

1 HB393  
2 137451-2  
3 By Representatives Greer and Black  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 23-FEB-12

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8 SYNOPSIS: Under existing law, the Alabama State Board  
9 of Pharmacy is responsible for regulating the  
10 practice of pharmacy and the operation of  
11 pharmacies in the state.

12 This bill would define pharmacy services.

13 This bill would authorize the Alabama State  
14 Board of Pharmacy to provide by rule for the  
15 issuance, renewal, and fees relating to a pharmacy  
16 services permit.

17 This bill would also provide that the  
18 creation of a pharmacy services permit does not  
19 expand or limit the existing practice of pharmacy  
20 or medicine.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 To amend Sections 34-23-1 and 34-23-30, Code of  
27 Alabama 1975, relating to the practice of pharmacy and the

1 operation of pharmacies; to define pharmacy services; to  
2 authorize the Alabama State Board of Pharmacy to provide by  
3 rule for the issuance, renewal, and fees relating to a  
4 pharmacy services permit; and to provide that the creation of  
5 a pharmacy services permit does not expand or limit the  
6 existing practice of pharmacy or medicine.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 34-23-1 of the Code of Alabama  
9 1975, is amended to read as follows:

10 "§34-23-1.

11 "For the purpose of this chapter, the following  
12 words and phrases shall have the following meanings:

13 "(1) ASSOCIATION. The Alabama Pharmacy Association.

14 "(2) BOARD or STATE BOARD. The Alabama State Board  
15 of Pharmacy.

16 "(3) CHEMICAL. Any substance of a medicinal nature,  
17 whether simple or compound, obtained through the process of  
18 the science and art of chemistry, whether of organic or  
19 inorganic origin.

20 "(4) DISPENSE. To sell, distribute, administer,  
21 leave with, give away, dispose of, deliver, or supply a drug  
22 or medicine to the ultimate user or their agent.

23 "(5) DRUGS. All medicinal substances, preparations,  
24 and devices recognized by the United States Pharmacopoeia and  
25 National Formulary, or any revision thereof, and all  
26 substances and preparations intended for external and internal  
27 use in the cure, diagnosis, mitigation, treatment, or

1 prevention of disease in man or animal and all substances and  
2 preparations other than food intended to affect the structure  
3 or any function of the body of man or animal.

4 "(6) EXTERN. A candidate for licensure as a  
5 pharmacist during the time prior to graduation from an  
6 accredited college of pharmacy.

7 "(7) HOSPITAL. An institution for the care and  
8 treatment of the sick and injured, licensed by the Alabama  
9 State Board of Health and authorized to be entrusted with the  
10 custody of drugs and medicines, the professional use of drugs  
11 and medicines being under the direct supervision of a medical  
12 practitioner or pharmacist.

13 "(8) INTERN. An individual who is currently licensed  
14 by this state to engage in the practice of pharmacy while  
15 under the personal supervision of a pharmacist and is  
16 satisfactorily progressing toward meeting the requirements for  
17 licensure as a pharmacist; or a graduate of an approved  
18 college of pharmacy who is currently licensed by the State  
19 Board of Pharmacy for the purpose of obtaining practical  
20 experience as a requirement for licensure as a pharmacist; or  
21 a qualified applicant awaiting examination for licensure.

22 "(9) LEGEND DRUG. Any drug, medicine, chemical, or  
23 poison bearing on the label the words, "caution, federal law  
24 prohibits dispensing without prescription," or similar wording  
25 indicating that such drug, medicine, chemical, or poison may  
26 be sold or dispensed only upon the prescription of a licensed  
27 medical practitioner.

1           "(10) LICENSE. The grant of authority by the State  
2 Board of Pharmacy to a person authorizing him or her to engage  
3 in the practice of pharmacy in this state.

4           "(11) MANUFACTURER. A person, except a pharmacy, who  
5 prepares, derives, produces, compounds, or packages any drug,  
6 medicine, chemical, or poison.

7           "(12) MEDICAL PRACTITIONER. Any physician, dentist,  
8 or veterinarian, or any other person authorized by law to  
9 treat, use, or prescribe medicine and drugs for sick and  
10 injured human beings or animals in this state.

11           "(13) MEDICINE. Any drug or combination of drugs  
12 that has the property of curing, diagnosing, preventing,  
13 treating, or mitigating diseases or that which may be used for  
14 those purposes.

15           "(14) PATENT OR PROPRIETARY MEDICINES. Completely  
16 compounded nonprescription packaged drugs, medicines, and  
17 nonbulk chemicals which are sold, offered, promoted, or  
18 advertised by the manufacturer or primary distributor under a  
19 trademark, trade name, or other trade symbol, and the labeling  
20 of which conforms to the requirements of the Federal Food,  
21 Drug, and Cosmetic Act; provided, that this definition shall  
22 not include:

23           "a. Drugs which are only advertised and promoted  
24 professionally to licensed physicians, dentists, or  
25 veterinarians by manufacturers or primary distributors.

26           "b. A narcotic or drug containing a narcotic.

1            "c. A drug the label of which bears substantially  
2 either the statements "caution--federal law prohibits  
3 dispensing without prescription" or "warning--may be  
4 habit-forming".

5            "d. A drug intended for injection.

6            "(15) PERMIT. The grant of authority by the State  
7 Board of Pharmacy to any person, firm, or corporation  
8 authorizing the operation of a pharmacy, wholesale drug  
9 distributor, repackager, bottler, manufacturer, or packer of  
10 drugs, medicines, chemicals, or poisons for medicinal  
11 purposes. Nonresident wholesale drug distributors registered  
12 with the appropriate agency, in the state in which they are  
13 domiciled, and operating in compliance with Prescription Drug  
14 Marketing Act standards, shall be allowed to do business in  
15 this state. No permit shall be required of any physician  
16 licensed to practice medicine for any act or conduct related  
17 to or connected with his or her professional practice.

18            "(16) PERSON. Any individual, partnership,  
19 corporation, association, trust, or other entity.

20            "(17) PHARMACIST. Any person licensed by the Alabama  
21 State Board of Pharmacy to practice the profession of pharmacy  
22 in the State of Alabama and whose license is in good standing.

23            "(18) PHARMACY. A place licensed by the Alabama  
24 State Board of Pharmacy in which prescriptions, drugs,  
25 medicines, medical devices, chemicals, and poisons are sold,  
26 offered for sale, compounded, or dispensed, and shall include  
27 all places whose title may imply the sale, offering for sale,

1       compounding, or dispensing of prescriptions, drugs, medicines,  
2       chemicals, or poisons.

3               "(19) PHARMACY SERVICES PERMIT. Certain services  
4       performed by a pharmacy, as defined by board rule, and  
5       specifically excluding, the receipt or inventory of drugs,  
6       medicines, chemicals, poisons, or medical devices. This  
7       subdivision, and any rule promulgated by the board pursuant to  
8       this subdivision, may not be interpreted to expand the  
9       practice of pharmacy as the practice of pharmacy and permits  
10       are limited by this section and Sections 34-23-11 and  
11       34-23-70, or to restrict the practice of medicine as defined  
12       in Section 34-24-50.

13               "(20) ~~(19)~~ POISON. Any substance other than  
14       agricultural products and pesticides which when applied to,  
15       introduced into, or developed within the body in relatively  
16       small quantities by its inherent chemical action uniformly  
17       produces serious bodily injury, disease, or death.

18               "(21) ~~(20)~~ PRECEPTOR. A person who is duly licensed  
19       to practice pharmacy in the state and meets the requirements  
20       as established by the State Board of Pharmacy.

21               "(22) ~~(21)~~ PRESCRIPTION. Any order for drug or  
22       medical supplies, written or signed or transmitted by word of  
23       mouth, telephone, telegraph, closed circuit television, or  
24       other means of communication by a legally competent  
25       practitioner, licensed by law to prescribe and administer such  
26       drugs and medical supplies intended to be filled, compounded,  
27       or dispensed by a pharmacist.

1           "(23) ~~(22)~~ PROFESSIONAL DEGREE. A degree in pharmacy  
2 requiring a minimum of five academic years.

3           "(24) ~~(23)~~ REPACKAGER. A person who purchases or  
4 acquires from a manufacturer or distributor, a drug, medicine,  
5 chemical, or poison for the purpose of bottling, labeling, or  
6 otherwise repackaging for sale or distribution. This  
7 definition shall not apply to a physician licensed to practice  
8 medicine who as a part of his or her professional practice  
9 dispenses, administers, sells, or otherwise distributes any  
10 drug to a patient.

11           "(25) ~~(24)~~ SALE. Barter, exchange, or gift, or offer  
12 of barter, exchange, or gift, and shall include each  
13 transaction made by any person, whether a principal,  
14 proprietor, agent, servant, or employee.

15           "(26) ~~(25)~~ WHOLESALE DRUG DISTRIBUTORS. A person  
16 engaged in the business of distributing drugs and medicines  
17 for resale to pharmacies, hospitals, practitioners, government  
18 agencies, or other lawful outlets permitted to sell drugs or  
19 medicines. The sale, purchase, or trade of a drug by a retail  
20 pharmacy to another retail pharmacy or practitioner, for  
21 relief of temporary shortages, is exempt from this definition.  
22 Also exempt from this definition shall be (a) intracompany  
23 sales, (b) manufacturer and distributor sales representatives  
24 who distribute drug samples, (c) charitable organizations  
25 distributing to nonprofit affiliates of that organization, (d)  
26 certain purchases by hospitals or other health care entities

1 that are members of a group purchasing organization, and (e)  
2 the distributors of blood and blood components."

3 "§34-23-30.

4 "(a) Every pharmacy, hospital pharmacy, drugstore,  
5 pharmacy department, prescription department, prescription  
6 laboratory, dispensary, apothecary, or any other establishment  
7 with a title implying the sale, offering for sale,  
8 compounding, or dispensing of drugs in this state, or any  
9 person performing pharmacy services in this state, shall  
10 register biennially and receive a permit from the Board of  
11 Pharmacy. Any person desiring to open, operate, maintain, or  
12 establish a pharmacy or perform pharmacy services in this  
13 state shall apply to the board for a permit at least 30 days  
14 prior to the opening of the business. No pharmacy or entity  
15 performing pharmacy services shall open for the transaction of  
16 business until it has been registered, inspected, and a permit  
17 issued by the board. The application for a permit shall be  
18 made on a form prescribed and furnished by the board which  
19 when properly executed shall indicate the ownership desiring  
20 such permit and the names and license numbers of all licensed  
21 pharmacists employed as well as the location of the pharmacy  
22 or entity where pharmacy services are performed and other  
23 information as the board may require. If more than one  
24 pharmacy or entity where pharmacy services are performed is  
25 operated by the same owner, a separate application for  
26 registration shall be made and a separate permit issued for  
27 each such establishment. All permits issued under this section

1 shall become due on October 31 and shall become null and void  
2 on December 31 of even-numbered years. Every application for a  
3 permit for a new pharmacy or entity where pharmacy services  
4 are performed shall be accompanied by a fee to be determined  
5 by the board, but the fee shall not be less than one hundred  
6 dollars (\$100) nor more than two hundred dollars (\$200). Every  
7 application for a renewal permit shall be accompanied by a fee  
8 to be determined by the board, but the fee shall not be less  
9 than fifty dollars (\$50) nor more than one hundred fifty  
10 dollars (\$150). Every application for a permit due to transfer  
11 of ownership shall be accompanied by a fee to be determined by  
12 the board, but the fee shall not be less than fifty dollars  
13 (\$50) nor more than one hundred fifty dollars (\$150). Each  
14 application for the renewal of a permit shall be made on or  
15 before October 31 of each even-numbered year, at which time  
16 the previous permit shall become null and void on December 31  
17 of even-numbered years. A penalty of twenty-five dollars (\$25)  
18 for each overdue month shall be assessed in addition to the  
19 permit fee for renewal of delinquent permits. The secretary of  
20 the board shall issue a permit for each pharmacy or entity  
21 where pharmacy services are performed whose application is  
22 found to be satisfactory by the board. Permits issued under  
23 this section shall not be transferable. Any change in the  
24 control of ownership or licensed pharmacists shall be reported  
25 to the board in writing within 10 days of such occurrence. If  
26 the pharmacy or entity where pharmacy services are performed  
27 is owned by a corporation, the permit shall be issued in the

1 name of the corporation. It shall be the duty of the owners of  
2 pharmacies or the owners of entities where pharmacy services  
3 are performed who are not licensed pharmacists to immediately  
4 notify the board upon the termination of employment of  
5 licensed pharmacists and to cause the surrender of permits as  
6 indicated. The further operation of the pharmacy or entity  
7 where pharmacy services are performed in the absence of  
8 licensed pharmacists is forbidden; provided, that the  
9 nonregistered owner shall have a period of 30 days within  
10 which to comply with this provision. The next of kin of any  
11 deceased licensed pharmacist owner shall have a period of 30  
12 days within which to comply with the provisions of this  
13 chapter, during which time no prescriptions shall be filled  
14 unless a licensed pharmacist is on duty. No mail order  
15 pharmacy shall transact business in this state without a  
16 permit from the board.

17 "(b) Requirements for the grant of authority by the  
18 board to any person who offers or performs pharmacy services  
19 shall be by board rule.

20 "(c) Any person who violates this section shall be  
21 guilty of a misdemeanor."

22 Section 2. This act shall become effective  
23 immediately following its passage and approval by the  
24 Governor, or its otherwise becoming law.