847.013, s.  
12 847.06, or s. 847.07, relating to obscene literature and  
13 profanity.  
14           ~~38.37~~ Section 849.09, s. 849.14, s. 849.15, s.  
15 849.23, or s. 849.25, relating to gambling.  
16           ~~39.38~~ Chapter 874, relating to criminal street gangs.  
17           ~~40.39~~ Chapter 893, relating to drug abuse prevention  
18 and control.  
19           ~~41.40~~ Chapter 896, relating to offenses related to  
20 financial transactions.  
21           ~~42.41~~ Sections 914.22 and 914.23, relating to  
22 tampering with a witness, victim, or informant, and  
23 retaliation against a witness, victim, or informant.  
24           ~~43.42~~ Sections 918.12 and 918.13, relating to  
25 tampering with jurors and evidence.  
26           Section 11. This act shall take effect July 1, 2004.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1372

The Committee Substitute revises grounds for which a pharmacy or pharmacist may be subject to discipline for dispensing a medication when there is reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship. Internet pharmacies and nonresident pharmacies and the pharmacist designated by that pharmacy as the prescription department manager are required to be licensed in the state of location in order to dispense drugs in Florida. The Committee Substitute revises requirements for pharmacists to display the expiration date on the outside of the container of each medicinal drug dispensed. The Committee Substitute 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.