

1 HB547  
2 129761-1  
3 By Representative Johnson (R)  
4 RFD: Health  
5 First Read: 21-APR-11

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8 SYNOPSIS: The State Board of Pharmacy licenses  
9 pharmacists to practice in Alabama and grants  
10 permits to pharmacies to operate in Alabama.

11 This bill defines the term hospital pharmacy  
12 services and requires a permit for that purpose.

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT

17  
18 To amend Sections 34-23-1, 34-23-30, 34-23-70, and  
19 34-23-74 of the Code of Alabama 1975, relating to the  
20 regulations and permits required by hospital pharmacies and to  
21 define hospital pharmacy services for that purpose.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 34-23-1, 34-23-30, 34-23-70, and  
24 34-23-74 of the Code of Alabama 1975, are amended to read as  
25 follows:

26 "§34-23-1.

1           "For the purpose of this chapter, the following  
2 words and phrases shall have the following meanings:

3           "(1) ASSOCIATION. The Alabama Pharmacy Association.

4           "(2) BOARD or STATE BOARD. The Alabama State Board  
5 of Pharmacy.

6           "(3) CHEMICAL. Any substance of a medicinal nature,  
7 whether simple or compound, obtained through the process of  
8 the science and art of chemistry, whether of organic or  
9 inorganic origin.

10          "(4) DISPENSE. To sell, distribute, administer,  
11 leave with, give away, dispose of, deliver, or supply a drug  
12 or medicine to the ultimate user or their agent.

13          "(5) DRUGS. All medicinal substances, preparations,  
14 and devices recognized by the United States Pharmacopoeia and  
15 National Formulary, or any revision thereof, and all  
16 substances and preparations intended for external and internal  
17 use in the cure, diagnosis, mitigation, treatment, or  
18 prevention of disease in man or animal and all substances and  
19 preparations other than food intended to affect the structure  
20 or any function of the body of man or animal.

21          "(6) EXTERN. A candidate for licensure as a  
22 pharmacist during the time prior to graduation from an  
23 accredited college of pharmacy.

24          "(7) HOSPITAL. An institution for the care and  
25 treatment of the sick and injured, licensed by the Alabama  
26 State Board of Health and authorized to be entrusted with the  
27 custody of drugs and medicines, the professional use of drugs

1 and medicines being under the direct supervision of a medical  
2 practitioner or pharmacist.

3 "(8) HOSPITAL PHARMACY SERVICES PERMIT. The grant of  
4 authority by the board to any person, firm, or corporation  
5 which offers or performs hospital pharmacy services. Hospital  
6 pharmacy services shall be defined by board rule, but shall  
7 not include any requirement for the receipt or inventory of  
8 any drugs, medicines, medical devices, chemicals, or poisons.  
9 The board shall further provide, by rule, qualifications and  
10 fees for the issuance of the hospital services permit.

11 ~~"(8)~~ (9) INTERN. An individual who is currently  
12 licensed by this state to engage in the practice of pharmacy  
13 while under the personal supervision of a pharmacist and is  
14 satisfactorily progressing toward meeting the requirements for  
15 licensure as a pharmacist; or a graduate of an approved  
16 college of pharmacy who is currently licensed by the State  
17 Board of Pharmacy for the purpose of obtaining practical  
18 experience as a requirement for licensure as a pharmacist; or  
19 a qualified applicant awaiting examination for licensure.

20 ~~"(9)~~ (10) LEGEND DRUG. Any drug, medicine, chemical,  
21 or poison bearing on the label the words, "caution, federal  
22 law prohibits dispensing without prescription," or similar  
23 wording indicating that such drug, medicine, chemical, or  
24 poison may be sold or dispensed only upon the prescription of  
25 a licensed medical practitioner.

1           "~~(10)~~ (11) LICENSE. The grant of authority by the  
2 State Board of Pharmacy to a person authorizing him or her to  
3 engage in the practice of pharmacy in this state.

4           "~~(11)~~ (12) MANUFACTURER. A person, except a  
5 pharmacy, who prepares, derives, produces, compounds, or  
6 packages any drug, medicine, chemical, or poison.

7           "~~(12)~~ (13) MEDICAL PRACTITIONER. Any physician,  
8 dentist, or veterinarian, or any other person authorized by  
9 law to treat, use, or prescribe medicine and drugs for sick  
10 and injured human beings or animals in this state.

11           "~~(13)~~ (14) MEDICINE. Any drug or combination of  
12 drugs that has the property of curing, diagnosing, preventing,  
13 treating, or mitigating diseases or that which may be used for  
14 those purposes.

15           "~~(14)~~ (15) PATENT OR PROPRIETARY MEDICINES.  
16 Completely compounded nonprescription packaged drugs,  
17 medicines, and nonbulk chemicals which are sold, offered,  
18 promoted, or advertised by the manufacturer or primary  
19 distributor under a trademark, trade name, or other trade  
20 symbol, and the labeling of which conforms to the requirements  
21 of the Federal Food, Drug, and Cosmetic Act; provided, that  
22 this definition shall not include:

23           "a. Drugs which are only advertised and promoted  
24 professionally to licensed physicians, dentists, or  
25 veterinarians by manufacturers or primary distributors.

26           "b. A narcotic or drug containing a narcotic.

1            "c. A drug the label of which bears substantially  
2 either the statements "caution--federal law prohibits  
3 dispensing without prescription" or "warning--may be  
4 habit-forming".

5            "d. A drug intended for injection.

6            "~~(15)~~ (16) PERMIT. The grant of authority by the  
7 State Board of Pharmacy to any person, firm, or corporation  
8 authorizing the operation of a pharmacy, wholesale drug  
9 distributor, repackager, bottler, manufacturer, or packer of  
10 drugs, medicines, chemicals, or poisons for medicinal  
11 purposes. Nonresident wholesale drug distributors registered  
12 with the appropriate agency, in the state in which they are  
13 domiciled, and operating in compliance with Prescription Drug  
14 Marketing Act standards, shall be allowed to do business in  
15 this state. No permit shall be required of any physician  
16 licensed to practice medicine for any act or conduct related  
17 to or connected with his or her professional practice.

18            "~~(16)~~ (17) PERSON. Any individual, partnership,  
19 corporation, association, trust, or other entity.

20            "~~(17)~~ (18) PHARMACIST. Any person licensed by the  
21 Alabama State Board of Pharmacy to practice the profession of  
22 pharmacy in the State of Alabama and whose license is in good  
23 standing.

24            "~~(18)~~ (19) PHARMACY. A place licensed by the Alabama  
25 State Board of Pharmacy in which prescriptions, drugs,  
26 medicines, medical devices, chemicals, and poisons are sold,  
27 offered for sale, compounded, or dispensed, and shall include

1 all places whose title may imply the sale, offering for sale,  
2 compounding, or dispensing of prescriptions, drugs, medicines,  
3 chemicals, or poisons.

4 "~~(19)~~ (20) POISON. Any substance other than  
5 agricultural products and pesticides which when applied to,  
6 introduced into, or developed within the body in relatively  
7 small quantities by its inherent chemical action uniformly  
8 produces serious bodily injury, disease, or death.

9 "~~(20)~~ (21) PRECEPTOR. A person who is duly licensed  
10 to practice pharmacy in the state and meets the requirements  
11 as established by the State Board of Pharmacy.

12 "~~(21)~~ (22) PRESCRIPTION. Any order for drug or  
13 medical supplies, written or signed or transmitted by word of  
14 mouth, telephone, telegraph, closed circuit television, or  
15 other means of communication by a legally competent  
16 practitioner, licensed by law to prescribe and administer such  
17 drugs and medical supplies intended to be filled, compounded,  
18 or dispensed by a pharmacist.

19 "~~(22)~~ (23) PROFESSIONAL DEGREE. A degree in pharmacy  
20 requiring a minimum of five academic years.

21 "~~(23)~~ (24) REPACKAGER. A person who purchases or  
22 acquires from a manufacturer or distributor, a drug, medicine,  
23 chemical, or poison for the purpose of bottling, labeling, or  
24 otherwise repackaging for sale or distribution. This  
25 definition shall not apply to a physician licensed to practice  
26 medicine who as a part of his or her professional practice

1 dispenses, administers, sells, or otherwise distributes any  
2 drug to a patient.

3 ~~"(24)~~ (25) SALE. Barter, exchange, or gift, or offer  
4 of barter, exchange, or gift, and shall include each  
5 transaction made by any person, whether a principal,  
6 proprietor, agent, servant, or employee.

7 ~~"(25)~~ (26) WHOLESALE DRUG DISTRIBUTORS. A person  
8 engaged in the business of distributing drugs and medicines  
9 for resale to pharmacies, hospitals, practitioners, government  
10 agencies, or other lawful outlets permitted to sell drugs or  
11 medicines. The sale, purchase, or trade of a drug by a retail  
12 pharmacy to another retail pharmacy or practitioner, for  
13 relief of temporary shortages, is exempt from this definition.  
14 Also exempt from this definition shall be (a) intracompany  
15 sales, (b) manufacturer and distributor sales representatives  
16 who distribute drug samples, (c) charitable organizations  
17 distributing to nonprofit affiliates of that organization, (d)  
18 certain purchases by hospitals or other health care entities  
19 that are members of a group purchasing organization, and (e)  
20 the distributors of blood and blood components.

21 "§34-23-30.

22 "Every pharmacy, hospital pharmacy, hospital  
23 pharmacy service provider, drugstore, pharmacy department,  
24 prescription department, prescription laboratory, dispensary,  
25 apothecary, or any other establishment with a title implying  
26 the sale, offering for sale, compounding, ~~or~~ dispensing of  
27 drugs, or providing hospital pharmacy services in this state



1 shall register biennially and receive a permit from the Board  
2 of Pharmacy. Any person desiring to open, operate, maintain,  
3 ~~or~~ establish a pharmacy or provide hospital pharmacy services  
4 in this state shall apply to the board for a permit at least  
5 30 days prior to the opening of the business. No pharmacy  
6 shall open for the transaction of business until it has been  
7 registered, inspected, and a permit issued by the board. The  
8 application for a permit shall be made on a form prescribed  
9 and furnished by the board which when properly executed shall  
10 indicate the ownership desiring such permit and the names and  
11 license numbers of all licensed pharmacists employed as well  
12 as the location of the pharmacy and other information as the  
13 board may require. If more than one pharmacy is operated by  
14 the same owner, a separate application for registration shall  
15 be made and a separate permit issued for each such  
16 establishment. All permits issued under this section shall  
17 become due on October 31 and shall become null and void on  
18 December 31 of even-numbered years. Every application for a  
19 permit for a new pharmacy or for hospital pharmacy services  
20 shall be accompanied by a fee to be determined by the board,  
21 but the fee shall not be less than one hundred dollars (\$100)  
22 nor more than two hundred dollars (\$200). Every application  
23 for a renewal permit shall be accompanied by a fee to be  
24 determined by the board, but the fee shall not be less than  
25 fifty dollars (\$50) nor more than one hundred fifty dollars  
26 (\$150). Every application for a permit due to transfer of  
27 ownership shall be accompanied by a fee to be determined by

1 the board, but the fee shall not be less than fifty dollars  
2 (\$50) nor more than one hundred fifty dollars (\$150). Each  
3 application for the renewal of a permit shall be made on or  
4 before October 31 of each even-numbered year, at which time  
5 the previous permit shall become null and void on December 31  
6 of even-numbered years. A penalty of twenty-five dollars (\$25)  
7 for each overdue month shall be assessed in addition to the  
8 permit fee for renewal of delinquent permits. The secretary of  
9 the board shall issue a permit for each pharmacy whose  
10 application is found to be satisfactory by the board. Permits  
11 issued under this section shall not be transferable. Any  
12 change in the control of ownership or licensed pharmacists  
13 shall be reported to the board in writing within 10 days of  
14 such occurrence. If the pharmacy is owned by a corporation,  
15 the permit shall be issued in the name of the corporation. It  
16 shall be the duty of the owners of pharmacies who are not  
17 licensed pharmacists to immediately notify the board upon the  
18 termination of employment of licensed pharmacists and to cause  
19 the surrender of permits as indicated. The further operation  
20 of the pharmacy in the absence of licensed pharmacists is  
21 forbidden; provided, that the nonregistered owner shall have a  
22 period of 30 days within which to comply with this provision.  
23 The next of kin of any deceased licensed pharmacist owner  
24 shall have a period of 30 days within which to comply with the  
25 provisions of this chapter, during which time no prescriptions  
26 shall be filled unless a licensed pharmacist is on duty. No

1 mail order pharmacy shall transact business in this state  
2 without a permit from the board.

3 Any person who violates this section shall be guilty  
4 of a misdemeanor.

5 "§34-23-70.

6 "(a) Every pharmacy when opened for business shall  
7 be under the personal supervision of a duly licensed  
8 pharmacist who shall have personal supervision of not more  
9 than one pharmacy at the same time. During temporary absences  
10 of the licensed pharmacist, not to exceed three hours daily or  
11 more than one and one-half hours at any one time, nor more  
12 than one week for temporary illness, the prescription  
13 department shall be closed, and no prescriptions are to be  
14 filled. During the temporary absence of a pharmacist, a sign  
15 shall be placed on the prescription counter in a prominent  
16 location easily seen by the public stating, "Prescription  
17 Department Closed, No Pharmacist on Duty."

18 "(b) The permit issued to each pharmacist by the  
19 board and the licensure certificates issued to the licensed  
20 pharmacist employed by each pharmacy must be prominently and  
21 conspicuously displayed in the pharmacy. The name of the  
22 licensed pharmacist on duty must be conspicuously displayed in  
23 the prescription department in a place readily observable by  
24 the public.

25 "(c) No licensed pharmacist or pharmacy operating  
26 within this state shall accept for refund purposes or  
27 otherwise any unused portion of any dispensed prescription.

1           "(d) The sale of poisons is restricted to the  
2 immediate supervision of a licensed pharmacist, and such  
3 poison shall not be displayed in a pharmacy in such a manner  
4 that a customer may obtain possession of such poisons when  
5 standing in an area allocated for customer use. No sale of a  
6 poison shall be made or delivered to any minor under 12 years  
7 of age or to any person known to be of unsound mind or under  
8 the influence of alcohol.

9           "(e) No pharmacy shall authorize any person, firm,  
10 or business establishment to serve as a pick-up station or  
11 intermediary for the purpose of having prescriptions filled or  
12 delivered, whether for profit or gratuitously. Except with  
13 respect to controlled substances, the following federally  
14 qualified health care centers are expressly exempt from this  
15 subsection: Birmingham Health Care, Inc., Central Alabama  
16 Comprehensive Health, Inc., Health Services, Inc., Family  
17 Oriented Primary Health Care Clinic/Mobile County Health  
18 Department, Franklin Primary Health Center, Quality of Life  
19 Health Services, Inc., and Whatley Health Services, Inc. Each  
20 named federally qualified health center is authorized to fill  
21 certain prescriptions at one location and deliver medications  
22 to clinics for patient pick-up subject to the review of the  
23 Board of Pharmacy.

24           "(f) No prescription blank supplied by a pharmacy or  
25 pharmacist to a practitioner shall bear the imprint thereon of  
26 the name or address of any pharmacy or bear the name or  
27 address of any person registered under this chapter.

1           "(g) No person shall fill or compound a prescription  
2 or drug order in an institution unless he is a duly licensed  
3 pharmacist or otherwise permitted to do so under the  
4 provisions of this chapter. The act of filling or compounding  
5 prescriptions or drug orders in an institution and hospital  
6 pharmacy services provided to hospital patients shall be as  
7 defined in the rules and regulations adopted by the board of  
8 pharmacy.

9           "However, such rules and regulations shall not apply  
10 to the reading, interpreting, and writing or verifying the  
11 writing of adequate directions as are necessary to assure  
12 patient's understanding of the prescriber's intentions by a  
13 duly qualified nurse practicing her/his profession in a  
14 licensed hospital or similar institution.

15           "Nothing in this chapter shall authorize the Board  
16 of Pharmacy to promulgate or to enforce any rule or regulation  
17 which governs, regulates, or restricts the professional  
18 practice of a physician licensed to practice medicine in this  
19 state. No provision of this chapter, or any rule promulgated  
20 under the authority of this chapter shall be interpreted to  
21 amend, alter, or modify the provisions of Section 34-23-11.

22           "(h) Only a licensed pharmacist or registered intern  
23 may accept an oral prescription of any nature. Upon so  
24 accepting such oral prescription, it must immediately be  
25 reduced to writing, and only a licensed pharmacist or an  
26 intern supervised by a licensed pharmacist may prepare a copy  
27 of a prescription or read a prescription to any person for

1 purposes of providing reference concerning treatment of the  
2 person or animal for whom the prescription was written; and,  
3 when the copy is given, a notation shall be made upon the  
4 prescription that a copy has been given, the date given, and  
5 to whom given.

6 "(i) If a prescription is refilled, a record of the  
7 date upon which the prescription is refilled must appear on  
8 the prescription or in a permanent prescription record book.  
9 On prescriptions which may be refilled, written or oral  
10 authorization must be received before refilling unless the  
11 number of refills is indicated on the original prescription.  
12 Those prescriptions marked "refill prn" or equivalent  
13 designation shall be refilled only in quantities commensurate  
14 with the dosage scheduled.

15 "(j) Each prescription must be written in a manner  
16 so that it can be compounded by any registered pharmacist. The  
17 coding of any prescription is in violation of this chapter. No  
18 prescription shall be written in any characters, figures, or  
19 ciphers, other than in the English or Latin language,  
20 generally in use among medical and pharmaceutical  
21 practitioners.

22 "(k) A prescription file or files shall be kept by  
23 every pharmacy for a period of not less than two years in  
24 which the original of every prescription compounded or  
25 dispensed shall be filed in the order of compounding with  
26 number and date of dispensing placed on each prescription.  
27 Each pharmacy shall produce any prescription file whenever

1       legally required to do so. Such prescription file shall at all  
2       times be open for inspection by the prescriber, the board of  
3       pharmacy, or its inspectors.

4               "(1) All drugs or drug preparations bearing upon the  
5       package the words, "caution, federal law prohibits dispensing  
6       without prescription" or words to the same effect, otherwise  
7       known as "legend drugs," shall be stored within the confines  
8       of the prescription department or the prescription department  
9       storage room of each pharmacy. Such drugs shall be sold or  
10       dispensed only on the prescription of a licensed practitioner  
11       authorized to prescribe such drugs and shall not be sold or  
12       dispensed as a refilled prescription except upon the express  
13       authorization of the prescriber. This shall not be construed  
14       to prohibit return to authorized suppliers or sale or transfer  
15       to others licensed to possess legend drugs.

16               "(m) Any person who violates any of the provisions  
17       of this section shall be guilty of a misdemeanor.

18               "§34-23-74.

19               "(a) Every pharmacy located in a hospital, skilled  
20       nursing home, or other related institution in this state shall  
21       be under the supervision of a licensed pharmacist.

22               "(b) (1) Hospital pharmacy service permits shall  
23       allow employed pharmacists and pharmacists under contract with  
24       a hospital to provide pharmacy services to hospital patients  
25       from locations outside the physical location of the licensed  
26       hospital pharmacy, only in places authorized by the board.

1           "(2) The State Board of Pharmacy shall promulgate  
2 rules to carry out this subsection pursuant to the Alabama  
3 Administrative Procedure Act, after advising with the Alabama  
4 Society of Health System Pharmacists.

5           "(3) This subsection and any rule promulgated to  
6 implement this subsection is not intended to and shall not be  
7 interpreted to include an expansion of the practice of  
8 pharmacy as the practice of pharmacy and permits are limited  
9 by Sections 34-23-1, 34-23-11, and 34-23-70, nor is any rule  
10 promulgated to implement this subsection intended to and shall  
11 not be interpreted to include any restriction on the practice  
12 of medicine as defined in Section 34-24-50.

13           "(c) In general hospitals, skilled nursing homes,  
14 and extended care facilities not operating a pharmacy, the  
15 drug or medicine room shall be under the direct supervision  
16 and direction of a consulting pharmacist or a member of the  
17 medical staff who shall be a licensed practitioner of  
18 medicine. In nursing homes which are not classified by the  
19 State Board of Health as skilled nursing homes, maternity  
20 homes, homes for the aged, domiciliary institutions, and all  
21 related institutions except those operated by and in  
22 conjunction with a licensed hospital, medicines or drugs  
23 bearing the wording on the label "caution, federal law  
24 prohibits dispensing without prescription" or similar wording  
25 that causes the medicines or drugs to be known as prescription  
26 legend drugs shall be furnished by a licensed pharmacy on the  
27 prescription of a licensed practitioner of medicine for



1 individual patients, and there shall be no prescription legend  
2 drugs on the premises of these institutions other than those  
3 so prescribed except an emergency kit as authorized by the  
4 State Board of Health. In hospitals and skilled nursing homes  
5 using vending machines or mechanical devices for the storage  
6 and dispensing of drugs, the machines or devices shall be  
7 stocked only under the supervision of a licensed pharmacist,  
8 and the drugs may be dispensed from the machine or device only  
9 by an individual acting in accordance with established  
10 institutional hospital pharmacy policy. The State Board of  
11 Pharmacy may at any time adopt such additional rules and  
12 regulations consistent with this chapter as may be deemed  
13 necessary after advising with the ~~Alabama Society of Hospital~~  
14 ~~Pharmacists~~ Alabama Society of Health System Pharmacists in  
15 regard to the storage and handling of drugs and medicines and  
16 the disposition of unused portion of drugs and medicines in  
17 hospitals and other related institutions under this section."

18 Section 2. This act shall become effective  
19 immediately following its passage and approval by the  
20 Governor, or its otherwise becoming law.