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HOUSE BILL 1917

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Braddock, Moyer and Prentice; by request of Department of Health.

Read first time February 14, 1991. Referred to Committee on Health Care.

1            AN ACT Relating to the licensure of nonresident pharmacies;  
2 amending RCW 42.17.310; adding new sections to chapter 18.64 RCW;  
3 adding a new section to chapter 48.20 RCW; adding a new section to  
4 chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a  
5 new section to chapter 48.46 RCW; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.**    (1) The legislature finds and declares that  
8 the practice of pharmacy is a dynamic, patient-oriented health service  
9 that applies a scientific body of knowledge to improve and promote  
10 patient health by means of appropriate drug use and drug-related  
11 therapy.

12            (2) The legislature recognizes that with the proliferation of  
13 alternate methods of health delivery, there has arisen among third-  
14 party payors and insurance companies the desire to control the cost and  
15 utilization of pharmacy services through a variety of mechanisms,

1 including the use of mail-order pharmacies located outside the state of  
2 Washington.

3 (3) As a result, the legislature finds and declares that to  
4 continue to protect the Washington consumer-patient, all out-of-state  
5 pharmacies that provide services to Washington residents shall be  
6 licensed by the department of health, disclose specific information  
7 about their services, and provide pharmacy services at a high level of  
8 protection and competence.

9 NEW SECTION. **Sec. 2.** (1) For the purposes of this chapter any  
10 pharmacy located outside this state that ships, mails, or delivers, in  
11 any manner, controlled substances, legend drugs, or devices into this  
12 state is a nonresident pharmacy, and shall be licensed by the  
13 department of health, and shall disclose to the department the  
14 following:

15 (a) The location, names, and titles of all owners including  
16 corporate officers and all pharmacists employed by the pharmacy who are  
17 dispensing controlled substances, legend drugs, or devices to residents  
18 of this state. A report containing this information shall be made on  
19 an annual basis and within ninety days after a change of location,  
20 corporate officer, or pharmacist;

21 (b) Proof of compliance with all lawful directions and requests for  
22 information from the regulatory or licensing agency of the state in  
23 which it is licensed as well as with all requests for information made  
24 by the department of health under this section. The nonresident  
25 pharmacy shall maintain, at all times, a valid unexpired license,  
26 permit, or registration to operate the pharmacy in compliance with the  
27 laws of the state in which it is located. As a prerequisite to be  
28 licensed by the department of health, the nonresident pharmacy shall

1 submit a copy of the most recent inspection report issued by the  
2 regulatory licensing agency of the state in which it is located;

3 (c) Proof that it maintains its records of controlled substances,  
4 legend drugs, or devices dispensed to patients in this state so that  
5 the records are readily retrievable from the records of other drugs  
6 dispensed.

7 (2) Any pharmacy subject to this section shall, during its regular  
8 hours of operation, provide a toll-free telephone service to facilitate  
9 communication between patients in this state and a pharmacist at the  
10 pharmacy who has access to the patient's records. This toll-free number  
11 shall be disclosed on the label affixed to each container of drugs  
12 dispensed to patients in this state.

13 (3) A pharmacy subject to this section shall comply with board  
14 rules regarding the maintenance and use of patient medication record  
15 systems.

16 (4) A pharmacy subject to this section shall comply with board of  
17 pharmacy rules regarding the provision of drug information to the  
18 patient. Drug information may be contained in written form setting  
19 forth directions for use and any additional information necessary to  
20 assure the proper utilization of the medication prescribed.

21 (5) A pharmacy subject to this section shall not dispense  
22 medication in a quantity greater than authorized by the prescriber.

23 (6) The license fee specified by the secretary, in accordance with  
24 the provisions of RCW 43.70.250, shall not exceed the fee charged to a  
25 pharmacy located in this state.

26 (7) The license requirements of this section apply to nonresident  
27 pharmacies that ship, mail, or deliver controlled substances, legend  
28 drugs, and devices into this state only under a prescription. The  
29 board of pharmacy may grant an exemption from licensing under this

1 section upon application by an out-of-state pharmacy that restricts its  
2 dispensing activity in Washington to isolated transactions.

3 (8) Each nonresident pharmacy that ships, mails, or delivers legend  
4 drugs or devices into this state shall designate a resident agent in  
5 Washington for service of process. The designation of such an agent  
6 does not indicate that the nonresident pharmacy is a resident of  
7 Washington for tax purposes.

8 NEW SECTION. **Sec. 3.** (1) A nonresident pharmacy that has not  
9 obtained a license from the department of health shall not conduct the  
10 business of selling or distributing drugs in this state.

11 (2) Applications for a nonresident pharmacy under this section  
12 shall be made on a form furnished by the department. The department may  
13 require such information as it finds reasonably necessary to carry out  
14 the purpose of this section.

15 (3) The nonresident pharmacy license shall be renewed annually on  
16 a date to be established by the department by rule. In the event the  
17 license fee remains unpaid, no renewal or new license shall be issued  
18 except upon payment of the license renewal fee and a penalty fee equal  
19 to the original license fee.

20 NEW SECTION. **Sec. 4.** A nonresident pharmacy shall:

21 (1) Submit to the department, upon request, information acceptable  
22 to the secretary concerning controlled substances shipped, mailed, or  
23 delivered to a Washington resident.

24 (2) Submit to on-site inspection by the department of the  
25 nonresident pharmacy's prescription records if the information in  
26 subsection (1) of this section is not provided to the department upon  
27 request.

1        NEW SECTION.    **Sec. 5.**    (1) The board may deny, revoke, or suspend  
2 a nonresident pharmacy license or impose a fine not to exceed one  
3 thousand dollars per violation for failure to comply with a requirement  
4 of sections 1 through 6 of this act.

5        (2) The board may deny, revoke, or suspend a nonresident pharmacy  
6 license or impose a fine not to exceed one thousand dollars per  
7 violation for conduct that causes serious bodily or psychological  
8 injury to a resident of this state if the secretary has referred the  
9 matter to the regulatory or licensing agency in the state in which the  
10 pharmacy is located and that regulatory or licensing agency fails to  
11 initiate an investigation within forty-five days of the referral under  
12 this subsection or fails to make a determination on the referral.

13        NEW SECTION.    **Sec. 6.**    For the purposes of this chapter, a  
14 nonresident pharmacy is defined as any pharmacy located outside this  
15 state that ships, mails, or delivers, in any manner, controlled  
16 substances, legend drugs, or devices into this state. It is unlawful  
17 for:

18        (1) A nonresident pharmacy that is not licensed under section 2 of  
19 this act to advertise its service in this state; or

20        (2) A resident of this state to advertise the pharmaceutical  
21 services of a nonresident pharmacy with the knowledge that the  
22 nonresident pharmacy is not licensed by the department and that the  
23 advertisement will or is likely to induce persons while in this state  
24 to use the nonresident pharmacy to fill prescriptions.

25        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 48.20 RCW  
26 to read as follows:

27        For the purposes of this chapter, a nonresident pharmacy is defined  
28 as any pharmacy located outside this state that ships, mails, or

1 delivers, in any manner, controlled substances, legend drugs, or  
2 devices into this state.

3 After October 1, 1991, an insurer providing coverage of  
4 prescription drugs from nonresident pharmacies may only provide  
5 coverage from licensed nonresident pharmacies. The insurers shall  
6 obtain proof of current licensure in conformity with this section and  
7 sections 1 through 6 of this act from the nonresident pharmacy and keep  
8 that proof of licensure on file.

9 The department of health may request from the insurer the proof of  
10 current licensure for all nonresident pharmacies through which the  
11 insurer is providing coverage for prescription drugs to residents of  
12 the state of Washington. This information, which may constitute a full  
13 or partial customer list, shall be confidential and exempt from public  
14 disclosure, and from the requirements of chapter 42.17 RCW. The board  
15 or the department shall not be restricted in the disclosure of the name  
16 of a nonresident pharmacy that is or has been licensed under section 2  
17 or 3 of this act or of the identity of a nonresident pharmacy  
18 disciplined under sections 1 through 6 of this act.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 48.21 RCW  
20 to read as follows:

21 For the purposes of this chapter, a nonresident pharmacy is defined  
22 as any pharmacy located outside this state that ships, mails, or  
23 delivers, in any manner, controlled substances, legend drugs, or  
24 devices into this state.

25 After October 1, 1991, an insurer providing coverage of  
26 prescription drugs from nonresident pharmacies may only provide  
27 coverage from licensed nonresident pharmacies. The insurers shall  
28 obtain proof of current licensure in conformity with this section and

1 sections 1 through 6 of this act from the nonresident pharmacy and keep  
2 that proof of licensure on file.

3 The department may request from the insurer the proof of current  
4 licensure for all nonresident pharmacies through which the insurer is  
5 providing coverage for prescription drugs for residents of the state of  
6 Washington. This information, which may constitute a full or partial  
7 customer list, shall be confidential and exempt from public disclosure,  
8 and from the requirements of chapter 42.17 RCW. The board or the  
9 department shall not be restricted in the disclosure of the name of a  
10 nonresident pharmacy that is or has been licensed under section 2 or 3  
11 of this act or of the identity of a nonresident pharmacy disciplined  
12 under sections 1 through 6 of this act.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.44 RCW  
14 to read as follows:

15 For the purposes of this chapter, a nonresident pharmacy is defined  
16 as any pharmacy located outside this state that ships, mails, or  
17 delivers, in any manner, controlled substances, legend drugs, or  
18 devices into this state.

19 After October 1, 1991, a health care service contractor providing  
20 coverage of prescription drugs from nonresident pharmacies may only  
21 provide coverage from licensed nonresident pharmacies. The health care  
22 service contractors shall obtain proof of current licensure in  
23 conformity with this section and sections 1 through 6 of this act from  
24 the nonresident pharmacy and keep that proof of licensure on file.

25 The department may request from the health care service contractor  
26 the proof of current licensure for all nonresident pharmacies through  
27 which the insurer is providing coverage for prescription drugs for  
28 residents of the state of Washington. This information, which may  
29 constitute a full or partial customer list, shall be confidential and

1 exempt from public disclosure, and from the requirements of chapter  
2 42.17 RCW. The board or the department shall not be restricted in the  
3 disclosure of the name of a nonresident pharmacy that is or has been  
4 licensed under section 2 or 3 of this act or of the identity of a  
5 nonresident pharmacy disciplined under sections 1 through 6 of this  
6 act.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 48.46 RCW  
8 to read as follows:

9 For the purposes of this chapter, a nonresident pharmacy is defined  
10 as any pharmacy located outside this state that ships, mails, or  
11 delivers, in any manner, controlled substances, legend drugs, or  
12 devices into this state.

13 After October 1, 1991, a health maintenance organization contractor  
14 providing coverage of prescription drugs from nonresident pharmacies  
15 may only provide coverage from licensed nonresident pharmacies. The  
16 health maintenance organizations shall obtain proof of current  
17 licensure in conformity with this section and sections 1 through 6 of  
18 this act from the nonresident pharmacy and keep that proof of licensure  
19 on file.

20 The department may request from the health maintenance organization  
21 the proof of current licensure for all nonresident pharmacies through  
22 which the insurer is providing coverage for prescription drugs for  
23 residents of the state of Washington. This information, which may  
24 constitute a full or partial customer list, shall be confidential and  
25 exempt from public disclosure, and from the requirements of chapter  
26 42.17 RCW. The board or the department shall not be restricted in the  
27 disclosure of the name of a nonresident pharmacy that is or has been  
28 licensed under section 2 or 3 of this act or of the identity of a

1 nonresident pharmacy disciplined under sections 1 through 6 of this  
2 act.

3 NEW SECTION. **Sec. 11.** The board may adopt rules to implement  
4 the provisions of sections 1 through 6 and 12 of this act.

5 NEW SECTION. **Sec. 12.** All records, reports, and information  
6 obtained by the department from or on behalf of an entity licensed  
7 under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential  
8 and exempt from inspection and copying under chapter 42.17 RCW.  
9 Nothing in this section restricts the investigation or the proceedings  
10 of the board or the department so long as the board and the department  
11 comply with the provisions of chapter 42.17 RCW. Nothing in this  
12 section or in chapter 42.17 RCW shall restrict the board or the  
13 department from complying with any mandatory reporting requirements  
14 that exist or may exist under federal law, nor shall the board or the  
15 department be restricted from providing to any person the name of any  
16 nonresident pharmacy that is or has been registered or disciplined  
17 under sections 1 through 6 of this act.

18 **Sec. 13.** RCW 42.17.310 and 1990 2nd ex.s. c 1 s 1103 are each  
19 amended to read as follows:

20 (1) The following are exempt from public inspection and copying:

21 (a) Personal information in any files maintained for students in  
22 public schools, patients or clients of public institutions or public  
23 health agencies, or welfare recipients.

24 (b) Personal information in files maintained for employees,  
25 appointees, or elected officials of any public agency to the extent  
26 that disclosure would violate their right to privacy.

1 (c) Information required of any taxpayer in connection with the  
2 assessment or collection of any tax if the disclosure of the  
3 information to other persons would (i) be prohibited to such persons by  
4 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
5 in unfair competitive disadvantage to the taxpayer.

6 (d) Specific intelligence information and specific investigative  
7 records compiled by investigative, law enforcement, and penology  
8 agencies, and state agencies vested with the responsibility to  
9 discipline members of any profession, the nondisclosure of which is  
10 essential to effective law enforcement or for the protection of any  
11 person's right to privacy.

12 (e) Information revealing the identity of persons who file  
13 complaints with investigative, law enforcement, or penology agencies,  
14 other than the public disclosure commission, if disclosure would  
15 endanger any person's life, physical safety, or property. If at the  
16 time the complaint is filed the complainant indicates a desire for  
17 disclosure or nondisclosure, such desire shall govern. However, all  
18 complaints filed with the public disclosure commission about any  
19 elected official or candidate for public office must be made in writing  
20 and signed by the complainant under oath.

21 (f) Test questions, scoring keys, and other examination data used  
22 to administer a license, employment, or academic examination.

23 (g) Except as provided by chapter 8.26 RCW, the contents of real  
24 estate appraisals, made for or by any agency relative to the  
25 acquisition or sale of property, until the project or prospective sale  
26 is abandoned or until such time as all of the property has been  
27 acquired or the property to which the sale appraisal relates is sold,  
28 but in no event shall disclosure be denied for more than three years  
29 after the appraisal.

1 (h) Valuable formulae, designs, drawings, and research data  
2 obtained by any agency within five years of the request for disclosure  
3 when disclosure would produce private gain and public loss.

4 (i) Preliminary drafts, notes, recommendations, and intra-agency  
5 memorandums in which opinions are expressed or policies formulated or  
6 recommended except that a specific record shall not be exempt when  
7 publicly cited by an agency in connection with any agency action.

8 (j) Records which are relevant to a controversy to which an agency  
9 is a party but which records would not be available to another party  
10 under the rules of pretrial discovery for causes pending in the  
11 superior courts.

12 (k) Records, maps, or other information identifying the location of  
13 archaeological sites in order to avoid the looting or depredation of  
14 such sites.

15 (l) Any library record, the primary purpose of which is to maintain  
16 control of library materials, or to gain access to information, which  
17 discloses or could be used to disclose the identity of a library user.

18 (m) Financial information supplied by or on behalf of a person,  
19 firm, or corporation for the purpose of qualifying to submit a bid or  
20 proposal for (a) a ferry system construction or repair contract as  
21 required by RCW 47.60.680 through 47.60.750 or (b) highway construction  
22 or improvement as required by RCW 47.28.070.

23 (n) Railroad company contracts filed with the utilities and  
24 transportation commission under RCW 81.34.070, except that the  
25 summaries of the contracts are open to public inspection and copying as  
26 otherwise provided by this chapter.

27 (o) Financial and commercial information and records supplied by  
28 private persons pertaining to export services provided pursuant to  
29 chapter 43.163 RCW and chapter 53.31 RCW.

1 (p) Financial disclosures filed by private vocational schools under  
2 chapter 28C.10 RCW.

3 (q) Records filed with the utilities and transportation commission  
4 or attorney general under RCW 80.04.095 that a court has determined are  
5 confidential under RCW 80.04.095.

6 (r) Financial and commercial information and records supplied by  
7 businesses during application for loans or program services provided by  
8 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

9 (s) Membership lists or lists of members or owners of interests of  
10 units in timeshare projects, subdivisions, camping resorts,  
11 condominiums, land developments, or common-interest communities  
12 affiliated with such projects, regulated by the department of  
13 licensing, in the files or possession of the department.

14 (t) All applications for public employment, including the names of  
15 applicants, resumes, and other related materials submitted with respect  
16 to an applicant.

17 (u) The residential addresses and residential telephone numbers of  
18 employees or volunteers of a public agency which are held by the agency  
19 in personnel records, employment or volunteer rosters, or mailing lists  
20 of employees or volunteers.

21 (v) The residential addresses and residential telephone numbers of  
22 the customers of a public utility contained in the records or lists  
23 held by the public utility of which they are customers.

24 (w) Information obtained by the board of pharmacy as provided in  
25 RCW 69.45.090.

26 (x) Information obtained by the board of pharmacy or the department  
27 of health and its representatives as provided in RCW 69.41.044 ((and)),  
28 69.41.280, and section 12 of this act.

29 (y) Financial information, business plans, examination reports, and  
30 any information produced or obtained in evaluating or examining a

1 business and industrial development corporation organized or seeking  
2 certification under chapter 31.24 RCW.

3 (z) Financial and commercial information supplied to the state  
4 investment board by any person when the information relates to the  
5 investment of public trust or retirement funds and when disclosure  
6 would result in loss to such funds or in private loss to the providers  
7 of this information.

8 (aa) Financial and valuable trade information under RCW 51.36.120.

9 (bb) Effective March 1, 1991, the work and home addresses, other  
10 than the city of residence, of a person shall remain undisclosed or be  
11 omitted from all documents made available for public review if that  
12 person requests in writing, under oath, that these addresses be kept  
13 private because disclosure would endanger his or her life, physical  
14 safety, or property. This provision does not in any way restrict the  
15 sharing or collection of information by state and local governmental  
16 agencies required for the daily administration of their duties. The  
17 secretary of state shall administer this provision and establish the  
18 procedures and rules that are necessary for its operation. An agency  
19 that has not been furnished with a request for confidentiality of  
20 address information is not liable for damages resulting from its  
21 disclosure of the information. For purpose of service of process, the  
22 secretary of state shall serve as agent for each person who submits a  
23 request under this subsection. A request shall be of no force or  
24 effect if the requester does not include a statement, along with or  
25 part of the request, designating the secretary of state as agent of the  
26 requester for purposes of service of process.

27 (2) Except for information described in subsection (1)(c)(i) of  
28 this section and confidential income data exempted from public  
29 inspection pursuant to RCW 84.40.020, the exemptions of this section  
30 are inapplicable to the extent that information, the disclosure of

1 which would violate personal privacy or vital governmental interests,  
2 can be deleted from the specific records sought. No exemption may be  
3 construed to permit the nondisclosure of statistical information not  
4 descriptive of any readily identifiable person or persons.

5 (3) Inspection or copying of any specific records exempt under the  
6 provisions of this section may be permitted if the superior court in  
7 the county in which the record is maintained finds, after a hearing  
8 with notice thereof to every person in interest and the agency, that  
9 the exemption of such records is clearly unnecessary to protect any  
10 individual's right of privacy or any vital governmental function.

11 (4) Agency responses refusing, in whole or in part, inspection of  
12 any public record shall include a statement of the specific exemption  
13 authorizing the withholding of the record (or part) and a brief  
14 explanation of how the exemption applies to the record withheld.

15 NEW SECTION. **Sec. 14.** Sections 1 through 6, 11, and 12 of  
16 this act are each added to chapter 18.64 RCW.

17 NEW SECTION. **Sec. 15.** This act shall take effect October 1,  
18 1991.