

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Peter J. Koutoujian**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relating to internet prescription consumer protection.

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PETITION OF:

NAME:

Peter J. Koutoujian

DISTRICT/ADDRESS:

10th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2160 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
—————

### AN ACT RELATING TO INTERNET PRESCRIPTION CONSUMER PROTECTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. This act may be known and cited as “The Massachusetts Internet Prescription  
2 Consumer Protection Act.”

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4 SECTION 2. The purpose of this act is to require Internet pharmacies to make certain disclosures  
5 on their web sites, to list the principals, pharmacists, and physicians associated with the site, and  
6 to include amending licensing requirements for pharmacists and physicians to address  
7 prescribing and dispensing medication via the Internet.

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9 SECTION 3. Chapter 112 of the Massachusetts General Laws as appearing in the 2006 Official  
10 Edition is hereby amended by adding after Section 39C, the following section:—

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13 Section 39D. (1) “Deliver” means the actual, constructive, or attempted transfer from one (1)  
14 person to another of any drug whether or not an agency relationship exists;

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16 (2) “Dispense” means to deliver prescription medication to the ultimate user or research subject  
17 pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level  
18 practitioner;

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20 (3) “Distribute” means to deliver, other than by administering or dispensing, any drug;

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- 22 (4) “Electronic mail” means any message transmitted through the international network of  
23 interconnected government, educational, and commercial computer networks, including but not  
24 limited to messages transmitted from or to any address affiliated with an Internet site;  
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- 26 (5) “Foreign entity” means any corporation, limited liability company, or other body corporate if  
27 organized under the law of any jurisdiction other than the Commonwealth of Massachusetts;  
28
- 29 (6) “Internet site” means a specific location on the international network of interconnected  
30 government, educational, and commercial computer networks that is determined by Internet  
31 protocol numbers, by a domain name, or by both, including but not limited to domain names that  
32 use the designations “.com”, “.edu”, “.gov”, “.org”, and “.net”;  
33
- 34 (7) “Person” means any individual, corporation, partnership, limited liability company, limited  
35 liability partnership, limited partnership, association, joint venture, or any other legal or  
36 commercial entity, whether foreign or domestic;  
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- 38 (8) “Pharmacist” means any natural person licensed under this act to practice pharmacy;  
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- 40 (9) “Pharmacy”, “drug store” or “apothecary” means premises, laboratory, area or other place:  
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- 42 (a) Where drugs are offered for sale where the profession of pharmacy is practiced and  
43 where prescriptions are compounded and dispensed;  
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  - 45 (b) Which has displayed upon it or within it the words pharmacist, pharmaceutical  
46 chemist, pharmacy, apothecary, drugstore, druggist, drugs, drug sundries, or any of these  
47 words or combination of these words; or  
48
  - 49 (c) Where the characteristic symbols of pharmacy or the characteristic prescription sign  
50 “Rx” may be exhibited;  
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- 52 (10) “Practitioner” means a person licensed to practice medicine and surgery, dentistry, podiatry,  
53 veterinary medicine, optometry licensed under the optometry law as a therapeutic licensee or  
54 diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to  
55 use a prescription-only drug in teaching or chemical analysis or to conduct research with respect  
56 to a prescription-only drug;  
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- 58 (11) “Premises” mean the portion of any building or structure leased, used or controlled by the  
59 licensee in the conduct of the business registered by the board at the address for which the  
60 registration was issued;  
61
- 62 (12)(a) “Prescription-only drug” means any drug whether intended for use by man or animal,  
63 required by federal or state law to be dispensed only pursuant to a written or oral prescription,  
64 order of a practitioner, or is restricted to use by practitioners only. (b) “Prescription-only drug”  
65 does not mean contact lenses; and  
66

67 (13) "Prescription order" means: (a) An order to be filled by a pharmacist for prescription  
68 medication issued and signed by a practitioner or a mid-level practitioner in the authorized  
69 course of professional practice; or (b) an order transmitted to a pharmacist through word of  
70 mouth, note, telephone, or other means of communication directed by the practitioner or mid-  
71 level practitioner.

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74 SECTION 4. (A) A pharmacy shall not sell, dispense, distribute, deliver, or participate in the  
75 sale, dispensing, distribution, or delivery of any prescription-only drug to any consumer in this  
76 state through an Internet site or by electronic mail unless:

77

78 (1) All Internet sites and electronic mail used by the person for purposes of sales or  
79 delivery of a prescription-only drug are in compliance with all requirements of federal law  
80 applicable to the site or electronic mail;

81

82 (2)(a) The pharmacy that sells, dispenses, distributes, or delivers the prescription-only  
83 drug, is in compliance with all requirements of relevant state law, and (b) the pharmacy shall be  
84 properly regulated by the Massachusetts Board of Registration in Pharmacy to engage in the  
85 practice of pharmacy and shall determine annually, the annual licensing fee.

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87 (3)(a) the pharmacy, if a foreign entity, is registered with the Secretary of State and is in  
88 compliance with all requirements for foreign corporations provided in any applicable state law,  
89 and (b) nothing in this subdivision (a)(3) shall be construed to authorize any corporation to  
90 engage in the practice of medicine contrary to any applicable Massachusetts law; and

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92 (4) Any practitioner who sells, dispenses, distributes, or delivers the prescription-only  
93 drug is in compliance with all requirements of relevant state law.

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95 (B) Any practitioner who writes a prescription order through an Internet site or electronic mail  
96 for a consumer physically located in this state that is not an established patient, shall be licensed  
97 by the applicable licensing board and in compliance with all applicable laws.

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99 SECTION 5. No pharmacy shall sell, dispense, distribute, deliver, or participate in the sale,  
100 dispensing, distribution, or delivery of any prescription-only drug to any consumer in this state if  
101 any part of the transaction was conducted through an Internet site, unless the Internet site  
102 displays, in a clear and conspicuous manner the:

103 (1) Name of each pharmacy that causes the sale, dispensing, or delivery of a prescription-  
104 only drug to any consumer in this state;

105 (2) Address of the principal place of business of each pharmacy that causes the sale,  
106 dispensing, or delivery of a prescription-only drug to any consumer in this state;

107 (3) Telephone number of each pharmacy that causes the sale, dispensing, or delivery of a  
108 prescription-only drug to any consumer or other person in this state; and

109 (4)(a) Pharmacy's permit number assigned by the Board of Registration of Pharmacy; or

110

111 (b) Certification by the National Association of Boards of Pharmacy (NABP) as a Verified  
112 Internet Pharmacy Practice Sites (VIPPS) site and displays the VIPPS seal with a link to the  
113 NABP's verification site.

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116 SECTION 6. (a) No pharmacy that sells, dispenses, distributes, delivers, prescribes, or  
117 participates in the sale, dispensing, or delivery of any prescription-only drug to any consumer in  
118 this state, if the consumer submitted the purchase order for the prescription- only drug through an  
119 Internet site or by electronic mail, may disclaim, limit, or waive any liability to which the  
120 pharmacy otherwise is subject under law for the act or practice of selling, dispensing, or  
121 delivering prescription-only drugs;

122 (b) Any disclaimer, limitation, or waiver in violation of this section is void.

123 (c) Any attempt to make any disclaimer, limitation, or waiver in violation of this section is a  
124 violation of this act.

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126 SECTION 7. Any violation of this act is an unconscionable act or practice under Chapter 93A.

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128 SECTION 8. There shall be established upon the books of the commonwealth a separate fund to  
129 be known as the Board of Registration in Pharmacy Internet Pharmacy Trust Fund to be used,  
130 without prior appropriation, by the board of registration in pharmacy established in section 22 of  
131 chapter 12. One hundred percent of revenues collected by the board that are generated by any  
132 licensing fee associated with the granting of an internet pharmacy license shall be deposited into  
133 said trust fund. All monies deposited into said fund shall be expended exclusively by the board  
134 for its operation and administration; but, any unexpended balance at the end of the fiscal year  
135 shall revert to the General Fund. The board may incur expenses, and the comptroller may certify  
136 for payment, amounts in anticipation of expected receipts; but no expenditure shall be made from  
137 said fund which shall cause said fund to be in deficit at the close of a fiscal year.

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139 SECTION 9. The board shall promulgate regulations pursuant to conducting investigations of  
140 internet pharmacies failing to comply with the provisions of this act. The Board shall also  
141 promulgate regulations to carry out the provisions of this act.

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