

Senate Bill 517

Sponsored by Senator MORRISETTE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires pharmacies to confirm that patient has valid prescription before causing prescription drug ordered through online pharmacy to be dispensed. Punishes violation by maximum of five years' imprisonment, \$125,000 fine, or both.

Requires pharmacies to provide certain information to State Board of Pharmacy when causing prescription drug ordered through online pharmacy to be dispensed. Punishes violation by maximum of one year's imprisonment, \$6,250 fine, or both.

Requires pharmacies that deliver prescription drugs ordered through online pharmacies to comply with laws of states to which drugs are delivered.

Requires online pharmacies to post certain information on websites.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to pharmacies; creating new provisions; amending ORS 689.005; and declaring an emer-
3 gency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 689.005 is amended to read:

6 689.005. As used in this chapter:

7 (1) "Administer" means the direct application of a drug or device whether by injection,
8 inhalation, ingestion, or any other means, to the body of a patient or research subject by:

9 (a) A practitioner or the authorized agent thereof; or

10 (b) The patient or research subject at the direction of the practitioner.

11 (2) "Approved continuing pharmacy education program" means those seminars, classes,
12 meetings, workshops and other educational programs on the subject of pharmacy approved by the
13 board.

14 (3) "Board of pharmacy" or "board" means the State Board of Pharmacy.

15 (4) "Continuing pharmacy education" means professional, pharmaceutical post-graduate educa-
16 tion in the general areas of socio-economic and legal aspects of health care; the properties and
17 actions of drugs and dosage forms; and the etiology, characteristics and therapeutics of the disease
18 state.

19 (5) "Continuing pharmacy education unit" means the unit of measurement of credits for ap-
20 proved continuing education courses and programs.

21 (6) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or
22 device other than by administration from one person to another, whether or not for a consideration.

23 (7) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro
24 reagent or other similar or related article, including any component part or accessory, which is re-
25 quired under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

26 (8) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pur-
27 suant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 administration to or use by a patient or other individual entitled to receive the prescription drug.

2 (9) "Distribute" means the delivery of a drug other than by administering or dispensing.

3 (10) "Drug" means:

4 (a) Articles recognized as drugs in the official United States Pharmacopoeia, official National
5 Formulary, official Homeopathic Pharmacopoeia, other drug compendium or any supplement to any
6 of them;

7 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of dis-
8 ease in a human or other animal;

9 (c) Articles (other than food) intended to affect the structure or any function of the body of
10 humans or other animals; and

11 (d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c)
12 of this subsection.

13 (11) "Drug order" means a written order, in a hospital or other inpatient care facility, for an
14 ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by
15 other means of communication from a practitioner, that is immediately reduced to writing by a
16 pharmacist, licensed nurse or other practitioner.

17 (12) "Drug outlet" means any pharmacy, nursing home, shelter home, convalescent home, ex-
18 tended care facility, drug abuse treatment center, penal institution, hospital, family planning clinic,
19 student health center, retail store, wholesaler, manufacturer, mail-order vendor or other establish-
20 ment with facilities located within or out of this state that is engaged in dispensing, delivery or
21 distribution of drugs within this state.

22 (13) "Drug room" means a secure and lockable location within an inpatient care facility that
23 does not have a licensed pharmacy.

24 (14) "Electronically transmitted" or "electronic transmission" means a communication sent or
25 received through technological apparatuses, including computer terminals or other equipment or
26 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,
27 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

28 (15) "Institutional drug outlet" means hospitals and inpatient care facilities where medications
29 are dispensed to another health care professional for administration to patients served by the hos-
30 pitals or facilities.

31 (16) "Intern" means any person who has completed the junior or third academic year of a course
32 of study at an approved college of pharmacy and is licensed with the board as an intern.

33 (17) "Internship" means a professional and practical experience program approved by the board
34 under the supervision of a licensed pharmacist registered with the board as a preceptor.

35 (18) "Itinerant vendor" means all persons who sell or otherwise distribute nonprescription drugs
36 by passing from house to house, or by haranguing the people on the public streets or in public
37 places, or who use the customary devices for attracting crowds and therewith recommending their
38 wares and offering them for sale.

39 (19) "Labeling" means the process of preparing and affixing of a label to any drug container
40 exclusive, however, of the labeling by a manufacturer, packer or distributor of a nonprescription
41 drug or commercially packaged legend drug or device. Any such label shall include all information
42 required by federal and state law or regulation.

43 (20) "Manufacture" means the production, preparation, propagation, compounding, conversion
44 or processing of a device or a drug, either directly or indirectly by extraction from substances of
45 natural origin or independently by means of chemical synthesis or by a combination of extraction

1 and chemical synthesis and includes any packaging or repackaging of the substances or labeling or
 2 relabeling of its container, except that this term does not include the preparation or compounding
 3 of a drug by an individual for their own use or the preparation, compounding, packaging or labeling
 4 of a drug:

5 (a) By a practitioner as an incident to administering or dispensing of a drug in the course of
 6 professional practice; or

7 (b) By a practitioner or by the practitioner's authorization under supervision of the practitioner
 8 for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

9 (21) "Manufacturer" means a person engaged in the manufacture of drugs.

10 (22) "Nonprescription drug outlet" means shopkeepers and itinerant vendors registered under
 11 ORS 689.305.

12 (23) "Nonprescription drugs" means drugs which may be sold without a prescription and which
 13 are prepackaged for use by the consumer and labeled in accordance with the requirements of the
 14 statutes and regulations of this state and the federal government.

15 **(24) "Online pharmacy" means a pharmacy that takes orders for prescription drugs**
 16 **through:**

17 **(a) An interactive website; or**

18 **(b) An electronic mail address.**

19 [(24)] **(25)** "Person" means an individual, corporation, partnership, association or any other legal
 20 entity.

21 [(25)] **(26)** "Pharmacist" means an individual licensed by this state to engage in the practice of
 22 pharmacy.

23 [(26)] **(27)** "Pharmacy" means a place that meets the requirements of rules of the board, is li-
 24 censed and approved by the board where the practice of pharmacy may lawfully occur and includes
 25 apothecaries, drug stores, dispensaries, hospital outpatient pharmacies, pharmacy departments and
 26 prescription laboratories but does not include a place used by a manufacturer or wholesaler.

27 [(27)] **(28)** "Pharmacy technician" means a person licensed by the State Board of Pharmacy who
 28 assists the pharmacist in the practice of pharmacy pursuant to rules of the board.

29 [(28)] **(29)** "Practitioner" means a person licensed and operating within the scope of such license
 30 to prescribe, dispense, conduct research with respect to or administer drugs in the course of pro-
 31 fessional practice or research:

32 (a) In this state; or

33 (b) In another state or territory of the United States, **if the person is** not residing in Oregon
 34 **and is** registered under the federal Controlled Substances Act.

35 [(29)] **(30)** "Preceptor" means a pharmacist licensed and in good standing, registered by the
 36 board to supervise the internship training of a licensed intern.

37 [(30)] **(31)** "Prescription drug" or "legend drug" means a drug which is:

38 (a) Required by federal law, prior to being dispensed or delivered, to be labeled with either of
 39 the following statements:

40 (A) "Caution: Federal law prohibits dispensing without prescription"; or

41 (B) "Caution: Federal law restricts this drug to use by or on the order of a licensed
 42 veterinarian"; or

43 (b) Required by any applicable federal or state law or regulation to be dispensed on prescription
 44 only or is restricted to use by practitioners only.

45 [(31)] **(32)** "Prescription" or "prescription drug order" means a written, oral or electronically

1 transmitted direction, given by a practitioner authorized to prescribe drugs, for the preparation and
 2 use of a drug. When the context requires, “prescription” also means the drug prepared under such
 3 written, oral or electronically transmitted direction.

4 [(32)] **(33)** “Retail drug outlet” means a place used for the conduct of the retail sale, adminis-
 5 tering or dispensing or compounding of drugs or chemicals or for the administering or dispensing
 6 of prescriptions and licensed by the board as a place wherein the practice of pharmacy may lawfully
 7 occur.

8 [(33)] **(34)** “Shopkeeper” means a business or other establishment, open to the general public, for
 9 the sale or nonprofit distribution of drugs.

10 **(35) “Telemedicine” means the practice of medicine by a practitioner, other than a**
 11 **pharmacist, who is not in the physical presence of the patient and who is communicating**
 12 **with the patient, or with the practitioner who is treating the patient, using a telecommuni-**
 13 **cations system:**

14 **(a) While the patient is being treated at and is physically located in a hospital or clinic**
 15 **registered under the federal Controlled Substances Act;**

16 **(b) While the patient is in the physical presence of a second practitioner who is acting**
 17 **in the course of professional practice;**

18 **(c) While acting as an employee or contractor of the Indian Health Service, or while**
 19 **working for an Indian tribe or tribal organization under its contract or compact with the**
 20 **Indian Health Service under the Indian Self-Determination and Education Assistance Act (25**
 21 **U.S.C. 450 et seq.), and acting within the scope of the employment, contract or compact;**

22 **(d) During a public health emergency declared under 42 U.S.C. 247d, when the patient is**
 23 **affected by the public health emergency;**

24 **(e) In a medical emergency situation if the practitioner:**

25 **(A) Reasonably believes that the emergency requires immediate intervention by a prac-**
 26 **titioner using prescription drugs to prevent imminent and serious clinical consequences; and**

27 **(B) Issues a prescription for no more than five-day supply that may not be extended or**
 28 **refilled; or**

29 **(f) Under other circumstances that the board by rule has determined to be consistent**
 30 **with effective controls against unlawful diversion of drugs and with the public health and**
 31 **safety.**

32 [(34)] **(36)** “Unit dose” means a sealed single-unit container so designed that the contents are
 33 administered to the patient as a single dose, direct from the container. Each unit dose container
 34 must bear a separate label, be labeled with the name and strength of the medication, the name of
 35 the manufacturer or distributor, an identifying lot number and, if applicable, the expiration date of
 36 the medication.

37 [(35)] **(37)** “Wholesale drug outlet” means any person who imports, stores, distributes or sells for
 38 resale any drugs including legend drugs and nonprescription drugs.

39 [(36)] *“Class I wholesaler” means any person operating or maintaining a wholesale distribution*
 40 *center, wholesale business or any other business in which drugs, medicinal chemicals, or poisons are*
 41 *sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally li-*
 42 *censed drug outlets or persons.]*

43 [(37)] *“Class II wholesaler” means any person operating or maintaining a wholesale distribution*
 44 *center, wholesale business or any other business in which nonprescription drugs are offered for sale*
 45 *at wholesale to a drug outlet legally authorized to resell.]*

1 **SECTION 2.** Sections 3 to 6 of this 2009 Act are added to and made a part of ORS chapter
2 **689.**

3 **SECTION 3.** (1) A pharmacy may not cause a prescription drug ordered through an online
4 pharmacy to be delivered, distributed or dispensed to a person in this state without first
5 confirming that the practitioner who wrote the prescription performed an in-person exam-
6 ination of the person or was practicing telemedicine when the practitioner wrote the pre-
7 scription.

8 (2) Violation of subsection (1) of this section is a Class C felony.

9 **SECTION 4.** (1) A pharmacy may not cause a prescription drug ordered through an online
10 pharmacy to be delivered, distributed or dispensed to a person in this state unless the
11 pharmacy has, at least 30 days before causing the prescription drug to be delivered, distrib-
12 uted or dispensed, provided the State Board of Pharmacy with the following information in
13 the form and manner prescribed by the board by rule:

14 (a) The name, address, board license number and Drug Enforcement Administration
15 registration number of the dispensing pharmacy;

16 (b) The name, address, board license number, Drug Enforcement Administration regis-
17 tration number, telephone number and electronic mail address of the online pharmacy;

18 (c) The domain names used by the online pharmacy, including any domain names to
19 which an Internet user is directed or redirected from the online pharmacy website for the
20 purpose of ordering or paying for a prescription;

21 (d) The domain name registrar for each domain name used by the online pharmacy;

22 (e) The registrant of each domain name used by the online pharmacy; and

23 (f) Other information that the board may require by rule.

24 (2) An online pharmacy that provides inaccurate or incomplete information to the domain
25 name registrar or whose domain name registration information is anonymous does not
26 comply with the requirements of subsection (1) of this section.

27 (3) Violation of subsection (1) of this section is a Class A misdemeanor.

28 **SECTION 5.** A pharmacy that delivers, distributes or dispenses a prescription drug or-
29 dered through an online pharmacy shall comply with the requirements of state law con-
30 cerning the licensure and conduct of pharmacies in each state to which it delivers,
31 distributes or dispenses prescription drugs.

32 **SECTION 6.** An online pharmacy that takes orders for prescription drugs for delivery in
33 this state shall post in a conspicuous manner on the home page of its website and in its
34 electronic mail the following information for each pharmacy that delivers, distributes or
35 dispenses prescription drugs ordered through the online pharmacy:

36 (1) The name, address, telephone number and electronic mail address of the dispensing
37 pharmacy;

38 (2) The name, professional degree and states of licensure of the pharmacist in charge of
39 the dispensing pharmacy; and

40 (3) A list of the states in which the dispensing pharmacy is licensed to dispense pre-
41 scription drugs.

42 **SECTION 7.** Section 4 of this 2009 Act becomes operative 60 days after the effective date
43 of this 2009 Act.

44 **SECTION 8.** The State Board of Pharmacy may take any action before the operative date
45 of section 4 of this 2009 Act that is necessary to enable the board to exercise, on and after

1 the operative date of section 4 of this 2009 Act, all the duties, functions and powers conferred
2 on the board by section 4 of this 2009 Act.

3 SECTION 9. This 2009 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
5 on its passage.
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