S T A T E O F N E W Y O R K

1521

2009-2010 Regular Sessions

I N S E N A T E

February 2, 2009

Introduced by Sens. DUANE, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to establishing certain duties for pharmacies when pharmacists employed by the pharmacies refuse to fill prescriptions on the basis of personal beliefs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature finds that an individual's right to religious beliefs and worship is a protected, fundamental right in the state of New York and that an individual's right to access legal contraception is a protected, fundamental right in the state of New York. The legislature thereby recognizes that an individual's right to religious belief and worship cannot impede an individual's access to legal prescriptions, including contraception.

S 2. The education law is amended by adding a new section 6810-a to read as follows:

S 6810-A. DUTIES OF A PHARMACY; FILLING VALID PRESCRIPTIONS. 1. A PHARMACY RECEIVING AND FILLING PRESCRIPTIONS SHALL MAINTAIN COMPLIANCE WITH THE FOLLOWING CONDITIONS:

(A) IF A PRODUCT IS IN STOCK AND A PHARMACIST EMPLOYED BY A PHARMACY REFUSES ON THE BASIS OF A PERSONAL BELIEF TO FILL A VALID PRESCRIPTION FOR SUCH PRODUCT, THE PHARMACY ENSURES, SUBJECT TO THE CONSENT OF THE INDIVIDUAL PRESENTING THE PRESCRIPTION IN ANY CASE IN WHICH THE INDIVIDUAL HAS REASON TO KNOW OF THE REFUSAL, THAT THE PRESCRIPTION IS, WITHOUT DELAY, FILLED BY ANOTHER PHARMACIST EMPLOYED BY SUCH PHARMACY; OR

(B) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF A PRODUCT IS NOT IN STOCK AND A PHARMACIST EMPLOYED BY THE PHARMACY REFUSES ON THE BASIS OF A PERSONAL BELIEF OR ON THE BASIS OF PHARMACY POLICY TO ORDER OR TO OFFER TO ORDER THE PRODUCT WHEN PRESENTED WITH A VALID PRESCRIPTION FOR THE PRODUCT, THE PHARMACY SHALL ENSURE:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(I) THAT THE INDIVIDUAL PRESENTING THE PRESCRIPTION IS IMMEDIATELY INFORMED THAT THE PRODUCT IS NOT IN STOCK BUT MAY BE ORDERED BY THE PHARMACY; AND

(II) SUBJECT TO THE CONSENT OF THE INDIVIDUAL, THAT THE PRODUCT IS, WITHOUT DELAY, ORDERED BY ANOTHER PHARMACIST EMPLOYED BY SUCH PHARMACY.

2. THE PHARMACY SHALL NOT EMPLOY ANY PHARMACIST WHO ENGAGES IN ANY CONDUCT WITH THE INTENT TO PREVENT OR DETER AN INDIVIDUAL FROM FILLING A VALID PRESCRIPTION FOR A PRODUCT OR FROM ORDERING SUCH PRODUCT, OTHER THAN THE SPECIFIC CONDUCT DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, INCLUDING:

(A) THE REFUSAL TO RETURN A PRESCRIPTION FORM TO THE INDIVIDUAL AFTER REFUSING TO FILL THE PRESCRIPTION OR ORDER THE PRODUCT, IF THE INDIVIDUAL REQUESTS THE RETURN OF SUCH FORM;

(B) THE REFUSAL TO TRANSFER PRESCRIPTION INFORMATION TO ANOTHER PHARMACY FOR REFILL DISPENSING WHEN SUCH A TRANSFER IS LAWFUL, IF THE INDIVIDUAL REQUESTS SUCH TRANSFER;

(C) SUBJECTING THE INDIVIDUAL TO HUMILIATION OR OTHERWISE HARASSING THE INDIVIDUAL; OR

(D) BREACHING MEDICAL CONFIDENTIALITY WITH RESPECT TO THE PRESCRIPTION OR THREATENING TO BREACH SUCH CONFIDENTIALITY.

3. PRODUCTS THAT ARE NOT ORDINARILY STOCKED SHALL APPLY ONLY WITH RESPECT TO A PHARMACY ORDERING A PARTICULAR PRODUCT FOR AN INDIVIDUAL PRESENTING A VALID PRESCRIPTION FOR THE PRODUCT, AND DOES NOT REQUIRE THE PHARMACY TO KEEP SUCH PRODUCT IN STOCK; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION HAVE NO APPLICABILITY WITH RESPECT TO A PRODUCT FOR A HEALTH CONDITION IF THE PHARMACY DOES NOT KEEP IN STOCK ANY PRODUCT FOR SUCH CONDITION.

4. ANY PHARMACY IN VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS PER DAY OF VIOLATION, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS FOR ALL VIOLATIONS ADJUDICATED IN A SINGLE PROCEEDING.

5. ANY PERSON AGGRIEVED AS A RESULT OF A VIOLATION OF A REQUIREMENT OF SUBDIVISION ONE OF THIS SECTION MAY, IN ANY COURT OF COMPETENT JURISDICTION, COMMENCE A CIVIL ACTION AGAINST THE PHARMACY INVOLVED TO OBTAIN APPROPRIATE RELIEF, INCLUDING ACTUAL AND PUNITIVE DAMAGES, INJUNCTIVE RELIEF, AND A REASONABLE ATTORNEY'S FEE AND COST.

6. A CIVIL ACTION PURSUED UNDER THE PROVISIONS OF SUBDIVISION FOUR OR FIVE OF THIS SECTION MAY NOT BE COMMENCED AGAINST A PHARMACY AFTER THE EXPIRATION OF THE FIVE-YEAR PERIOD BEGINNING ON THE DATE ON WHICH THE PHARMACY ALLEGEDLY ENGAGED IN THE VIOLATION INVOLVED.

7. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) THE TERM "EMPLOY", WITH RESPECT TO THE SERVICES OF A PHARMACIST, INCLUDES ENTERING INTO A CONTRACT FOR THE PROVISIONS OF SUCH SERVICES;

(B) THE TERM "WITHOUT DELAY", WITH RESPECT TO A PHARMACY FILLING A PRESCRIPTION FOR A PRODUCT OR ORDERING THE PRODUCT, MEANS WITHIN THE USUAL AND CUSTOMARY TIMEFRAME AT THE PHARMACY FOR FILLING PRESCRIPTIONS FOR PRODUCTS FOR THE HEALTH CONDITION INVOLVED OR FOR ORDERING SUCH PRODUCTS, RESPECTIVELY.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.