

SB2893



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2893

Introduced 2/15/2008, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

New Act
815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

Creates the Pharmaceutical Consumer Protection Act. Provides that, with regard to a prescription for a drug that is written by a prescriber within Illinois or that is dispensed within Illinois, a prescriber, company, pharmacy, or prescription drug information intermediary may not license, use, sell, transfer, or exchange for value, for any commercial purpose, prescription drug information that identifies directly or indirectly the individual or the prescriber, with specified exceptions. Provides that any person who violates any provision of the Act commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act, and makes a corresponding change in the Consumer Fraud and Deceptive Business Practices Act. Effective immediately.

LRB095 19261 WGH 46369 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Pharmaceutical Consumer Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Company" means an insurance or surety company and shall be
8 deemed to include a corporation, company, partnership,
9 association, society, order, individual, or aggregation of
10 individuals engaging in or proposing or attempting to engage in
11 any kind of insurance or surety business, including the
12 exchanging of reciprocal or inter insurance contracts between
13 individuals, partnerships, and corporations.

14 "Administrator" means any person who receives or collects
15 charges, contributions, or premiums for, or adjusts or settles
16 claims in connection with, any type of health benefit provided
17 as an alternative to insurance.

18 "Commercial purpose" means advertising, marketing,
19 promotion, or any similar activity that is used or intended to
20 be used to influence sales or the market share of a
21 pharmaceutical drug, to influence or elevate the prescribing
22 behavior of a prescriber, to market prescription drugs to
23 individuals, or to elevate the effectiveness of a professional

1 pharmaceutical detailing sales force.

2 "De-identified" means information that cannot be used to
3 directly or indirectly identify the patient or the prescriber.
4 Information that may identify the patient or prescriber
5 includes a person's name, address, telephone number, facsimile
6 number, electronic mail address, photograph or likeness,
7 account, credit card, medical record, social security number,
8 or any other unique number, characteristic, code, or
9 information that is likely to lead to the identification of the
10 patient or prescriber.

11 "Electronic transmission intermediary" means an entity
12 that provides the infrastructure that connects the computer
13 systems or other electronic devices used by health care
14 practitioners, prescribers, pharmacies, health care facilities
15 and pharmacy benefit managers, companies, administrators and
16 agents and contractors of those persons and entities in order
17 to facilitate the secure transmission of an individual's
18 prescription drug order, refill, authorization request, claim,
19 payment, or other prescription drug information.

20 "Health care facility" means a licensed facility,
21 institution, or entity that offers health care to persons in
22 this State, including a health care provider, home health care
23 provider, hospice program and a pharmacy.

24 "Health care practitioner" means a person licensed to
25 provide or otherwise lawfully providing health care or a
26 partnership or corporation made up of those persons or an

1 officer, employee, agent, or contractor of that person acting
2 in the course and scope of employment, agency, or contract
3 related to or supportive of the provision of health care to
4 individuals.

5 "Individual" means a natural person who is the subject of
6 prescription drug information.

7 "Pharmacy" means a pharmacy registered under the Pharmacy
8 Practice Act.

9 "Pharmacy benefits manager" means an entity that performs
10 pharmacy benefits management. "Pharmacy benefits manager"
11 includes a person or entity acting for a pharmacy benefits
12 manager in a contractual or employment relationship in the
13 performance of pharmacy benefits management for a covered
14 entity and includes mail service pharmacies.

15 "Prescriber" means a person who is licensed, registered, or
16 otherwise authorized to prescribe and administer drugs in the
17 course of professional practice.

18 "Prescription drug information" means information
19 concerning prescription drugs which under federal law, is
20 required, prior to being dispensed or delivered, to be labeled
21 "Caution: Federal law prohibits dispensing without
22 prescription" or is required by an applicable federal or State
23 law or rule to be dispensed on prescription only or is
24 restricted to use by practitioners only, and includes lawful
25 written or oral orders of a practitioner for a drug or device,
26 issued on a prescription form or by electronic transmission.

1 "Prescription drug information intermediary" means a
2 person or entity that communicates, facilitates, or
3 participates in the exchange of prescription drug information
4 regarding an individual or a prescriber. "Prescription drug
5 information intermediary" includes, but shall not be limited
6 to, a pharmacy benefits manager, an administrator, and an
7 electronic transmission intermediary.

8 "Regulated transaction" means a prescription for a drug
9 that is written by a prescriber within the State of Illinois or
10 that is dispensed within the State of Illinois.

11 Section 10. Prohibition. With regard to a regulated
12 transaction, a prescriber, company, pharmacy, or prescription
13 drug information intermediary may not license, use, sell,
14 transfer, or exchange for value, for any commercial purpose,
15 prescription drug information that identifies directly or
16 indirectly the individual or the prescriber except if expressly
17 permitted as a regulated transaction that is allowed under
18 Section 15.

19 Section 15. Certain transactions allowed. The following
20 regulated transactions are allowed and are not subject to the
21 prohibitions of Section 10:

- 22 (1) the dispensing of prescription drugs to an
23 individual or the individual's authorized representative,
24 the transmission of prescription drug information between

1 a prescriber and a pharmacy or other health care
2 practitioner caring for the individual, and the transfer of
3 prescription information between pharmacies;

4 (2) the transfer of prescription records that may occur
5 when a pharmacy's ownership is changed or transferred;

6 (3) care management educational communications
7 provided to an individual about the individual's health
8 condition, adherence to a prescribed course of therapy, or
9 other information relating to the drug being dispensed,
10 treatment options, or clinical trials;

11 (4) transfers for the limited purpose of pharmacy
12 reimbursement, prescription drug formulary or prior
13 authorization compliance, patient care management,
14 utilization review, health care research, or as required by
15 law; and

16 (5) the collection, use, transfer, or sale of
17 prescription drug information that is de-identified and
18 that does not directly or indirectly identify the
19 individual or prescriber.

20 Section 20. Penalties. Any person who violates any
21 provision of this Act commits an unlawful practice within the
22 meaning of the Consumer Fraud and Deceptive Business Practices
23 Act.

24 Section 90. The Consumer Fraud and Deceptive Business

1 Practices Act is amended by changing Section 2Z as follows:

2 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

3 (Text of Section before amendment by P.A. 95-562)

4 Sec. 2Z. Violations of other Acts. Any person who knowingly
5 violates the Automotive Repair Act, the Automotive Collision
6 Repair Act, the Home Repair and Remodeling Act, the Dance
7 Studio Act, the Physical Fitness Services Act, the Hearing
8 Instrument Consumer Protection Act, the Illinois Union Label
9 Act, the Job Referral and Job Listing Services Consumer
10 Protection Act, the Travel Promotion Consumer Protection Act,
11 the Credit Services Organizations Act, the Automatic Telephone
12 Dialers Act, the Pay-Per-Call Services Consumer Protection
13 Act, the Telephone Solicitations Act, the Illinois Funeral or
14 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic
15 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
16 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud
17 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
18 Act, the Payday Loan Reform Act, subsection (a) or (b) of
19 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
20 Act, the Internet Caller Identification Act, paragraph (6) of
21 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
22 Article 3 of the Residential Real Property Disclosure Act, the
23 Automatic Contract Renewal Act, ~~or~~ the Personal Information
24 Protection Act, or the Pharmaceutical Consumer Protection Act
25 commits an unlawful practice within the meaning of this Act.

1 (Source: P.A. 94-13, eff. 12-6-05; 94-36, eff. 1-1-06; 94-280,
2 eff. 1-1-06; 94-292, eff. 1-1-06; 94-822, eff. 1-1-07; 95-413,
3 eff. 1-1-08.)

4 (Text of Section after amendment by P.A. 95-562)

5 Sec. 2Z. Violations of other Acts. Any person who knowingly
6 violates the Automotive Repair Act, the Automotive Collision
7 Repair Act, the Home Repair and Remodeling Act, the Dance
8 Studio Act, the Physical Fitness Services Act, the Hearing
9 Instrument Consumer Protection Act, the Illinois Union Label
10 Act, the Job Referral and Job Listing Services Consumer
11 Protection Act, the Travel Promotion Consumer Protection Act,
12 the Credit Services Organizations Act, the Automatic Telephone
13 Dialers Act, the Pay-Per-Call Services Consumer Protection
14 Act, the Telephone Solicitations Act, the Illinois Funeral or
15 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic
16 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
17 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud
18 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
19 Act, the Payday Loan Reform Act, subsection (a) or (b) of
20 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
21 Act, the Internet Caller Identification Act, paragraph (6) of
22 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
23 Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the
24 Illinois Vehicle Code, Article 3 of the Residential Real
25 Property Disclosure Act, the Automatic Contract Renewal Act, ~~or~~

1 the Personal Information Protection Act, or the Pharmaceutical
2 Consumer Protection Act commits an unlawful practice within the
3 meaning of this Act.

4 (Source: P.A. 94-13, eff. 12-6-05; 94-36, eff. 1-1-06; 94-280,
5 eff. 1-1-06; 94-292, eff. 1-1-06; 94-822, eff. 1-1-07; 95-413,
6 eff. 1-1-08; 95-562, eff. 7-1-08; revised 10-17-07.)

7 Section 95. No acceleration or delay. Where this Act makes
8 changes in a statute that is represented in this Act by text
9 that is not yet or no longer in effect (for example, a Section
10 represented by multiple versions), the use of that text does
11 not accelerate or delay the taking effect of (i) the changes
12 made by this Act or (ii) provisions derived from any other
13 Public Act.

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.