

HOUSE No. 2091

The Commonwealth of Massachusetts

PRESENTED BY:
Peter J. Koutoujian

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act relating to internet prescription consumer protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	10th Middlesex
Robert A. O'Leary	Cape and Islands
Lori Ehrlich	8th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2160 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

AN ACT RELATING TO INTERNET PRESCRIPTION CONSUMER PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. This act may be known and cited as “The Massachusetts Internet Prescription Consumer Protection Act.”

SECTION 2. The purpose of this act is to require Internet pharmacies to make certain disclosures on their web sites, to list the principals, pharmacists, and physicians associated with the site, and to include amending licensing requirements for pharmacists and physicians to address prescribing and dispensing medication via the Internet.

SECTION 3. Chapter 112 of the Massachusetts General Laws as appearing in the 2006 Official Edition is hereby amended by adding after Section 39C, the following section:—

Section 39D. (1) “Deliver” means the actual, constructive, or attempted transfer from one (1) person to another of any drug whether or not an agency relationship exists;

(2) “Dispense” means to deliver prescription medication to the ultimate user or research subject pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner;

(3) “Distribute” means to deliver, other than by administering or dispensing, any drug;

(4) “Electronic mail” means any message transmitted through the international network of interconnected government, educational, and commercial computer networks, including but not limited to messages transmitted from or to any address affiliated with an Internet site;

(5) “Foreign entity” means any corporation, limited liability company, or other body corporate if organized under the law of any jurisdiction other than the Commonwealth of Massachusetts;

(6) “Internet site” means a specific location on the international network of interconnected government, educational, and commercial computer networks that is determined by Internet protocol numbers, by a domain name, or by both, including but not limited to domain names that use the designations “.com”, “.edu”, “.gov”, “.org”, and “.net”;

(7) “Person” means any individual, corporation, partnership, limited liability company, limited liability partnership, limited partnership, association, joint venture, or any other legal or commercial entity, whether foreign or domestic;

(8) “Pharmacist” means any natural person licensed under this act to practice pharmacy;

(9) “Pharmacy”, “drug store” or “apothecary” means premises, laboratory, area or other place:

(a) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed;

(b) Which has displayed upon it or within it the words pharmacist, pharmaceutical chemist, pharmacy, apothecary, drugstore, druggist, drugs, drug sundries, or any of these words or combination of these words; or

(c) Where the characteristic symbols of pharmacy or the characteristic prescription sign “Rx” may be exhibited;

(10) “Practitioner” means a person licensed to practice medicine and surgery, dentistry, podiatry, veterinary medicine, optometry licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug;

(11) “Premises” mean the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued;

(12)(a) “Prescription-only drug” means any drug whether intended for use by man or animal, required by federal or state law to be dispensed only pursuant to a written or oral prescription, order of a practitioner, or is restricted to use by practitioners only. (b) “Prescription-only drug” does not mean contact lenses; and

(13) “Prescription order” means: (a) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (b) an order transmitted to a pharmacist through word of mouth, note, telephone, or other means of communication directed by the practitioner or mid-level practitioner.

SECTION 4. (A) A pharmacy shall not sell, dispense, distribute, deliver, or participate in the sale, dispensing, distribution, or delivery of any prescription-only drug to any consumer in this state through an Internet site or by electronic mail unless:

(1) All Internet sites and electronic mail used by the person for purposes of sales or delivery of a prescription-only drug are in compliance with all requirements of federal law applicable to the site or electronic mail;

(2)(a) The pharmacy that sells, dispenses, distributes, or delivers the prescription-only drug, is in compliance with all requirements of relevant state law, and (b) the pharmacy shall be properly regulated by the Massachusetts Board of Registration in Pharmacy to engage in the practice of pharmacy and shall determine annually, the annual licensing fee.

(3)(a) the pharmacy, if a foreign entity, is registered with the Secretary of State and is in compliance with all requirements for foreign corporations provided in any applicable state law, and (b) nothing in this subdivision (a)(3) shall be construed to authorize any corporation to engage in the practice of medicine contrary to any applicable Massachusetts law; and

(4) Any practitioner who sells, dispenses, distributes, or delivers the prescription-only drug is in compliance with all requirements of relevant state law.

(B) Any practitioner who writes a prescription order through an Internet site or electronic mail for a consumer physically located in this state that is not an established patient, shall be licensed by the applicable licensing board and in compliance with all applicable laws.

SECTION 5. No pharmacy shall sell, dispense, distribute, deliver, or participate in the sale, dispensing, distribution, or delivery of any prescription-only drug to any consumer in this state if any part of the transaction was conducted through an Internet site, unless the Internet site displays, in a clear and conspicuous manner the:

(1) Name of each pharmacy that causes the sale, dispensing, or delivery of a prescription-only drug to any consumer in this state;

(2) Address of the principal place of business of each pharmacy that causes the sale, dispensing, or delivery of a prescription-only drug to any consumer in this state;

(3) Telephone number of each pharmacy that causes the sale, dispensing, or delivery of a prescription-only drug to any consumer or other person in this state; and

(4)(a) Pharmacy's permit number assigned by the Board of Registration of Pharmacy; or

(b) Certification by the National Association of Boards of Pharmacy (NABP) as a Verified Internet Pharmacy Practice Sites (VIPPS) site and displays the VIPPS seal with a link to the NABP's verification site.

SECTION 6. (a) No pharmacy that sells, dispenses, distributes, delivers, prescribes, or participates in the sale, dispensing, or delivery of any prescription-only drug to any consumer in this state, if the consumer submitted the purchase order for the prescription-only drug through an Internet site or by electronic mail, may disclaim, limit, or waive any liability to which the pharmacy otherwise is subject under law for the act or practice of selling, dispensing, or delivering prescription-only drugs;

(b) Any disclaimer, limitation, or waiver in violation of this section is void.

(c) Any attempt to make any disclaimer, limitation, or waiver in violation of this section is a violation of this act.

SECTION 7. Any violation of this act is an unconscionable act or practice under Chapter 93A.

SECTION 8. There shall be established upon the books of the commonwealth a separate fund to be known as the Board of Registration in Pharmacy Internet Pharmacy Trust Fund to be used, without prior appropriation, by the board of registration in pharmacy established in section 22 of chapter 12. One hundred percent of revenues collected by the board that are generated by any licensing fee associated with the granting of an internet pharmacy license shall be deposited into said trust fund. All monies deposited into said fund shall be expended exclusively by the board for its operation and administration; but, any unexpended balance at the end of the fiscal year shall revert to the General Fund. The board may incur expenses, and the comptroller may certify for payment, amounts in anticipation of expected receipts; but no expenditure shall be made from said fund which shall cause said fund to be in deficit at the close of a fiscal year.

SECTION 9. The board shall promulgate regulations pursuant to conducting investigations of internet pharmacies failing to comply with the provisions of this act. The Board shall also promulgate regulations to carry out the provisions of this act.