
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1089 Session of
2006

INTRODUCED BY C. WILLIAMS, BOSCOLA, TARTAGLIONE, WASHINGTON,
WOZNIAK AND CONTI, MARCH 16, 2006

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MARCH 16, 2006

AN ACT

1 Establishing certain duties for pharmacies when pharmacists
2 employed by the pharmacies refuse to fill valid prescriptions
3 for drugs or devices on the basis of personal beliefs; and
4 providing for a penalty.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Access to
9 Legal Pharmaceuticals Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Employ." The term, with respect to the services of a
15 pharmacist, includes entering into a contract for the provision
16 of such services.

17 "In stock." The maintenance of a supply of drugs and devices
18 adequate to meet the needs of the health professionals and the

1 patients the pharmacy is intended to serve.

2 "Pharmacist." A person authorized by the Commonwealth to
3 practice pharmacy, including the dispensing and selling of
4 prescription drugs.

5 "Pharmacy." A person or entity who:

6 (1) is authorized by the Commonwealth to engage in the
7 business of selling prescription drugs at retail; and

8 (2) employs one or more pharmacists.

9 "Prescription device." A device whose sale at retail is
10 restricted under section 520(e)(1) of the Federal Food, Drug,
11 and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

12 Prescription drug." A drug that is subject to section
13 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (52 Stat.
14 1040, 21 U.S.C. § 301 et seq.).

15 "Product." A prescription drug or a prescription device.

16 "Valid." The term, with respect to a prescription, means:

17 (1) in the case of a drug, a prescription within the
18 meaning of section 503(b)(1) of the Federal Food, Drug, and
19 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), that
20 is in compliance with applicable law, including, in the case
21 of a prescription for a drug that is a controlled substance,
22 compliance with 21 C.F.R. Pt. 1306; and

23 (2) in the case of a device, an authorization of a
24 practitioner within the meaning of section 520(e)(1) of the
25 Federal Food, Drug and Cosmetic Act that is in compliance
26 with applicable law.

27 "Without delay." The term, with respect to a pharmacy
28 filling a prescription for a product or ordering the product,
29 means within the usual and customary time frame at the pharmacy
30 for filling prescriptions for products for the health condition

1 involved or for ordering such products, respectively.

2 Section 3. Duties of pharmacies with respect to refusal of
3 pharmacists to fill valid prescriptions.

4 (a) Compliance.--A pharmacy that receives prescription drugs
5 or prescription devices shall maintain compliance with the
6 following conditions:

7 (1) If a product is in stock and a pharmacist employed
8 by the pharmacy refuses on the basis of a personal belief to
9 fill a valid prescription for the product, the pharmacy shall
10 ensure, subject to the consent of the individual presenting
11 the prescription in any case in which the individual has
12 reason to know of the refusal, that the prescription is,
13 without delay, filled by another pharmacist employed by the
14 pharmacy.

15 (2) (i) Except as provided in subparagraph (ii), if a
16 product is not in stock and a pharmacist employed by the
17 pharmacy refuses on the basis of a personal belief or on
18 the basis of pharmacy policy to order or to offer to
19 order the product when presented a valid prescription for
20 the product, the pharmacy shall ensure that:

21 (A) the individual presenting the prescription
22 is immediately informed that the product is not in
23 stock but can be ordered by the pharmacy; and

24 (B) subject to the consent of the individual,
25 the product is, without delay, ordered by another
26 pharmacist employed by the pharmacy.

27 (ii) Subparagraph (i) shall apply only to a pharmacy
28 ordering a particular product for an individual
29 presenting a valid prescription for the product and shall
30 not require the pharmacy to keep the product in stock,

1 except that the subparagraph shall not apply to a product
2 for a health condition if the pharmacy does not keep in
3 stock any product for that condition.

4 (3) Except as provided in paragraphs (1) and (2), the
5 pharmacy shall not employ any pharmacist who engages in any
6 conduct with the intent to prevent or deter an individual
7 from filling a valid prescription for a product or from
8 ordering the product, including any of the following:

9 (i) The refusal to return a prescription form to the
10 individual after refusing to fill the prescription or
11 order the product if the individual requests the return
12 of the form.

13 (ii) The refusal to transfer prescription
14 information to another pharmacy for refill dispensing
15 when a transfer is lawful if the individual requests the
16 transfer.

17 (iii) Subjecting the individual to humiliation or
18 otherwise harassing the individual.

19 (iv) Breaching or threatening medical
20 confidentiality with respect to the prescription.

21 Section 4. Enforcement.

22 (a) Civil penalty.--A pharmacy that violates a requirement
23 of section 3 shall incur a civil penalty in an amount not
24 exceeding \$5,000 per day of violation, not to exceed \$500,000
25 for all violations adjudicated in a single proceeding.

26 (b) Private cause of action.--Any person aggrieved as a
27 result of a violation of a requirement of section 3 may commence
28 a civil action against the pharmacy involved to obtain
29 appropriate relief, including actual and punitive damages,
30 injunctive relief and reasonable attorney fees and costs.

1 (c) Limitations.--A civil action under paragraph (1) or (2)
2 may not be commenced against a pharmacy after the expiration of
3 the five-year period beginning on the date on which the pharmacy
4 allegedly engaged in the violation involved.

5 Section 10. Effective date.

6 This act shall take effect in 60 days.