

110TH CONGRESS
1ST SESSION

S. 980

To amend the Controlled Substances Act to address online pharmacies.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2007

Mrs. FEINSTEIN (for herself and Mr. SESSIONS) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act to address online
pharmacies.

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 “Online Pharmacy Con-
5 sumer Protection Act of 2007”.

1 **SEC. 2. AMENDMENTS TO THE CONTROLLED SUBSTANCES**
2 **ACT RELATING TO THE DELIVERY OF CON-**
3 **TROLLED SUBSTANCES BY MEANS OF THE**
4 **INTERNET.**

5 (a) IN GENERAL.—Section 102 of the Controlled
6 Substances Act (21 U.S.C. 802) is amended by adding at
7 the end the following:

8 “(47) The term ‘Internet’ means collectively the
9 myriad of computer and telecommunications facili-
10 ties, including equipment and operating software,
11 which comprise the interconnected worldwide net-
12 work of networks that employ the Transmission
13 Control Protocol/Internet Protocol, or any prede-
14 cessor or successor protocol to such protocol, to com-
15 municate information of all kinds by wire or radio.

16 “(48) The term ‘deliver, distribute, or dispense
17 by means of the Internet’ refers, respectively, to any
18 delivery, distribution, or dispensing of a controlled
19 substance that is caused or facilitated by means of
20 the Internet.

21 “(49) The term ‘online pharmacy’—

22 “(A) means a person, entity, or Internet
23 site, whether in the United States or abroad,
24 that delivers, distributes, or dispenses, or offers
25 to deliver, distribute, or dispense, a controlled
26 substance by means of the Internet; and

1 “(B) does not include—

2 “(i) manufacturers or distributors
3 registered under subsection (a), (b), (c), or
4 (d) of section 303 who do not dispense
5 controlled substances;

6 “(ii) nonpharmacy practitioners who
7 are registered under section 303(f);

8 “(iii) mere advertisements that do not
9 attempt to facilitate an actual transaction
10 involving a controlled substance; or

11 “(iv) a person, entity, or Internet site
12 which is not in the United States and does
13 not facilitate the delivery, distribution, or
14 dispensing of a controlled substance by
15 means of the Internet to any person in the
16 United States.

17 “(50) The term ‘homepage’ means the first
18 page of the website of an online pharmacy that is
19 viewable on the Internet.”.

20 (b) REGISTRATION REQUIREMENTS.—Section 303 of
21 the Controlled Substances Act (21 U.S.C. 823) is amend-
22 ed by adding at the end the following new subsection:

23 “(i) DISPENSER OF CONTROLLED SUBSTANCES BY
24 MEANS OF THE INTERNET.—(1) A pharmacy that seeks
25 to deliver, distribute, or dispense by means of the Internet

1 a controlled substance shall obtain a registration specifi-
2 cally authorizing such activity, in accordance with regula-
3 tions promulgated by the Attorney General. In deter-
4 mining whether to grant an application for such registra-
5 tion, the Attorney General shall apply the factors set forth
6 in subsection (f).

7 “(2) Registration under this subsection shall be in
8 addition to, and not in lieu of, registration under sub-
9 section (f).

10 “(3) This subsection does not apply to pharmacies
11 that merely advertise by means of the Internet but do not
12 attempt to facilitate an actual transaction involving a con-
13 trolled substance by means of the Internet.”.

14 (c) REPORTING REQUIREMENTS.—Section 307(d) of
15 the Controlled Substances Act (21 U.S.C. 827(d)) is
16 amended by—

17 (1) designating the text as paragraph (1); and

18 (2) inserting after paragraph (1), as so des-
19 ignated by this Act, the following new paragraph:

20 “(2) A pharmacy registered under section 303(i) shall
21 report to the Attorney General the controlled substances
22 dispensed under such registration, in such manner and ac-
23 companied by such information as the Attorney General
24 by regulation shall require.”.

1 (d) ONLINE PRESCRIPTION REQUIREMENT.—Section
2 309 of the Controlled Substances Act (21 U.S.C. 829) is
3 amended by adding at the end the following new sub-
4 section:

5 “(e) CONTROLLED SUBSTANCES DISPENSED BY
6 MEANS OF THE INTERNET.—(1) As used in this sub-
7 section—

8 “(A) the term ‘valid prescription’ means a pre-
9 scription that is issued for a legitimate medical pur-
10 pose in the usual course of professional practice that
11 is based upon a qualifying medical relationship by a
12 practitioner registered by the Attorney General
13 under this part;

14 “(B) the term ‘qualifying medical relation-
15 ship’—

16 “(i) means a medical relationship that ex-
17 ists when the practitioner—

18 “(I) has conducted at least one med-
19 ical evaluation with the user in the phys-
20 ical presence of the practitioner, without
21 regard to whether portions of the evalua-
22 tion are conducted by other health profes-
23 sionals; or

24 “(II) conducts a medical evaluation of
25 the patient as a covering practitioner and

1 is not prescribing a controlled substance in
2 schedule II, III, or IV; and

3 “(ii) shall not be construed to imply that
4 one medical evaluation described in clause (i)
5 demonstrates that a prescription has been
6 issued for a legitimate medical purpose within
7 the usual course of professional practice; and

8 “(C) the term ‘covering practitioner’ means,
9 with respect to a patient, a practitioner who con-
10 ducts a medical evaluation, without regard to wheth-
11 er the medical evaluation of the patient involved is
12 an in-person evaluation, at the request of a practi-
13 tioner who has conducted at least one in-person
14 medical evaluation of the patient and is temporarily
15 unavailable to conduct the evaluation of the patient.

16 “(2) In addition to the requirements of subsections
17 (a) through (c), no controlled substance may be delivered,
18 distributed, or dispensed by means of the Internet without
19 a valid prescription.

20 “(3) Nothing in this subsection shall apply to—

21 “(A) the dispensing of a controlled substance
22 pursuant to telemedicine practices sponsored by—

23 “(i) a hospital that has in effect a provider
24 agreement under title XVIII of the Social Secu-
25 rity Act; or

1 Internet a controlled substance without a valid prescrip-
2 tion (as defined in section 309(e)) and each online phar-
3 macy shall comply with all applicable requirements of Fed-
4 eral and State law.

5 “(d) INTERNET SITE DISCLOSURE INFORMATION.—

6 Each online pharmacy site shall post in a visible and clear
7 manner on the homepage of its Internet site or on a page
8 directly linked from its homepage the following:

9 “(1) The name of the owner, street address of
10 the online pharmacy’s principal place of business,
11 telephone number, and email address.

12 “(2) A list of the States in which the online
13 pharmacy, and any pharmacy which dispenses, deliv-
14 ers, or distributes a controlled substance on behalf
15 of the online pharmacy, is licensed to dispense con-
16 trolled substances or prescription drugs and any ap-
17 plicable license number.

18 “(3) For each pharmacy identified on its license
19 in each State in which it is licensed to engage in the
20 practice of pharmacy and for each pharmacy which
21 dispenses or ships controlled substances on behalf of
22 the online pharmacy:

23 “(A) The name of the pharmacy.

24 “(B) The street address of the pharmacy.

1 “(C) The name, professional degree, and
2 licensure of the pharmacist-in-charge.

3 “(D) The telephone number at which the
4 pharmacist-in-charge can be contacted.

5 “(E) A certification that each pharmacy
6 which dispenses or ships controlled substances
7 on behalf of the online pharmacy is registered
8 under this part to deliver, distribute, or dis-
9 pense by means of the Internet controlled sub-
10 stances.

11 “(4) The name, address, professional degree,
12 and licensure of practitioners who provide medical
13 consultations through the website for the purpose of
14 providing prescriptions.

15 “(5) A telephone number or numbers at which
16 the practitioners described in paragraph (4) may be
17 contacted.

18 “(6) The following statement, unless revised by
19 the Attorney General by regulation: ‘This online
20 pharmacy will only dispense a controlled substance
21 to a person who has a valid prescription issued for
22 a legitimate medical purpose based upon a medical
23 relationship with a prescribing practitioner, which
24 includes at least one prior in-person medical evalua-
25 tion. This online pharmacy complies with section

1 309(e) of the Controlled Substances Act (21 U.S.C.
2 829(e)).’.

3 “(e) NOTIFICATION.—(1) Thirty days prior to offer-
4 ing a controlled substance for sale, delivery, distribution,
5 or dispensing, the online pharmacy shall notify the Attor-
6 ney General, in the form and manner as the Attorney Gen-
7 eral shall determine, and the State boards of pharmacy
8 in any States in which the online pharmacy offers to sell,
9 deliver, distribute, or dispense controlled substances.

10 “(2) The notification required under paragraph (1)
11 shall include—

12 “(A) the information required to be posted on
13 the online pharmacy’s Internet site under subsection
14 (d) and shall notify the Attorney General and the
15 applicable State boards of pharmacy, under penalty
16 of perjury, that the information disclosed on its
17 Internet site under to subsection (d) is true and ac-
18 curate;

19 “(B) the online pharmacy’s Internet site ad-
20 dress and a certification that the online pharmacy
21 shall notify the Attorney General of any change in
22 the address at least 30 days in advance; and

23 “(C) the Drug Enforcement Administration
24 registration numbers of any pharmacies and practi-
25 tioners referred to in subsection (d), as applicable.

1 “(3) An online pharmacy that is already operational
2 as of the effective date of this section, shall notify the At-
3 torney General and applicable State boards of pharmacy
4 in accordance with this subsection not later than 30 days
5 after the effective date of this section.

6 “(f) DECLARATION OF COMPLIANCE.—On and after
7 the date on which it makes the notification under sub-
8 section (e), each online pharmacy shall display on the
9 homepage of its Internet site, in such form as the Attorney
10 General shall by regulation require, a declaration that it
11 has made such notification to the Attorney General.

12 “(g) REPORTS.—Any statement, declaration, notifi-
13 cation, or disclosure required under this section shall be
14 considered a report required to be kept under this part.”.

15 (f) OFFENSES INVOLVING CONTROLLED SUB-
16 STANCES IN SCHEDULES III, IV, AND V.—Section 401(b)
17 of the Controlled Substances Act (21 U.S.C. 841(b)) is
18 amended—

19 (1) in paragraph (1)—

20 (A) in subparagraph (C), by striking “1
21 gram of” before “flunitrazepam”;

22 (B) in subparagraph (D), by striking “or
23 in the case of any controlled substance in
24 schedule III (other than gamma hydroxybutyric
25 acid), or 30 milligrams of flunitrazepam”; and

1 (C) by inserting at the end the following:

2 “(E)(i) In the case of any controlled substance
3 in schedule III, such person shall be sentenced to a
4 term of imprisonment of not more than 10 years
5 and if death or serious bodily injury results from the
6 use of such substance shall be sentenced to a term
7 of imprisonment of not more than 20 years, a fine
8 not to exceed the greater of that authorized in ac-
9 cordance with the provisions of title 18, or \$500,000
10 if the defendant is an individual or \$2,500,000 if the
11 defendant is other than an individual, or both.

12 “(ii) If any person commits such a violation
13 after a prior conviction for a felony drug offense has
14 become final, such person shall be sentenced to a
15 term of imprisonment of not more than 20 years
16 and if death or serious bodily injury results from the
17 use of such substance shall be sentenced to a term
18 of imprisonment of not more than 30 years, a fine
19 not to exceed the greater of twice that authorized in
20 accordance with the provisions of title 18, or
21 \$1,000,000 if the defendant is an individual or
22 \$5,000,000 if the defendant is other than an indi-
23 vidual, or both.

24 “(iii) Any sentence imposing a term of impris-
25 onment under this subparagraph shall, in the ab-

1 sence of such a prior conviction, impose a term of
2 supervised release of at least 2 years in addition to
3 such term of imprisonment and shall, if there was
4 such a prior conviction, impose a term of supervised
5 release of at least 4 years in addition to such term
6 of imprisonment”;

7 (2) in paragraph (2) by—

8 (A) striking “3 years” and inserting “5
9 years”;

10 (B) striking “6 years” and inserting “10
11 years”;

12 (C) striking “after one or more prior con-
13 victions” and all that follows through “have be-
14 come final,” and inserting “after a prior convic-
15 tion for a felony drug offense has become
16 final,”; and

17 (3) in paragraph (3) by—

18 (A) striking “2 years” and inserting “6
19 years”;

20 (B) striking “after one or more convic-
21 tions” and all that follows through “have be-
22 come final,” and inserting “after a prior convic-
23 tion for a felony drug offense has become
24 final,”; and

1 (C) adding at the end the following “Any
2 sentence imposing a term of imprisonment
3 under this paragraph may, if there was a prior
4 conviction, impose a term of supervised release
5 of not more than 1 year, in addition to such
6 term of imprisonment.”

7 (g) OFFENSES INVOLVING DISPENSING OF CON-
8 TROLLED SUBSTANCES BY MEANS OF THE INTERNET.—
9 Section 401 of the Controlled Substances Act (21 U.S.C.
10 841) is amended by adding at the end the following:

11 “(g) OFFENSES INVOLVING DISPENSING OF CON-
12 TROLLED SUBSTANCES BY MEANS OF THE INTERNET.—

13 (1) Except as authorized by this title, it shall be unlawful
14 for any person to knowingly or intentionally cause or fa-
15 cilitate the delivery, distribution, or dispensing by means
16 of the Internet of a controlled substance.

17 “(2) Violations of this subsection include—

18 “(A) delivering, distributing, or dispensing a
19 controlled substance by means of the Internet by a
20 pharmacy not registered under section 303(i);

21 “(B) writing a prescription for a controlled sub-
22 stance for the purpose of delivery, distribution, or
23 dispensation by means of the Internet in violation of
24 subsection 309(e);

1 “(C) serving as an agent, intermediary, or other
2 entity that causes the Internet to be used to bring
3 together a buyer and seller to engage in the dis-
4 pensing of a controlled substance in a manner not
5 authorized by sections 303(i) or 309(e); and

6 “(D) making a material false, fictitious, or
7 fraudulent statement or representation in the sub-
8 mission to the Attorney General under section 311.

9 “(3) This subsection does not apply to—

10 “(A) the delivery, distribution, or dispensation
11 of controlled substances by nonpractitioners to the
12 extent authorized by their registration under this
13 title;

14 “(B) the placement on the Internet of material
15 that merely advocates the use of a controlled sub-
16 stance or includes pricing information without at-
17 tempting to propose or facilitate an actual trans-
18 action involving a controlled substance; or

19 “(C) any activity that is limited to—

20 “(i) the provision of a telecommunications
21 service, or of an Internet access service or
22 Internet information location tool (as those
23 terms are defined in section 231 of the Commu-
24 nications Act of 1934 (47 U.S.C. 231)); or

1 “(ii) the transmission, storage, retrieval,
2 hosting, formatting, or translation (or any com-
3 bination thereof) of a communication, without
4 selection or alteration of the content of the
5 communication, except that deletion of a par-
6 ticular communication or material made by an-
7 other person in a manner consistent with sec-
8 tion 230(e) of the Communications Act of 1934
9 (47 U.S.C. 230(e)) shall not constitute such se-
10 lection or alteration of the content of the com-
11 munication.

12 “(4) Any person who knowingly or intentionally vio-
13 lates this subsection shall be sentenced in accordance with
14 subsection (b) of this section.”.

15 (h) PUBLICATION.—Section 403(c) of the Controlled
16 Substances Act (21 U.S.C. 843(c)) is amended by—

17 (1) designating the text as paragraph (1); and

18 (2) adding at the end the following:

19 “(2)(A) It shall be unlawful for any person to use
20 the Internet, or cause the Internet to be used, to advertise
21 the sale of, or to offer to sell, distribute, or dispense, a
22 controlled substance except as authorized by this title.

23 “(B) Violations of this paragraph include causing the
24 placement on the Internet of an advertisement that refers
25 to or directs prospective buyers to Internet sellers of con-

1 trolled substances who are not registered under section
2 303(i).

3 “(C) This paragraph does not apply to material that
4 either—

5 “(i) advertises the distribution of controlled
6 substances by nonpractitioners to the extent author-
7 ized by their registration under this title; or

8 “(ii) merely advocates the use of a controlled
9 substance or includes pricing information without at-
10 tempting to facilitate an actual transaction involving
11 a controlled substance.”.

12 (i) INJUNCTIVE RELIEF.—Section 512 of the Con-
13 trolled Substances Act (21 U.S.C. 882) is amended by
14 adding to the end of the section the following new sub-
15 section:

16 “(c) STATE CAUSE OF ACTION PERTAINING TO ON-
17 LINE PHARMACIES.—(1) In any case in which the State
18 has reason to believe that an interest of the residents of
19 that State has been or is being threatened or adversely
20 affected by the action of a person, entity, or Internet site
21 that violates the provisions of section 303(i), 309(e), or
22 311, the State may bring a civil action on behalf of such
23 residents in a district court of the United States with ap-
24 propriate jurisdiction—

1 “(A) to enjoin the conduct which violates this
2 section;

3 “(B) to enforce compliance with this section;

4 “(C) to obtain damages, restitution, or other
5 compensation, including civil penalties under section
6 402(b); and

7 “(D) to obtain such other legal or equitable re-
8 lief as the court may find appropriate.

9 “(2)(A) Prior to filing a complaint under paragraph
10 (1), the State shall serve a copy of the complaint upon
11 the Attorney General and upon the United States Attor-
12 ney for the judicial district in which the complaint is to
13 be filed. In any case where such prior service is not fea-
14 sible, the State shall serve the complaint on the Attorney
15 General and the appropriate United States Attorney on
16 the same day that the State’s complaint is filed in Federal
17 district court of the United States. Such proceedings shall
18 be independent of, and not in lieu of, criminal prosecutions
19 or any other proceedings under this title or any other laws
20 of the United States.

21 “(B)(i) Not later than 120 days after the later of the
22 date on which a State’s complaint is served on the Attor-
23 ney General and the appropriate United States Attorney,
24 or the date on which the complaint is filed, the United

1 States shall have the right to intervene as a party in any
2 action filed by a State under paragraph (1).

3 “(ii) After the 120-day period described in clause (i)
4 has elapsed, the United States may, for good cause shown,
5 intervene as a party in an action filed by a State under
6 paragraph (1).

7 “(iii) Notice and an opportunity to be heard with re-
8 spect to intervention shall be afforded the State that filed
9 the original complaint in any action in which the United
10 States files a complaint in intervention under clause (i)
11 or a motion to intervene under clause (ii).

12 “(iv) The United States may file a petition for appeal
13 of a judicial determination in any action filed by a State
14 under this section.

15 “(C) Service of a State’s complaint on the United
16 States as required in this paragraph shall be made in ac-
17 cord with the requirements of Federal Rule of Civil Proce-
18 dure 4(i)(1).

19 “(3) For purposes of bringing any civil action under
20 paragraph (1), nothing in this Act shall prevent an attor-
21 ney general of a State from exercising the powers con-
22 ferred on the attorney general of a State by the laws of
23 such State to conduct investigations or to administer oaths
24 or affirmations or to compel the attendance of witnesses
25 of or the production of documentary or other evidence.

1 “(4) Any civil action brought under paragraph (1) in
2 a district court of the United States may be brought in
3 the district in which the defendant is found, is an inhab-
4 itant, or transacts business or wherever venue is proper
5 under section 1391 of title 28, United States Code. Proc-
6 ess in such action may be served in any district in which
7 the defendant is an inhabitant or in which the defendant
8 may be found.

9 “(5) No private right of action is created under this
10 subsection.”.

11 (j) FORFEITURE OF FACILITATING PROPERTY IN
12 DRUG CASES.—Section 511(a)(4) of the Controlled Sub-
13 stances Act (21 U.S.C. 881(a)(4)) is amended to read as
14 follows:

15 “(4) Any property, real or personal, tangible or
16 intangible, used or intended to be used to commit,
17 or to facilitate the commission, of a violation of this
18 title or title III, and any property traceable there-
19 to.”.

20 (k) IMPORT AND EXPORT ACT.—Section 1010(b) of
21 the Controlled Substances Import and Export Act (21
22 U.S.C. 960(b)) is amended—

23 (1) in paragraph (4) by—

24 (A) striking “or any quantity of a con-
25 trolled substance in schedule III, IV, or V, (ex-

1 cept a violation involving flunitrazepam and ex-
2 cept a violation involving gamma hydroxy-
3 butyric acid)”;

4 (B) inserting “, or” before “less than one
5 kilogram of hashish oil”; and

6 (C) striking “imprisoned” and all that fol-
7 lows through the end of the paragraph and in-
8 serting “sentenced in accordance with section
9 401(b)(1)(D) of this title (21 U.S.C.
10 841(b)(1)(E)).”;

11 (2) by adding at the end the following:

12 “(5) In the case of a violation of subsection (a) of
13 this section involving a controlled substance in schedule
14 III, such person shall be sentenced in accordance with sec-
15 tion 401(b)(1)(E).

16 “(6) In the case of a violation of subsection (a) of
17 this section involving a controlled substance in schedule
18 IV (except a violation involving flunitrazepam), such per-
19 son shall be sentenced in accordance with section
20 401(b)(2).

21 “(7) In the case of a violation of subsection (a) of
22 this section involving a controlled substance in schedule
23 V, such person shall be sentenced in accordance with sec-
24 tion 401(b)(3).”; and

1 (3) in paragraph (3), by striking “, nor shall a
2 person so sentenced be eligible for parole during the
3 term of such a sentence” in the final sentence.

4 (1) EFFECTIVE DATE.—The amendments made by
5 this Act shall become effective 60 days after the date of
6 enactment of this Act.

7 (m) GUIDELINES AND REGULATIONS.—

8 (1) IN GENERAL.—The Attorney General may
9 promulgate and enforce any rules, regulations, and
10 procedures which may be necessary and appropriate
11 for the efficient execution of functions under this
12 subtitle, including any interim rules necessary for
13 the immediate implementation of this Act, on its ef-
14 fective date.

15 (2) SENTENCING GUIDELINES.—The United
16 States Sentencing Commission, in determining
17 whether to amend, or establish new, guidelines or
18 policy statements, to conform the guidelines and pol-
19 icy statements to this Act and the amendments
20 made by this Act, may not construe any change in
21 the maximum penalty for a violation involving a con-
22 trolled substance in a particular schedule as requir-
23 ing an amendment to, or establishing a new, guide-
24 line or policy statement.

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