

# HOUSE BILL 868

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EMERGENCY BILL

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CF SB 761

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By: **Delegates Murphy, Morhaim, Cullison, Donoghue, Elliott, Hubbard,  
A. Kelly, Pena–Melnyk, Ready, and V. Turner**

Introduced and read first time: February 7, 2013

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – State Board of Pharmacy – Waivers – Pharmacies That**  
3 **Only Dispense Devices**

4 FOR the purpose of authorizing the State Board of Pharmacy to waive certain  
5 requirements for certain pharmacies that only dispense devices in accordance  
6 with certain rules and regulations; making certain technical changes; making  
7 this Act an emergency measure; and generally relating to the State Board of  
8 Pharmacy and waivers for pharmacies that only dispense devices.

9 BY repealing and reenacting, with amendments,  
10 Article – Health Occupations  
11 Section 12–403  
12 Annotated Code of Maryland  
13 (2009 Replacement Volume and 2012 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Health Occupations**

17 12–403.

18 (a) This section does not require a nonresident pharmacy to violate the laws  
19 or regulations of the state in which it is located.

20 (b) Except as otherwise provided in this section, a pharmacy for which a  
21 pharmacy permit has been issued under this title:

22 (1) Shall be operated in compliance with the law and with the rules  
23 and regulations of the Board;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) Shall be located and equipped so that the pharmacy may be  
2 operated without endangering the public health or safety;

3 (3) Shall ensure that a licensed pharmacist be immediately available  
4 on the premises to provide pharmacy services at all times the pharmacy is in  
5 operation;

6 (4) Shall be supervised by a licensed pharmacist who is responsible for  
7 the operations of the pharmacy at all times the pharmacy is in operation;

8 (5) Shall provide complete pharmaceutical service by preparing and  
9 dispensing all prescriptions that reasonably may be expected of a pharmacist;

10 (6) Shall provide services to the general public and may not restrict or  
11 limit its services to any group of individuals unless granted a waiver from this  
12 requirement by the Board;

13 (7) May not offer pharmaceutical services under any term or condition  
14 that tends to interfere with or impair the free and complete exercise of professional  
15 pharmaceutical judgment or skill;

16 (8) May not make any agreement that denies a patient a free choice of  
17 pharmacist or pharmacy services;

18 (9) May not participate in any activity that is a ground for Board  
19 action against a licensed pharmacist under § 12-313 or a registered pharmacy  
20 technician under § 12-6B-09 of this title;

21 (10) (i) Shall maintain at all times a current reference library that  
22 is appropriate to meet the needs of:

23 1. The practice specialty of that pharmacy; and

24 2. The consumers the pharmacy serves; and

25 (ii) Shall comply with any regulations adopted by the Board  
26 establishing the types of texts required to be included in the reference libraries in each  
27 of the various practice specialty pharmacies;

28 (11) (i) Shall maintain at all times the minimum professional and  
29 technical equipment and sanitary appliances that are necessary in a pharmacy:

30 1. To prepare and dispense prescriptions properly; and

31 2. To otherwise operate a pharmacy; and

1 (ii) Shall:

2 1. Be equipped with the minimum equipment and  
3 appliances specified by the Board under this section; and

4 2. Be kept in a clean and orderly manner;

5 (12) Shall store all prescription or nonprescription drugs or devices  
6 properly and safely subject to the rules and regulations adopted by the Board;

7 (13) Shall:

8 (i) Make and keep on file for at least 5 years a record of each  
9 prescription prepared or dispensed in the pharmacy;

10 (ii) Disclose the records and files maintained of prescriptions for  
11 drugs or devices that identify or may be readily associated with the identity of a  
12 patient only in accordance with the provisions of Title 4, Subtitle 3 of the Health –  
13 General Article; and

14 (iii) Keep additional records as required by the rules and  
15 regulations adopted by the Board;

16 (14) Except as otherwise provided under federal law, shall establish  
17 and maintain mechanisms to ensure that all prescription drugs or devices used within  
18 institutions that provide acute, subacute, or long-term care, or within their related  
19 corporate subsidiaries, but stored outside a pharmacy, are stored properly and safely,  
20 subject to rules and regulations adopted by the Board and policies established by the  
21 institution;

22 (15) Shall provide such personnel, automation, and technology as are  
23 necessary to allow the licensed pharmacist employee sufficient time to utilize the  
24 pharmacist's knowledge and training and to perform competently the functions of a  
25 licensed pharmacist as required by law;

26 (16) Shall provide such personnel, automation, and technology as are  
27 necessary to [allow the licensed pharmacist employee or registered pharmacy  
28 technician to] comply with the labeling requirements specified in § 12-505 of this title;

29 (17) With regard to a prescription drug that is delivered in this State by  
30 the United States mail, a common carrier, or a delivery service and is not personally  
31 hand delivered directly to a patient or to the agent of the patient at the residence of  
32 the patient or at another location designated by the patient, shall:

33 (i) Provide a general written notice in each shipment of a  
34 prescription drug that alerts a consumer that, under certain circumstances, a

1 medication's effectiveness may be affected by exposure to extremes of heat, cold, or  
2 humidity; and

3 (ii) Provide a specific written notice in each shipment of a  
4 prescription drug that provides a consumer with a toll-free or local consumer access  
5 telephone number accessible during regular hours of operation, which is designed to  
6 respond to consumer questions pertaining to medications;

7 (18) (i) May maintain a record log of any prescription that is  
8 requested to be filled or refilled by a patient in accordance with the provisions of Title  
9 4, Subtitle 3 of the Health – General Article;

10 (ii) If the prescription record of a patient includes the patient's  
11 Social Security number, shall keep the Social Security number confidential;

12 (iii) May not list in the record log the type of illness, disability, or  
13 condition that is the basis of any dispensing or distribution of a drug by a pharmacist;  
14 and

15 (iv) May not list a patient's Social Security number, illness,  
16 disability, or condition, or the name and type of drug received in the record log if the  
17 log is available to other pharmacy customers;

18 (19) May not allow an unauthorized individual to represent that the  
19 individual is a pharmacist or registered pharmacy technician;

20 (20) Shall provide information regarding the process for resolving  
21 incorrectly filled prescriptions in accordance with existing regulations by:

22 (i) Posting a sign that is conspicuously positioned and readable  
23 by consumers at the point where prescription drugs are dispensed to consumers; or

24 (ii) Including written information regarding the process with  
25 each prescription dispensed; and

26 (21) Shall dispense or dispose of prescription drugs or medical supplies  
27 in accordance with Title 15, Subtitle 6 of the Health – General Article.

28 (c) (1) The Board may waive any of the requirements of this section for  
29 the University of Maryland School of Pharmacy, for nuclear pharmacy and dental  
30 pharmacy experimental and teaching programs.

31 (2) The Board may waive the requirements of subsection (b)(5) and (6)  
32 of this section for pharmacies that are engaged in pharmaceutical specialties which  
33 are recognized by the Board under rules and regulations adopted by the Board.

1                   **(3) THE BOARD MAY WAIVE THE REQUIREMENTS OF SUBSECTION**  
2 **(B)(3) THROUGH (6) AND (15) OF THIS SECTION FOR PHARMACIES THAT ONLY**  
3 **DISPENSE DEVICES IN ACCORDANCE WITH RULES AND REGULATIONS ADOPTED**  
4 **BY THE BOARD.**

5                   **[(3)](4)**       The Board shall waive the requirements of subsection (b)(20)  
6 of this section for a pharmacy owned and operated by a hospital, nursing facility, or  
7 clinic to which the public does not have access to purchase pharmaceuticals on a retail  
8 basis.

9           (d)     A nonresident pharmacy shall:

10                   (1)    Hold a pharmacy permit issued by the Board; and

11                   (2)    Have a pharmacist on staff who is:

12                           (i)    Licensed by the Board; and

13                           (ii)   Designated as the pharmacist responsible for providing  
14 pharmaceutical services to patients in the State.

15           (e)    (1)    In order to obtain a pharmacy permit from the Board, a  
16 nonresident pharmacy shall:

17                           (i)    Submit an application to the Board on the form that the  
18 Board requires;

19                           (ii)   Pay to the Board an application fee set by the Board;

20                           (iii)   Submit a copy of the most recent inspection report resulting  
21 from an inspection conducted by the regulatory or licensing agency of the state in  
22 which the nonresident pharmacy is located; and

23                           (iv)   On the required permit application, identify the name and  
24 current address of an agent located in this State officially designated to accept service  
25 of process.

26                   (2)    A nonresident pharmacy shall report a change in the name or  
27 address of the resident agent in writing to the Board 30 days prior to the change.

28           (f)     Notwithstanding subsection (a) of this section, a nonresident pharmacy  
29 shall:

30                   (1)    Comply with the requirements of subsection (b)(2), (7) through  
31 (12), and (19) **OF THIS SECTION** when:

1 (i) Dispensing prescription drugs or prescription devices to a  
2 patient in this State; or

3 (ii) Otherwise engaging in the practice of pharmacy in this  
4 State;

5 (2) On an annual basis and within 30 days after a change of office,  
6 corporate officer, or pharmacist, disclose to the Board the location, names, and titles of  
7 all principal corporate officers and all pharmacists who are dispensing prescriptions  
8 for drugs or devices to persons in this State;

9 (3) Comply with all lawful directions and requests for information  
10 from the regulatory or licensing agency of the state in which it is located and all  
11 requests for information made by the Board pursuant to this section;

12 (4) Maintain at all times a valid, unexpired permit to conduct a  
13 pharmacy in compliance with the laws of the state in which it is located;

14 (5) Maintain its records of prescription drugs or devices dispensed to  
15 patients in this State so that the records are readily retrievable;

16 (6) During its regular hours of operation, but not less than 6 days a  
17 week, and for a minimum of 40 hours per week, provide toll-free telephone service to  
18 facilitate communication between patients in this State and a pharmacist **OR AN**  
19 **INDIVIDUAL** who:

20 (i) Has access to the patient's prescription records; and

21 (ii) Is required to refer patients in the State to the responsible  
22 pharmacist licensed in the State, as appropriate;

23 (7) Disclose its toll-free telephone number on a label affixed to each  
24 container of drugs or devices;

25 (8) Comply with the laws of this State relating to the confidentiality of  
26 prescription records if there are no laws relating to the confidentiality of prescription  
27 records in the state in which the nonresident pharmacy is located; and

28 (9) Comply with the requirements of subsection (b)(17) and (20) of this  
29 section.

30 (g) Subject to the hearing provisions of § 12-411 of this subtitle, if a  
31 pharmacy or a nonresident pharmacy is operated in violation of this section, the Board  
32 may suspend the applicable pharmacy permit until the pharmacy complies with this  
33 section.

1           **(H) THE BOARD MAY WAIVE THE FOLLOWING REQUIREMENTS FOR**  
2 **NONRESIDENT PHARMACIES THAT ONLY DISPENSE DEVICES IN ACCORDANCE**  
3 **WITH RULES AND REGULATIONS ADOPTED BY THE BOARD:**

4                   **(1) SUBSECTIONS (D)(2) AND (F)(6)(II) OF THIS SECTION; AND**

5                   **(2) IF NOT APPLICABLE, SUBSECTIONS (E)(1)(III) AND (F)(4) OF**  
6 **THIS SECTION.**

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
8 measure, is necessary for the immediate preservation of the public health or safety,  
9 has been passed by a yea and nay vote supported by three-fifths of all the members  
10 elected to each of the two Houses of the General Assembly, and shall take effect from  
11 the date it is enacted.