

By Mr. Koutoujian of Waltham, petition of Peter J. Koutoujian and John W. Scibak to create the Massachusetts Internet prescription consumer protection act. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO CREATE THE MASSACHUSETTS INTERNET PRESCRIPTION CONSUMER PROTECTION ACT.

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

1 SECTION 1. This act may be known and cited as “The Massa-
2 chusetts Internet Prescription Consumer Protection Act.”

1 SECTION 2. The purpose of this act is to require Internet
2 pharmacies to make certain disclosures on their web sites, to list
3 the principals, pharmacists, and physicians associated with the
4 site, and to include amending licensing requirements for pharma-
5 cists and physicians to address prescribing and dispensing medica-
6 tion via the Internet.

1 SECTION 3. Chapter 112 of the Massachusetts General Laws
2 as appearing in the 2002 Official Edition is hereby amended by
3 adding after Section 39B, the following section:—

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

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

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

13 (4) “Electronic mail” means any message transmitted through
14 the international network of interconnected government, educa-

15 tional, and commercial computer networks, including but not lim-
16 ited to messages transmitted from or to any address affiliated with
17 an Internet site;

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

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

27 (7) “Person” means any individual, corporation, partnership,
28 limited liability company, limited liability partnership, limited
29 partnership, association, joint venture, or any other legal or com-
30 mercial entity, whether foreign or domestic;

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

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

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

38 (b) Which has displayed upon it or within it the words pharma-
39 cist, pharmaceutical chemist, pharmacy, apothecary, drugstore,
40 druggist, drugs, drug sundries, or any of these words or combina-
41 tion of these words; or

42 (c) Where the characteristic symbols of pharmacy or the char-
43 acteristic prescription sign “Rx” may be exhibited;

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

51 (11) “Premises” mean the portion of any building or structure
52 leased, used or controlled by the licensee in the conduct of the

53 business registered by the board at the address for which the regis-
54 tration was issued;

55 (12)(a) "Prescription-only drug" means any drug whether
56 intended for use by man or animal, required by federal or state
57 law to be dispensed only pursuant to a written or oral prescription,
58 order of a practitioner, or is restricted to use by practitioners only.

59 (b) "Prescription-only drug" does not mean contact lenses; and

60 (13) "Prescription order" means:

61 (a) An order to be filled by a pharmacist for prescription med-
62 ication issued and signed by a practitioner or a mid-level practi-
63 tioner in the authorized course of professional practice; or (b) an
64 order transmitted to a pharmacist through word of mouth, note,
65 telephone, or other means of communication directed by the prac-
66 titioner or mid-level practitioner.

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

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 6. (a) No pharmacy that sells, dispenses, distributes,
2 delivers, prescribes, or participates in the sale, dispensing, or
3 delivery of any prescription-only drug to any consumer in this
4 state, if the consumer submitted the purchase order for the pre-
5 scription-only drug through an

6 Internet site or by electronic mail, may disclaim, limit, or waive
7 any liability to which the pharmacy otherwise is subject under law
8 for the act or practice of selling, dispensing, or delivering pre-
9 scription-only drugs;

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

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

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

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

1 SECTION 9. The board shall promulgate regulations pursuant
2 to conducting investigations of internet pharmacies failing to
3 comply with the provisions of this act. The Board shall also pro-
4 mulgate regulations to carry out the provisions of this act.

