



SPONSOR: Rep. Hall-Long & Rep. McWilliams, & Sen. Henry, & Sen.
Blevins
Reps. Maier, Manolakos, Mitchell, Schooley; Sens. Marshall,
McDowell, Sokola

HOUSE OF REPRESENTATIVES

144th GENERAL ASSEMBLY

HOUSE BILL NO. 454
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO INTERNET PHARMACIES AND
INTERNET SALES OF PRESCRIPTION DRUGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 47, Title 16 of the Delaware Code by adding a new subchapter IIIA thereto as follows:

2 “Subchapter IIIA. Safe Internet Pharmacy Act.

3 §4741. Short Title.

4 This subchapter shall be known as the ‘Safe Internet Pharmacy Act.’

5 §4742. Legislative Findings and intent; construction of this subchapter.

6 The General Assembly has determined that the sale and delivery of prescription drugs by internet sites which are
7 not licensed pharmacies and which dispense prescription drugs to patients without the existence of a bona fide patient-
8 practitioner relationship constitutes an extreme danger to the safety and welfare of Delaware residents. The General
9 Assembly has also determined that existing laws are not sufficiently punitive to deter these internet sites, and the
10 unscrupulous practitioners and pharmacists who help them, from unlawfully selling and delivering prescription drugs to the
11 residents of this State. The intent of this subchapter is to completely stop these rogue internet pharmacies from delivering
12 prescription drugs into this State and, therefore, the provisions of this subchapter shall be liberally construed to effect its
13 remedial purpose.

14 §4743. Definitions.

15 The following definitions shall be applicable to this subchapter:

16 (1) “Board” means the Delaware State Board of Pharmacy;

(2) "Delaware patient" means any person residing within or outside of this State who requests an internet pharmacy deliver a prescription drug order to a location within this State;

(3) "Electronic mail" or "email" shall mean any message transmitted through the internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site;

(4) "Internet" means collectively the international network of interconnected government, educational and commercial computer networks, including equipment and operating software;

(5) "Internet pharmacy" means any person or entity maintaining an internet site which solicits or receives, or offers to solicit or receive, prescription drug orders to be dispensed and delivered to patients, including Delaware patients, by means of the United States Postal Service or any other delivery service. The term "internet pharmacy" does not include a pharmacy which has been issued a valid permit or license by the Board;

(6) "Internet site" means a specific location on the Internet that is determined by Internet protocol numbers, domain name, or both, including, but not limited to, domain names that use the designations ".com", ".edu", ".gov", ".net" and ".org."

(7) "Licensed practitioner" means any individual who is authorized by law to prescribe drugs in the course of professional practice or research in any state;

(8) "Licensed Delaware pharmacist" means a pharmacist licensed by the Board to engage in the practice of pharmacy in this State;

(9) "Link", with respect to the internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command:

- a. to move from viewing one portion of a page on such site to another portion of the page; or
- b. to move from viewing one page on such site to another page on such site; or
- c. to move from viewing a page on one internet site to a page on another internet site;

(10) "Prescription drug" means any drug required by federal or state law or regulation to be dispensed only by or on the prescription of a practitioner licensed in to prescribe drugs, or which is restricted to use by practitioners only;

(11) "Prescription drug order" means any written or verbal order of a practitioner for a prescription drug;

(12) "Patient-Practitioner relationship" means, with respect to prescribing drugs for a patient, that the practitioner:

- a. has conducted at-least one in-person medical evaluation of the patient and performed a medical history and physical examination sufficient to establish a diagnosis and to identify underlying conditions of, or contraindications to, the treatment recommended or provided; or
- b. personally knows the patient and the patient's general health status through an existing patient-practitioner relationship; or
- c. provides treatment in consultation with or upon referral of another practitioner who has an existing patient-practitioner relationship with the patient and who has agreed to supervise the patient's treatment, including follow-up care and use of the prescribed medications; or
- d. provides treatment to the patient through an on-call or cross-coverage situation for another practitioner who has an existing patient-practitioner relationship with the patient; or
- e. provides continuing medications on a short-term basis for a new patient prior to the first appointment; or
- f. provides treatment based upon admission orders for a newly hospitalized patient.

§4744. Prohibited Practices; Penalties.

(a)(1) An internet pharmacy shall not sell, dispense, distribute or deliver or offer to sell, dispense, distribute or deliver or participate in the sale, distribution, dispensing or delivery of any prescription drug to a Delaware patient unless the practitioner issuing the prescription drug order to be filled or dispensed by the internet pharmacy is a licensed practitioner who has a patient-practitioner relationship with the Delaware patient; and

(2) An internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of a Class D felony and shall be fined not less than \$2,500.00 nor more than \$25,000.00 for each offense; provided, however, that if an internet pharmacy or any owner or operator thereof knowingly violates this subsection and the substance or prescription drug dispensed causes death or serious physical injury to a Delaware patient, the internet pharmacy or any owner or operator thereof is guilty of a Class B felony and shall be fined not less than \$25,000.00 nor more than \$100,000.00 for each offense.

(b)(1) An internet pharmacy or any owner or operator thereof shall not advertise or represent by advertisement, sales presentation or direct communication with any person within this State, including by telephone, facsimile, electronic mail or otherwise, that a prescription drug may be obtained by a Delaware patient based on an internet consultation, questionnaire or medical history form submitted to the internet pharmacy through an internet site. This subsection shall not

73 apply to any internet pharmacy or internet site which advises in a clear and visible manner on each page of its internet site,
74 or by link to a separate page, that it will not deliver or ship prescription drugs to a location within this State.

75 (2) An internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of a
76 Class D felony and shall be fined not less than \$2,500.00 nor more than \$25,000.00 for each offense.

77 (c)(1) A practitioner or any person acting as a practitioner within or outside of this State shall not issue a
78 prescription drug order, by email or otherwise, to or on behalf of a Delaware patient through an internet pharmacy unless
79 the person is a licensed practitioner who has a patient-practitioner relationship with the Delaware patient.

80 (2) A practitioner or any person acting as a practitioner who knowingly violates this subsection is guilty of a Class
81 D felony and shall be fined not less than \$2,500.00 nor more than \$25,000.00 for each offense; provided, however that if a
82 practitioner or any person acting as a practitioner knowingly violates this subsection and the substance or prescription drug
83 dispensed causes death or serious physical injury to a Delaware patient, then the practitioner or person acting as a
84 practitioner is guilty of a Class B felony and shall be fined not less than \$25,000.00 nor more than \$100,000.00 for each
85 offense.

86 (3) The provisions of this subsection shall not apply to a licensed practitioner who inadvertently allows his or her
87 respective license or permit to lapse for a period of less than sixty days.

88 (d)(1) A licensed Delaware pharmacist practicing within or outside of this State shall not dispense or authorize the
89 dispensing of a prescription drug order, by email or otherwise, to or on behalf of a Delaware patient through an internet
90 pharmacy if:

- 91 a. the licensed Delaware pharmacist knows that the prescription order was issued solely on the basis of an
92 internet consultation or questionnaire or medical history form submitted to an internet pharmacy through an
93 internet site; or
94 b. the licensed Delaware pharmacist knows that the prescription order was issued by a practitioner who is not a
95 licensed practitioner or by a licensed practitioner who does not have a patient-practitioner relationship with
96 the Delaware patient.

97 (2) Any licensed Delaware pharmacist who violates this subsection is guilty of a Class F felony and shall be fined
98 not less than \$1,000.00 nor more than \$10,000.00 for each offense.

99 (f)(1) No person within or outside of this State shall purchase, attempt to purchase, offer to purchase or submit an
100 order to purchase, by email or otherwise, any prescription drug from an internet pharmacy to be delivered to a location

101 within this State unless the person has been issued a valid prescription drug order from licensed practitioner with whom the
102 person has a patient-practitioner relationship.

103 (2) A person who knowingly violates this subsection shall be guilty of a Class A misdemeanor and shall be fined
104 not less than \$100.00 nor more than \$1,000.00 for each offense.

105 (g) The Superior Court shall have exclusive jurisdiction over any offense defined in this subchapter. In any
106 prosecution for an offense prohibited by this subchapter, the delivery of a prescription drug to a location within this State
107 shall constitute a result occurring within this State for purposes of establishing jurisdiction under §204 of Title 11.

108 (h) In any prosecution for an offense defined in this subchapter it shall not be a defense that a Delaware patient or
109 any recipient or intended recipient of a prescription drug order is not prosecuted, convicted or punished based upon the
110 same act or transaction.

111 (i) Nothing in this section shall be construed to limit or prevent the Attorney General or applicable professional
112 board from taking any civil or administrative action permitted by law against an internet pharmacy, practitioner, pharmacist
113 or other person violating the provisions of this subchapter.

114 §4745. Seizure of Unlawfully Delivered Prescription Drugs.

115 (a) Any prescription drug which is ordered, sold, dispensed or delivered in violation of this subchapter is hereby
116 declared to be contraband and may be seized by any peace officer authorized to enforce the provisions of this subchapter.

117 (b) Any prescription drugs seized pursuant to this subchapter shall be subject to forfeiture pursuant to the
118 provisions and procedures set forth in §4784 of this title.”

119 Section 2. This Act shall take effect immediately upon enactment.