

CERTIFICATION OF ENROLLMENT

SENATE BILL 5684

Chapter 87, Laws of 1991

52nd Legislature
1991 Regular Session

PHARMACIES--LICENSING OF NONRESIDENT PHARMACIES

EFFECTIVE DATE: 10/1/91

Passed by the Senate April 22, 1991
Yeas 45 Nays 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 19, 1991
Yeas 97 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Approved May 9, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5684** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

FILED

May 9, 1991 - 11:19 a.m.

**Secretary of State
State of Washington**

SENATE BILL 5684

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senators West, Niemi and Johnson; by request of Department of Health.

Read first time February 14, 1991. Referred to Committee on Health & Long-Term Care.

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

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

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

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

1 utilization of pharmacy services through a variety of mechanisms,
2 including the use of mail-order pharmacies located outside the state of
3 Washington.

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

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

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

22 (b) Proof of compliance with all lawful directions and requests for
23 information from the regulatory or licensing agency of the state in
24 which it is licensed as well as with all requests for information made
25 by the department of health under this section. The nonresident
26 pharmacy shall maintain, at all times, a valid unexpired license,
27 permit, or registration to operate the pharmacy in compliance with the
28 laws of the state in which it is located. As a prerequisite to be
29 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 license under sections
12 1 through 6 of this act shall be made on a form furnished by the
13 department. The department may require such information as it deems is
14 reasonably necessary to carry out the purpose of sections 1 through 6
15 of this act.

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

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

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

25 (2) Submit to on-site inspection by the department of the
26 nonresident pharmacy's prescription records if the information in
27 subsection (1) of this section is not provided to the department upon
28 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 any
4 requirement 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, except when
16 delivered in person to an individual, controlled substances, legend
17 drugs, or devices into this state. It is unlawful for:

18 (1) Any nonresident pharmacy that is not licensed under sections 1
19 through 6 of this act to advertise its service in this state; or

20 (2) Any 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 within this state to
24 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, except when delivered in person to an enrolled
2 participant or his/her representative, controlled substances, legend
3 drugs, or devices into this state.

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

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

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

22 For the purposes of this chapter, a nonresident pharmacy is defined
23 as any pharmacy located outside this state that ships, mails, or
24 delivers, in any manner, except when delivered in person to an enrolled
25 participant or his/her representative, controlled substances, legend
26 drugs, or devices into this state.

27 After October 1, 1991, an insurer providing coverage of
28 prescription drugs from nonresident pharmacies may only provide
29 coverage from licensed nonresident pharmacies. The insurers shall

1 obtain proof of current licensure in conformity with this section and
2 sections 1 through 6 of this act from the nonresident pharmacy and keep
3 that proof of licensure on file.

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

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

16 For the purposes of this chapter, a nonresident pharmacy is defined
17 as any pharmacy located outside this state that ships, mails, or
18 delivers, in any manner, except when delivered in person to an enrolled
19 participant or his/her representative, controlled substances, legend
20 drugs, or devices into this state.

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

27 The department may request from the health care service contractor
28 the proof of current licensure for all nonresident pharmacies through
29 which the insurer is providing coverage for prescription drugs for

1 residents of the state of Washington. This information, which may
2 constitute a full or partial customer list, shall be confidential and
3 exempt from public disclosure, and from the requirements of chapter
4 42.17 RCW. The board or the department shall not be restricted in the
5 disclosure of the name of a nonresident pharmacy that is or has been
6 licensed under section 2 or 3 of this act or of the identity of a
7 nonresident pharmacy disciplined under sections 1 through 6 of this
8 act.

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

11 For the purposes of this chapter, a nonresident pharmacy is defined
12 as any pharmacy located outside this state that ships, mails, or
13 delivers, in any manner, except when delivered in person to an enrolled
14 participant or his/her representative, controlled substances, legend
15 drugs, or devices into this state.

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

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

1 licensed under section 2 or 3 of this act or of the identity of a
2 nonresident pharmacy disciplined under sections 1 through 6 of this
3 act.

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

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

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

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

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

25 (b) Personal information in files maintained for employees,
26 appointees, or elected officials of any public agency to the extent
27 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.

Passed the Senate April 22, 1991.
Passed the House April 19, 1991.
Approved by the Governor May 9, 1991.
Filed in Office of Secretary of State May 9, 1991.