

SENATE FILE NO. SF0166

State drug wholesaler.

Sponsored by: Senator(s) Mockler

A BILL

for

1 AN ACT relating to prescription drugs; providing that the  
2 department of health shall be the exclusive wholesale  
3 distributor of prescription drugs; providing definitions;  
4 granting rulemaking authority; providing additional grounds  
5 for discipline of licensed pharmacists as specified;  
6 providing an appropriation; and providing for an effective  
7 date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 35-7-1601 through 35-7-1607 are  
12 created to read:

13

14

## ARTICLE 16

15

## STATE DRUG WHOLESALER

16

17 **35-7-1601. Definitions.**

1

2 (a) As used in this act:

3

4 (i) "Department" means the department of health;

5

6 (ii) "Pharmacy" means as provided in W.S.  
7 33-24-124;

8

9 (iii) "Prescription drugs" means those  
10 substances which are designated as dangerous substances  
11 under the provisions of W.S. 33-24-131 and which are named  
12 and thereby included on a list of dangerous drugs,  
13 medicines, poisons, chemicals and narcotics compiled by the  
14 board of pharmacy.

15

16 **35-7-1602. Generally.**

17

18 (a) The department is the exclusive wholesale  
19 distributor and seller of prescription drugs within  
20 Wyoming. It is granted the sole right to sell prescription  
21 drugs at wholesale to licensed pharmacies and no pharmacy  
22 that is granted the right to sell, distribute or receive  
23 prescription drugs at retail shall purchase any  
24 prescription drugs from any source other than the

1 department, unless otherwise expressly authorized by state  
2 law. Any out-of-state shipment of prescription drugs into  
3 this state is prohibited unless otherwise expressly  
4 authorized by state law.

5  
6 (b) The department, in consultation with the board of  
7 pharmacy, shall promulgate rules and regulations as it  
8 considers necessary to carry out this article. Rules  
9 promulgated pursuant to this subsection shall be consistent  
10 with applicable laws and regulations of this state and of  
11 the United States.

12  
13 (c) The director of the department shall direct  
14 audits, inspections and other investigations as the  
15 director considers necessary for the enforcement of this  
16 article and the rules and regulations of the department.

17  
18 (d) On or before October 1 of each year, the  
19 department shall submit to the legislature financial  
20 statements on the operation of the department's  
21 prescription drug wholesale distribution activities. The  
22 statements shall be prepared in accordance with generally  
23 accepted accounting principles and shall itemize all

1 amounts actually paid to prescription drug manufacturers,  
2 wholesalers or other suppliers.

3

4 **35-7-1603. Collection of taxes; disposition of**  
5 **revenue and fees.**

6

7 (a) The department shall collect all excise or other  
8 taxes provided by law relating to prescription drugs for  
9 deposit into the general fund.

10

11 (b) All other revenue and fees collected by the  
12 department shall be deposited into the state treasury to  
13 the credit of the enterprise fund except as otherwise  
14 provided by law. The legislature shall authorize  
15 expenditures as necessary to defray the administrative  
16 expenses of the department, including salaries, office  
17 expenses and general expenses for the enforcement of their  
18 duties under this article and sufficient funds to defray  
19 the cost of prescription drug purchases and attendant  
20 expenses as provided by W.S. 9-4-204(o) and 9-4-205(d).

21

22 **35-7-1604. Purchase and sale of prescription drugs;**  
23 **shortages.**

24

1           (a) The department shall purchase and sell  
2     prescription drugs to licensed pharmacists within the state  
3     including, at the discretion of the department, any retail  
4     distributors or permittees operating within any military  
5     post or national park located within the boundaries of the  
6     state of Wyoming. Except as provided in subsection (c) of  
7     this section, sales shall be made at prices sufficient to  
8     return the cost of merchandise and all expenses of  
9     operation together with a profit, not to exceed seventeen  
10    and six-tenths percent (17.6%) above the cost of the  
11    merchandise.

12

13           (b) In the case of a shortage in the supply of any  
14    prescription drug, the department may apportion its  
15    available supply among licensed pharmacists in an equitable  
16    manner.

17

18           (c) The department may sell a prescription drug at a  
19    price less than that provided in subsection (a) of this  
20    section if the prescription drug has been designated by the  
21    division as overstocked or has been removed from the  
22    department's published listing of prescription drugs to be  
23    kept for sale to pharmacies. For purposes of this section  
24    "overstocked" means the amount of the prescription drug in

1 the department's inventory is greater than would be sold in  
2 a twelve (12) month period.

3

4 **35-7-1605. Inspections and examinations; failure to**  
5 **permit entry.**

6

7 (a) The department through its employees or agents  
8 may enter and inspect at any time every place of business  
9 wherein prescription drugs are being sold, stored or kept  
10 by any pharmacy.

11

12 (b) The department through its employees or agents  
13 may examine the records, books of account and stock of  
14 prescription drugs of any pharmacy.

15

16 (c) If the operator of any pharmacy refuses to permit  
17 the entry of an agent of the department to his place of  
18 business or storage place for the purpose of inspection,  
19 his license may be revoked as provided by the Wyoming  
20 Pharmacy Act. Entry for purposes of inspection is  
21 authorized only during open business hours unless it is in  
22 the presence of the pharmacist in charge or his duly  
23 authorized representative or unless the officer making  
24 entry does so under court order or has reasonable grounds

1 to believe that evidence of any violation of this title is  
2 within the place to be entered.

3

4 **35-7-1606. Sales to violators prohibited; hearing and**  
5 **review.**

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7 Whenever the operator of any pharmacy is convicted of  
8 willfully violating any provision of this article, upon  
9 satisfactory proof of the conviction, the department may,  
10 after notice and hearing, refuse to sell prescription drugs  
11 to the operator or pharmacy. The administrative proceeding  
12 shall be conducted as a contested case before a hearing  
13 examiner of the office of administrative hearings, who  
14 shall recommend a decision to the department. Judicial  
15 review, if any, shall be from the decision of the  
16 department and in accordance with the provisions of the  
17 Wyoming Administrative Procedure Act.

18

19 **35-7-1607. Sales to pharmacies failing to pay sales**  
20 **tax prohibited; hearing and review.**

21

22 Upon certification by the department of revenue that any  
23 pharmacy is sixty (60) or more days delinquent in paying  
24 sales taxes, the department shall not sell prescription

1 drugs to the pharmacy or its operator until the department  
2 of revenue certifies that the pharmacy has paid all sales  
3 taxes owed. Upon receipt of certification, the department  
4 shall notify the board of pharmacy of the delinquency. The  
5 operator of the pharmacy shall be allowed a hearing before  
6 the state board of equalization as provided by the Wyoming  
7 Administrative Procedure Act if the operator feels  
8 aggrieved by any action taken under this section.

9  
10 **Section 2.** W.S. 33-24-122(a) by creating new  
11 paragraph (xi) is amended to read:

12  
13 **33-24-122. Revocation or suspension of license and**  
14 **registration; letter of admonition; administrative**  
15 **penalties; probation; grounds.**

16  
17 (a) The license and registration of any pharmacist  
18 may be revoked or suspended by the board of pharmacy or the  
19 board may issue a letter of admonition, refuse to issue or  
20 renew any license or require successful completion of a  
21 rehabilitation program for any of the following causes:



1                    (xi) Knowing purchase of prescription drugs from  
2 any source in violation of W.S. 35-7-1601 through  
3 35-7-1607.

5           **Section     3.**   Five       hundred       thousand       dollars  
6   (\$500,000.00) is appropriated from the general fund to the  
7   enterprise fund as the working capital for the program  
8   established by this act.

10           **Section 4.** This act is effective July 1, 2005.

12 (END)