

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 274

By: Senator J. Petty
By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO RESTRICT WHOLESALE DISTRIBUTORS OF CONTROLLED SUBSTANCES AND LEGEND DRUGS FROM LIMITING OR TERMINATING SALES OF CONTROLLED SUBSTANCES TO CERTAIN LICENSED PROFESSIONALS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO RESTRICT WHOLESALE DISTRIBUTORS OF CONTROLLED SUBSTANCES AND LEGEND DRUGS FROM LIMITING OR TERMINATING SALES OF CONTROLLED SUBSTANCES TO CERTAIN LICENSED PROFESSIONALS; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly to:

(1) Provide clarity and data transparency requirements to the pharmaceutical wholesaler distributors who reduce or eliminate distribution of controlled substances to providers or pharmacies in this state, particularly in the case of pharmaceutical wholesaler distributors subject to federal injunctive relief that became effective on July 1, 2022;

(2) Ensure that the Arkansas State Board of Pharmacy, as the licensing, regulatory, and oversight entity for pharmaceutical wholesalers in this state, is involved in and understands business practices and specific



data elements that cause the pharmaceutical wholesaler distributors to desire to reduce or eliminate distribution of controlled substances to providers or pharmacies in this state; and

(3) Protect the providers and pharmacies by providing a complaint-driven process with their respective licensing boards that provides the provider or pharmacy with data, an opportunity to respond, and a known administrative process that must be followed before any reduction or termination of distribution of controlled substances to the provider or pharmacy by the pharmaceutical wholesaler distributor.

SECTION 2. Arkansas Code § 20-64-506, concerning whole distributors of controlled substances and legend drugs and shipments to certain licensed professionals, is amended to add additional subsections to read as follows:

(c) A wholesale distributor shall not limit or terminate the sale of controlled substances, or materially alter pricing of any items or services intended to limit or terminate sale of controlled substances, to any entity identified in subsection (a) of this section except if:

(1)(A) The wholesale distributor:

(i) Suspects purchasing or dispensing behavior that is an aberration compared to similar providers or pharmacies in the same geographic region within this state; and

(ii) Files a written, formal complaint against the provider or pharmacy with its licensing board containing specific allegations and prescription-level details, such as National Provider Identifier numbers of prescribers and dispensers, against the provider or pharmacy.

(B) Once a complaint is filed by the wholesale distributor with a licensing board, the licensing board takes administrative action against the licensee as a result of complaint filed by the wholesale distributor;

(2) The provider or pharmacy voluntarily terminates the relationship with the wholesale distributor and provides the wholesale distributor with a minimum one hundred twenty (120) day written notice of intent to terminate the distribution relationship;

(3) A wholesale distributor voluntarily terminates the relationship with the provider or pharmacy and provides the provider or pharmacy with a minimum one hundred twenty (120) day written notice of intent

to terminate the distribution relationship; or

(4)(A) The wholesale distributor may flag specific items on an individual order as suspicious if the order exceeds clearly identified thresholds and if the order is reported to the Arkansas State Board of Pharmacy on the day the suspicious order is flagged stating the specific reason the order is deemed suspicious.

(B) Subdivision (c)(4)(A) of this section may be used only to limit the sale of controlled substances, and may not be used as a rationale for terminating the distribution relationship.

(C) All standards and metrics that are used by a wholesale distributor related to the duties, interpretation, or compliance with the terms of the federal injunctive relief shall be communicated in writing to the Arkansas State Board of Pharmacy every three (3) months or sooner if the standards are changed by the wholesale distributor or upon request by the Arkansas State Board of Pharmacy.

(d)(1) A violation of subsection (c) of this section shall be a violation of this subchapter.

(2) The Arkansas State Board of Pharmacy shall take disciplinary action against a wholesale distributor that violates subsection (c) of this section with a minimum fine of one hundred thousand dollars (\$100,000) per violation and may include revocation of a wholesale distributor license.

(e) The Arkansas State Board of Pharmacy shall adopt rules to implement and clarify this section.

SECTION 3. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the Arkansas State Board of Pharmacy shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2024; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2024, as soon as practicable after approval under § 10-3-309.

(b) The board shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2024, so that the Legislative Council may consider the rules for approval before January 1, 2024.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the whole distribution of controlled substances in this state is of critical importance to the citizens of this state to maintain their health and safety; that wholesale distributors must follow certain practices before making any changes in the distribution of controlled substances in this state; that the changes in the distribution of controlled substances should be done only with the involvement of state licensing boards when a wholesale distributor suspects purchasing or dispensing behavior is an aberration compared to similar providers or pharmacies in the same geographic region within this state; and that this act is immediately necessary to ensure the safe distribution of controlled substances and legend drugs in this state and to protect the health and safety of the citizens of this state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.