

109TH CONGRESS  
1ST SESSION

# H. R. 1539

To amend the Public Health Service Act with respect to the responsibilities of a pharmacy when a pharmacist employed by the pharmacy refuses to fill a valid prescription for a drug on the basis of religious beliefs or moral convictions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2005

Mrs. MCCARTHY introduced the following bill; which was referred to the  
Committee on Energy and Commerce

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## A BILL

To amend the Public Health Service Act with respect to the responsibilities of a pharmacy when a pharmacist employed by the pharmacy refuses to fill a valid prescription for a drug on the basis of religious beliefs or moral convictions, 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,*

1 **SECTION 1. RESPONSIBILITIES OF PHARMACY REGARDING**  
2 **REFUSAL OF PHARMACIST TO FILL VALID**  
3 **PRESCRIPTION.**

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

7 **“SEC. 249. RESPONSIBILITIES OF PHARMACY REGARDING**  
8 **REFUSAL OF PHARMACIST TO FILL VALID**  
9 **PRESCRIPTION.**

10 “(a) IN GENERAL.—A pharmacy may not receive any  
11 prescription drug in interstate commerce unless the phar-  
12 macy maintains compliance with the following require-  
13 ments:

14 “(1) If a pharmacist employed by the pharmacy  
15 refuses to fill a valid prescription for a drug on the  
16 basis of religious beliefs or moral convictions, the  
17 pharmacy ensures that the prescription is promptly  
18 filled by another pharmacist employed by the phar-  
19 macy, not to exceed four hours after such refusal.

20 “(2) The pharmacy does not employ any phar-  
21 macist who—

22 “(A) with the intent to prevent a patient  
23 from filling a valid prescription for a drug, re-  
24 fuses to return an unfilled prescription to the  
25 patient, or to transfer an unfilled prescription

1 to another pharmacy at the request of that  
2 pharmacy; or

3 “(B) engages in any other conduct with  
4 such intent, other than the conduct described in  
5 paragraph (1).

6 “(b) EMPLOYMENT AUTHORITY OF PHARMACY.—  
7 Subsection (a)(1) does not affect the authority of a phar-  
8 macy to employ a pharmacist or to terminate the employ-  
9 ment of a pharmacist.

10 “(c) ENFORCEMENT.—

11 “(1) CIVIL PENALTY.—A pharmacy that vio-  
12 lates a requirement of subsection (a) is liable to the  
13 United States for a civil penalty in an amount not  
14 exceeding \$100,000 for all violations litigated in a  
15 single civil action.

16 “(2) PRIVATE CAUSE OF ACTION.—A person  
17 aggrieved as a result of a violation of a requirement  
18 of subsection (a) may, in any court of competent ju-  
19 risdiction, commence a civil action against the phar-  
20 macy involved to obtain appropriate relief, including  
21 actual and punitive damages, injunctive relief, and a  
22 reasonable attorney’s fee and cost.

23 “(3) LIMITATIONS.—A civil action under para-  
24 graph (1) or (2) may not be commenced against a  
25 pharmacy after the expiration of the five-year period

1 beginning on the date on which the pharmacy alleg-  
2 edly engaged in the violation involved.

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

4 “(1) The term ‘pharmacist’ means a person li-  
5 censed by a State to practice pharmacy, including  
6 the dispensing and selling of prescription drugs.

7 “(2) The term ‘pharmacy’ means a person  
8 who—

9 “(A) is licensed by a State to engage in the  
10 business of selling prescription drugs at retail;  
11 and

12 “(B) employs one or more pharmacists.

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

16 “(4) The term ‘valid’, with respect to a pre-  
17 scription, means a prescription within the meaning  
18 of section 503(b)(1) of the Federal Food, Drug, and  
19 Cosmetic Act that is in compliance with applicable  
20 law, including, in the case of a prescription for a  
21 drug that is a controlled substance, compliance with  
22 regulations under section 309 of the Controlled Sub-  
23 stances Act (part 1306 of title 21, Code of Federal  
24 Regulations, or successor regulations).’”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) takes effect upon the expiration of 30 days  
3 after the date of the enactment of this Act, without regard  
4 to whether the Secretary of Health and Human Services  
5 has issued any guidance or final rule regarding such  
6 amendment.

