

109TH CONGRESS
1ST SESSION

S. 809

To establish certain duties for pharmacies when pharmacists employed by the pharmacies refuse to fill valid prescriptions for drugs or devices on the basis of personal beliefs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2005

Mr. LAUTENBERG (for himself, Mr. CORZINE, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish certain duties for pharmacies when pharmacists employed by the pharmacies refuse to fill valid prescriptions for drugs or devices on the basis of personal beliefs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Access to Legal Phar-
5 maceuticals Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) An individual’s right to religious belief and
2 worship is a protected, fundamental right in the
3 United States.

4 (2) An individual’s right to access legal contra-
5 ception is a protected, fundamental right in the
6 United States.

7 (3) An individual’s right to religious belief and
8 worship cannot impede an individual’s access to legal
9 prescriptions, including contraception.

10 **SEC. 3. DUTIES OF PHARMACIES WITH RESPECT TO RE-**
11 **FUSAL OF PHARMACISTS TO FILL VALID PRE-**
12 **SCRIPTIONS.**

13 (a) IN GENERAL.—Part B of title II of the Public
14 Health Service Act (42 U.S.C. 238 et seq.) is amended
15 by adding at the end the following section:

16 **“SEC. 249. DUTIES OF PHARMACIES WITH RESPECT TO RE-**
17 **FUSAL OF PHARMACISTS TO FILL VALID PRE-**
18 **SCRIPTIONS.**

19 “(a) IN GENERAL.—A pharmacy that receives pre-
20 scription drugs or prescription devices in interstate com-
21 merce shall maintain compliance with the following condi-
22 tions:

23 “(1) If a product is in stock and a pharmacist
24 employed by the pharmacy refuses on the basis of a
25 personal belief to fill a valid prescription for the

1 product, the pharmacy ensures, subject to the con-
2 sent of the individual presenting the prescription in
3 any case in which the individual has reason to know
4 of the refusal, that the prescription is, without delay,
5 filled by another pharmacist employed by the phar-
6 macy.

7 “(2) Subject to subsection (b), if a product is
8 not in stock and a pharmacist employed by the phar-
9 macy refuses on the basis of a personal belief or on
10 the basis of pharmacy policy to order or to offer to
11 order the product when presented a valid prescrip-
12 tion for the product—

13 “(A) the pharmacy ensures that the indi-
14 vidual presenting the prescription is imme-
15 diately informed that the product is not in
16 stock but can be ordered by the pharmacy; and

17 “(B) the pharmacy ensures, subject to the
18 consent of the individual, that the product is,
19 without delay, ordered by another pharmacist
20 employed by the pharmacy.

21 “(3) The pharmacy does not employ any phar-
22 macist who engages in any conduct with the intent
23 to prevent or deter an individual from filling a valid
24 prescription for a product or from ordering the prod-

1 uct (other than the specific conduct described in
2 paragraph (1) or (2)), including—

3 “(A) the refusal to return a prescription
4 form to the individual after refusing to fill the
5 prescription or order the product, if the indi-
6 vidual requests the return of such form;

7 “(B) the refusal to transfer prescription
8 information to another pharmacy for refill dis-
9 pensing when such a transfer is lawful, if the
10 individual requests such transfer;

11 “(C) subjecting the individual to humilia-
12 tion or otherwise harassing the individual; or

13 “(D) breaching medical confidentiality with
14 respect to the prescription or threatening to
15 breach such confidentiality.

16 “(b) PRODUCTS NOT ORDINARILY STOCKED.—Sub-
17 section (a)(2) applies only with respect to a pharmacy or-
18 dering a particular product for an individual presenting
19 a valid prescription for the product, and does not require
20 the pharmacy to keep such product in stock, except that
21 such subsection has no applicability with respect to a prod-
22 uct for a health condition if the pharmacy does not keep
23 in stock any product for such condition.

24 “(c) ENFORCEMENT.—

1 “(1) CIVIL PENALTY.—A pharmacy that vio-
2 lates a requirement of subsection (a) is liable to the
3 United States for a civil penalty in an amount not
4 exceeding \$5,000 per day of violation, and not to ex-
5 ceed \$500,000 for all violations adjudicated in a sin-
6 gle proceeding.

7 “(2) PRIVATE CAUSE OF ACTION.—Any person
8 aggrieved as a result of a violation of a requirement
9 of subsection (a) may, in any court of competent ju-
10 risdiction, commence a civil action against the phar-
11 macy involved to obtain appropriate relief, including
12 actual and punitive damages, injunctive relief, and a
13 reasonable attorney’s fee and cost.

14 “(3) LIMITATIONS.—A civil action under para-
15 graph (1) or (2) may not be commenced against a
16 pharmacy after the expiration of the five-year period
17 beginning on the date on which the pharmacy alleg-
18 edly engaged in the violation involved.

19 “(d) DEFINITIONS.—For purposes of this section:

20 “(1) The term ‘employ’, with respect to the
21 services of a pharmacist, includes entering into a
22 contract for the provision of such services.

23 “(2) The term ‘pharmacist’ means a person au-
24 thorized by a State to practice pharmacy, including
25 the dispensing and selling of prescription drugs.

1 “(3) The term ‘pharmacy’ means a person
2 who—

3 “(A) is authorized by a State to engage in
4 the business of selling prescription drugs at re-
5 tail; and

6 “(B) employs one or more pharmacists.

7 “(4) The term ‘prescription device’ means a de-
8 vice whose sale at retail is restricted under section
9 520(e)(1) of the Federal Food, Drug, and Cosmetic
10 Act.

11 “(5) The term ‘prescription drug’ means a drug
12 that is subject to section 503(b)(1) of the Federal
13 Food, Drug, and Cosmetic Act.

14 “(6) The term ‘product’ means a prescription
15 drug or a prescription device.

16 “(7) The term ‘valid’, with respect to a pre-
17 scription, means—

18 “(A) in the case of a drug, a prescription
19 within the meaning of section 503(b)(1) of the
20 Federal Food, Drug, and Cosmetic Act that is
21 in compliance with applicable law, including, in
22 the case of a prescription for a drug that is a
23 controlled substance, compliance with part 1306
24 of title 21, Code of Federal Regulations, or suc-
25 cessor regulations; and

1 “(B) in the case of a device, an authoriza-
2 tion of a practitioner within the meaning of sec-
3 tion 520(e)(1) of such Act that is in compliance
4 with applicable law.

5 “(8) The term ‘without delay’, with respect to
6 a pharmacy filling a prescription for a product or or-
7 dering the product, means within the usual and cus-
8 tomary timeframe at the pharmacy for filling pre-
9 scriptions for products for the health condition in-
10 volved or for ordering such products, respectively.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) takes effect upon the expiration of 30 days
13 after the date of the enactment of this Act, without regard
14 to whether the Secretary of Health and Human Services
15 has issued any guidance or final rule regarding such
16 amendment.

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