

**ASSEMBLY, No. 3088**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 24, 2020

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Regulates Internet pharmacies and electronic prescriptions.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/24/2020)**

1 AN ACT concerning Internet pharmacies and electronic  
2 prescriptions, amending and supplementing P.L.2003, c.280  
3 (C.45:14-40 et seq.).  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 1. (New section) As used in this act:

9 "Board" means the New Jersey State Board of Pharmacy.

10 "Electronic prescription" means a prescription which is  
11 transmitted by a computer device in a secure manner, including  
12 computer to computer and computer to facsimile transmissions.

13 "Facsimile prescription" means a prescription which is  
14 transmitted by a device which sends an exact image to the receiver.

15 "Internet" means the international network of interconnected  
16 government, educational and commercial computer networks.

17 "Internet pharmacy" means a pharmacy located in the United  
18 States which maintains an Internet site for the purpose of soliciting  
19 and receiving prescription drug orders to be delivered to the patient  
20 by means of the United States Postal Service or other delivery  
21 service.

22 "New Jersey patient" means a person who resides in New Jersey  
23 and requests delivery of a prescription drug order to an address in  
24 New Jersey.

25 "Practitioner" means a duly licensed physician, dentist,  
26 optometrist, veterinarian, certified nurse midwife, advanced practice  
27 nurse or physician assistant, or other health care practitioner  
28 licensed or approved to write prescriptions.

29 "Prescription" or "prescription drug order" means any order for  
30 drugs and related items which meets the definition of "prescription"  
31 as that term is defined in section 2 of P.L.2003, c.280 (C.45:14-41)  
32 and includes a facsimile and electronic prescription.

33 "Prescription drug" means a drug the label of which bears a  
34 statement that it is to be dispensed only by or on the prescription of  
35 a person licensed to prescribe drugs, or words of similar or like  
36 import, or a drug that requires a prescription or order by an  
37 authorized prescriber in order to be dispensed.

38 "Professional judgment" means judiciousness and discretion  
39 based upon thorough knowledge and sound application of the  
40 specialized body of knowledge peculiar to the practice of pharmacy,  
41 and an understanding of the relationship of this knowledge and its  
42 application to the well-being of the patient and to the judgment of  
43 the prescriber.  
44

45 2. (New section) a. An Internet pharmacy shall not dispense  
46 or deliver prescription drugs to a New Jersey patient unless the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 pharmacy applies to the board and obtains a pharmacy permit to  
2 dispense and deliver prescription drugs in New Jersey in accordance  
3 with this act.

4 b. The provisions of this act shall not apply to an Internet  
5 pharmacy certified under the Verified Internet Pharmacy Practice  
6 Sites Certification Process of the National Association of Boards of  
7 Pharmacy, provided that the pharmacy has submitted a copy of its  
8 certification to the board.

9 c. The provisions of this act shall not apply to a pharmacy  
10 practice site located in this State to which a duly authorized permit  
11 has been issued by the board pursuant to N.J.A.C.13:39-4.16.

12

13 3. (New section) The board shall issue a permit to an Internet  
14 pharmacy that satisfactorily meets the following requirements:

15 a. has its corporate headquarters in the United States;

16 b. submits an application to the board on the form that the  
17 board requires;

18 c. submits a copy of the most recent inspection report resulting  
19 from an inspection conducted by the regulatory or licensing agency  
20 of the state in which the pharmacy is located;

21 d. provides certification that it is licensed and in good standing  
22 in the state in which it is located;

23 e. provides the names, titles and addresses of all principal  
24 corporate officers;

25 f. provides the names and addresses of all of its pharmacists  
26 and certification that the pharmacists are registered and in good  
27 standing in the state where they work;

28 g. provides all other information deemed necessary by the  
29 board to ensure that the Internet pharmacy is qualified to dispense  
30 or deliver prescription drugs to New Jersey patients; and

31 h. pays any necessary application and permit fees as are  
32 required by the board.

33 The permit shall be renewed annually in accordance with  
34 regulations adopted by the board.

35

36 4. (New section) An Internet pharmacy issued a permit in this  
37 State shall:

38 a. comply with the laws of the state in which it is located;

39 b. within 30 days after a change of office, corporate officer, or  
40 pharmacist, disclose to the board the location, names and titles of  
41 all principal corporate officers and all pharmacists who are  
42 dispensing prescriptions for drugs or devices for delivery into this  
43 State;

44 c. comply with all lawful directions and requests for  
45 information from the regulatory or licensing agency of the state in  
46 which the pharmacy is located and all requests made by the board  
47 pursuant to this section;

- 1 d. maintain at all times a valid, unexpired permit to operate a
- 2 pharmacy in compliance with the laws of the state in which it is
- 3 located;
- 4 e. ensure that all prescription drug orders for New Jersey
- 5 patients are filled by pharmacists licensed and in good standing in
- 6 the state where the prescription is filled;
- 7 f. maintain in readily-retrievable form the records of New
- 8 Jersey patients;
- 9 g. provide a toll-free telephone number for consultations
- 10 between New Jersey patients and a licensed pharmacist who has
- 11 ready access to the patient's records. The toll-free telephone
- 12 number must be answered during normal business hours for a
- 13 minimum of 48 hours, six days per week. The toll-free telephone
- 14 number must be on the label of every prescription drug delivered to
- 15 New Jersey and prominently displayed on the pharmacy's Internet
- 16 site;
- 17 h. comply with the laws of this State relating to the
- 18 confidentiality of prescription records if there are no laws relating
- 19 to the confidentiality of prescription records in the state in which
- 20 the Internet pharmacy is located; and
- 21 i. dispense drugs for delivery into this State pursuant to a
- 22 prescription electronically transmitted only if the transmission is an
- 23 electronic prescription or facsimile prescription conforming to the
- 24 requirements of the board.
- 25
- 26 5. (New section) An Internet pharmacy issued a permit in this
- 27 State shall not:
- 28 a. disclaim, limit or waive any liability to which a retail
- 29 pharmacy in New Jersey is subject;
- 30 b. disclaim, limit or waive the jurisdiction of the courts of the
- 31 State of New Jersey; or
- 32 c. disclaim, limit or waive the application of the laws of the
- 33 State of New Jersey.
- 34 Any disclaimer, limitation or waiver in violation of this section
- 35 is void.
- 36
- 37 6. (New section) The following are violations of this act:
- 38 a. Dispensing, or arranging for the dispensing of a prescription
- 39 drug to a consumer unless the person or business that packages,
- 40 delivers, or otherwise furnishes the drug for use by the consumer:
- 41 (1) has a valid pharmacy license issued by the board; or
- 42 (2) is a health care professional acting within the scope of his
- 43 license within this State.
- 44 b. Soliciting, assisting or enabling consumers to obtain a
- 45 prescription via the Internet without a bona-fide existing
- 46 practitioner-patient relationship. For purposes of this section, a
- 47 bona-fide existing practitioner-patient relationship means:

1 the practitioner has conducted an examination, which shall be  
2 appropriately documented in the patient record. As part of the  
3 patient examination, the practitioner shall:

4 (1) perform an appropriate history and physical examination;

5 (2) make a diagnosis based upon the examination and all  
6 diagnostic and laboratory tests consistent with good medical care;

7 (3) formulate a therapeutic plan and discuss that plan, along  
8 with the basis for the plan and the risks and benefits of various  
9 treatment options, with the patient; and

10 (4) ensure the availability of the physician or coverage for the  
11 patient for appropriate follow-up care.

12  
13 7. (New section) a. A violation of this act is an unfair or  
14 deceptive trade practice in this State. Persons or businesses  
15 violating this act shall be subject to a civil penalty of \$25,000 for  
16 each occurrence and a pharmacist is subject to a civil penalty of  
17 \$5,000 for each occurrence. The Attorney General may bring an  
18 action in accordance with the "Penalty Enforcement Law of 1999,"  
19 P.L.1999, c.274 (C.2A:58-10 et seq.), to enforce this section and to  
20 collect the civil penalties authorized herein.

21 In addition to such other penalties as may apply, a consumer  
22 aggrieved by violation of this act may:

23 (1) obtain an injunction or such equitable relief as the court may  
24 find to be appropriate; and

25 (2) obtain liquidated damages of \$10,000 per violation, in  
26 addition to court costs, attorney fees, and the reasonable costs of  
27 litigation.

28 In addition to such penalties as may apply, a consumer who is  
29 injured by a prescription drug purchased through the Internet may  
30 bring an action for compensatory damages against a person who  
31 violated this act with respect to the purchase of that prescription  
32 drug by the consumer. Attorneys fees, court costs, and reasonable  
33 costs of litigation may be awarded by the court.

34 b. A violation of any of the provisions of this act shall be  
35 grounds for revoking or refusing to issue a permit to an Internet  
36 pharmacy as provided in this act.

37 c. Nothing in this act shall be construed to prevent or limit the  
38 board, the Director of the Division of Consumer Affairs in the  
39 Department of Law and Public Safety or the Attorney General from  
40 taking any other action permitted by law against an Internet  
41 pharmacy.

42 d. Nothing in this act shall be construed to prevent or limit the  
43 board from taking any action permitted by law against a person,  
44 other than a pharmacy, violating the provisions of this act for aiding  
45 and abetting the unlawful practice of pharmacy.

46  
47 8. (New section) Whenever a pharmacist has reason to  
48 question the validity of an electronic prescription or a facsimile

1 prescription for a New Jersey patient, the pharmacist shall verify  
2 the prescription directly with the prescribing practitioner. The  
3 pharmacist shall refuse to fill a prescription if, in his professional  
4 judgment:

- 5 a. the prescription is outside the scope of practice of the license
- 6 of the prescriber;
- 7 b. the pharmacist has sufficient reason to question the validity
- 8 of the prescription; or
- 9 c. refusal to fill the prescription is necessary to protect the
- 10 health and welfare of the patient.

11  
12 9. (New section) No Internet pharmacy acting pursuant to a  
13 permit issued under this act shall fill a prescription for any schedule  
14 II, III, IV or V controlled dangerous substances in any manner other  
15 than in writing signed by the practitioner.

16  
17 10. Section 34 of P.L.2003, c.280 (C.45:14-73) is amended to  
18 read as follows:

19 34. Any pharmacy located in another state, other than a  
20 pharmacy that is solely an Internet pharmacy, which ships, mails,  
21 distributes or delivers in any manner, legend drugs or devices  
22 pursuant to a prescription into this State, shall register with the  
23 board and provide the board with the following information:

24 (1) The location, names and titles of all principal corporate  
25 officers of the pharmacy. A report containing this information shall  
26 be made on an annual basis and within 30 days after any change of  
27 office or corporate officer; and

28 (2) That it complies with all lawful directions and requests for  
29 information from the regulatory or licensing agency of the state in  
30 which it is licensed as well as with all requests for information  
31 made by the board pursuant to this section. As a prerequisite to  
32 registering with the board, the pharmacy shall submit a copy of the  
33 most recent inspection report resulting from an inspection  
34 conducted by the regulatory or licensing agency of the state in  
35 which it is located.

36 The annual registration fee shall be established by the board and  
37 shall not exceed \$500 annually.

38 Any pharmacy subject to this section shall, during its regular  
39 hours of operation, but not less than six days per week, and for a  
40 minimum of 40 hours per week, provide a toll-free telephone  
41 service to facilitate communication between patients in this State  
42 and **[a]** pharmacists at a pharmacy who **[has]** have access to the  
43 patient's records. This toll-free number shall be disclosed on a label  
44 affixed to each container of drugs dispensed to patients in this State.  
45 (cf: P.L.2003, c.280, s.34)

46  
47 11. (New section) The New Jersey State Board of Pharmacy, in  
48 consultation with the State Board of Medical Examiners, shall

1 promulgate, in accordance with the "Administrative Procedure Act,"  
2 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as  
3 may be necessary to effectuate the purposes of this act.  
4

5 12. This act shall take effect on the 180th day after enactment;  
6 however, the board may take such action in advance as shall be  
7 necessary for the implementation of the act.  
8  
9

#### 10 STATEMENT

11

12 This bill regulates Internet pharmacies which dispense or deliver  
13 prescription drugs to patients living in New Jersey.

14 Under its provisions, Internet pharmacies are required to obtain a  
15 pharmacy permit from the New Jersey State Board of Pharmacy  
16 prior to dispensing or delivering prescription drugs in New Jersey  
17 and to provide the board with certain information, as specified in  
18 the bill, to qualify for the permit. An Internet pharmacy must have  
19 its corporate headquarters in the United States to receive a permit  
20 under the bill's provisions.

21 The bill prohibits Internet pharmacies from disclaiming: any  
22 liability to which a retail pharmacy in New Jersey is subject;  
23 jurisdiction of the courts of New Jersey; or application of the laws  
24 of the State of New Jersey.

25 Before dispensing or delivering prescription drugs in accordance  
26 with an electronic prescription, the bill requires an Internet  
27 pharmacy or pharmacist to have a valid pharmacy license issued by  
28 the board or be a health care professional acting within the scope of  
29 his or her license within this State. It is a violation of this bill for  
30 any person to solicit, assist, or enable consumers to obtain a  
31 prescription via the Internet without a bona-fide existing  
32 practitioner-patient relationship.

33 As provided by the bill, a bona-fide existing practitioner-patient  
34 relationship means the practitioner has conducted an examination,  
35 appropriately documented in the patient record. As part of this  
36 examination, the practitioner is required to:

- 37 (1) perform an appropriate history and physical examination;
- 38 (2) make a diagnosis based upon the examination and all  
39 diagnostic and laboratory tests consistent with good medical care;
- 40 (3) formulate a therapeutic plan and discuss that plan, along  
41 with the basis for the plan and the risks and benefits of various  
42 treatment options, with the patient; and
- 43 (4) ensure the availability of the physician or coverage for the  
44 patient for appropriate follow-up care.

45 Violations of the bill may result in a civil penalty of \$25,000 for  
46 each occurrence by a pharmacy and \$5,000 for each occurrence by a  
47 pharmacist. Consumers aggrieved by a violation of the bill may  
48 obtain equitable relief and liquidated damages of \$10,000 for each

1 violation. Additionally, consumers injured by a prescription drug  
2 purchased through the Internet may recover compensatory damages.  
3 A permit issued pursuant to the bill may be revoked as a result of a  
4 violation as well.

5 The bill requires pharmacists with reason to question the validity  
6 of an electronic or facsimile prescription to verify the prescription  
7 with the prescribing practitioner and to refuse to fill any  
8 prescription which, in his or her professional judgment, is beyond  
9 the scope of practice of the license of the prescriber, is of  
10 questionable validity, or is necessary to protect the health and  
11 welfare of the patient.

12 An Internet pharmacy certified under the Verified Internet  
13 Pharmacy Practice Sites Certification Process of the National  
14 Association of Boards of Pharmacy is exempted from the bill's  
15 provisions, provided that it has submitted a copy of its certification  
16 to the board. Also exempt from the bill's provisions are pharmacy  
17 practice sites to which a duly authorized permit has been issued by  
18 the board pursuant to N.J.A.C.13:39-4.16.

19 Under the provisions of the bill, an Internet pharmacy acting  
20 pursuant to a permit issued under the bill is prohibited from filling a  
21 prescription for any schedule II, III, IV or V controlled dangerous  
22 substances in any manner other than in writing signed by the  
23 practitioner.

24 In addition, the bill authorizes the New Jersey State Board of  
25 Pharmacy, in consultation with the State Board of Medical  
26 Examiners, to promulgate rules and regulations necessary to  
27 effectuate the purposes of this act.