

1-1 By: Thompson of Harris H.B. No. 2561
 1-2 (Senate Sponsor - Taylor of Collin)
 1-3 (In the Senate - Received from the House May 3, 2017;
 1-4 May 5, 2017, read first time and referred to Committee on Health &
 1-5 Human Services; May 17, 2017, reported adversely, with favorable
 1-6 Committee Substitute by the following vote: Yeas 5, Nays 4;
 1-7 May 17, 2017, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11		X		
1-12		X		
1-13	X			
1-14	X			
1-15		X		
1-16	X			
1-17	X			
1-18		X		

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 2561 By: Taylor of Collin

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to the continuation and functions of the Texas State Board
 1-23 of Pharmacy; authorizing a reduction in fees.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 481.074(q), Health and Safety Code, is
 1-26 amended to read as follows:

1-27 (q) Each dispensing pharmacist shall send all required
 1-28 information, including any information required to complete the
 1-29 Schedule III through V prescription forms, to the board by
 1-30 electronic transfer or another form approved by the board not later
 1-31 than the next business ~~seventh~~ day after the date the
 1-32 prescription is completely filled.

1-33 SECTION 2. Section 481.075(i), Health and Safety Code, is
 1-34 amended to read as follows:

1-35 (i) Each dispensing pharmacist shall:

1-36 (1) fill in on the official prescription form or note
 1-37 in the electronic prescription record each item of information
 1-38 given orally to the dispensing pharmacy under Subsection (h) and
 1-39 the date the prescription is filled, and:

1-40 (A) for a written prescription, fill in the
 1-41 dispensing pharmacist's signature; or

1-42 (B) for an electronic prescription,
 1-43 appropriately record the identity of the dispensing pharmacist in
 1-44 the electronic prescription record;

1-45 (2) retain with the records of the pharmacy for at
 1-46 least two years:

1-47 (A) the official prescription form or the
 1-48 electronic prescription record, as applicable; and

1-49 (B) the name or other patient identification
 1-50 required by Section 481.074(m) or (n); and

1-51 (3) send all required information, including any
 1-52 information required to complete an official prescription form or
 1-53 electronic prescription record, to the board by electronic transfer
 1-54 or another form approved by the board not later than the next
 1-55 business ~~seventh~~ day after the date the prescription is
 1-56 completely filled.

1-57 SECTION 3. Section 481.0761, Health and Safety Code, is
 1-58 amended by adding Subsections (h), (i), and (j) to read as follows:

1-59 (h) The board, in consultation with the department and the
 1-60 regulatory agencies listed in Section 481.076(a)(1), shall

2-1 identify prescribing practices that may be potentially harmful and
2-2 patient prescription patterns that may suggest drug diversion or
2-3 drug abuse. The board shall determine the conduct that constitutes
2-4 a potentially harmful prescribing pattern or practice and develop
2-5 indicators for levels of prescriber or patient activity that
2-6 suggest a potentially harmful prescribing pattern or practice may
2-7 be occurring or drug diversion or drug abuse may be occurring.

2-8 (i) The board, based on the indicators developed under
2-9 Subsection (h), may send an electronic notification to a dispenser
2-10 or prescriber if the information submitted under Section 481.074(q)
2-11 or 481.075 indicates a potentially harmful prescribing pattern or
2-12 practice may be occurring or drug diversion or drug abuse may be
2-13 occurring.

2-14 (j) The board by rule may develop guidelines identifying
2-15 behavior suggesting a patient is obtaining controlled substances
2-16 that indicate drug diversion or drug abuse is occurring. A
2-17 pharmacist who observes behavior described by this subsection by a
2-18 person who is to receive a controlled substance shall access the
2-19 information under Section 481.076(a)(5) regarding the patient for
2-20 whom the substance is to be dispensed.

2-21 SECTION 4. Subchapter C, Chapter 481, Health and Safety
2-22 Code, is amended by adding Sections 481.0763 and 481.0764 to read as
2-23 follows:

2-24 Sec. 481.0763. DUTY OF PHARMACISTS. A pharmacist must
2-25 access information under Section 481.076(a)(5) with respect to a
2-26 patient before dispensing opioids, benzodiazepines, barbiturates,
2-27 or carisprodol for the patient.

2-28 Sec. 481.0764. REPORTS OF WHOLESALE DISTRIBUTORS. (a) A
2-29 wholesale distributor shall report to the board the information
2-30 that the distributor is required to report to the Automation of
2-31 Reports and Consolidated Orders System (ARCOS) of the Federal Drug
2-32 Enforcement Administration for the distribution of a controlled
2-33 substance by the distributor to a person in this state. The
2-34 distributor shall report the information to the board in the same
2-35 format and with the same frequency as the information is reported to
2-36 ARCOS.

2-37 (b) Information reported to the board under Subsection (a)
2-38 is confidential and not subject to disclosure under Chapter 552,
2-39 Government Code.

2-40 SECTION 5. Section 551.005, Occupations Code, is amended to
2-41 read as follows:

2-42 Sec. 551.005. APPLICATION OF SUNSET ACT. The Texas State
2-43 Board of Pharmacy is subject to Chapter 325, Government Code (Texas
2-44 Sunset Act). Unless continued in existence as provided by that
2-45 chapter, the board is abolished and this subtitle expires September
2-46 1, 2029 [2017].

2-47 SECTION 6. Chapter 551, Occupations Code, is amended by
2-48 adding Section 551.008 to read as follows:

2-49 Sec. 551.008. CLAIM OR DEFENSE FOR PROHIBITED RULE OR
2-50 POLICY. (a) A person may assert as an affirmative defense in an
2-51 administrative hearing or as a claim or defense in a judicial
2-52 proceeding under Chapter 37, Civil Practice and Remedies Code, that
2-53 a board rule, regulation, or policy, or a penalty imposed by the
2-54 board:

2-55 (1) limits the ability of an applicant for a license or
2-56 for registration under this subtitle to be licensed or registered
2-57 based on a sincerely held religious belief of the applicant; or

2-58 (2) burdens a license holder's or registrant's:

2-59 (A) free exercise of religion, regardless of
2-60 whether the burden is the result of a rule generally applicable to
2-61 all license holders or registrants, as applicable;

2-62 (B) freedom of speech regarding a sincerely held
2-63 religious belief; or

2-64 (C) membership in any religious organization.

2-65 (b) Subsection (a) does not apply to a rule, regulation, or
2-66 policy adopted or a penalty imposed by the board that results in a
2-67 limitation or burden described by Subsection (a) if the rule,
2-68 regulation, policy, or penalty is:

2-69 (1) essential to enforcing a compelling governmental

3-1 purpose; and
 3-2 (2) narrowly tailored to accomplish that purpose.

3-3 (c) Subsection (a) does not apply to any action imposed by
 3-4 the board to enforce a minimum standard applicable to the
 3-5 licensing, practice, or professional conduct of a license holder or
 3-6 registrant, as required by a statute or rule of the board.

3-7 (d) A person may bring an action for injunctive relief
 3-8 against a violation of this section.

3-9 SECTION 7. Section 552.006, Occupations Code, is amended by
 3-10 amending Subsection (b) and adding Subsection (d) to read as
 3-11 follows:

3-12 (b) The training program must provide the person with
 3-13 information regarding:

3-14 (1) the law governing the board's operations;

3-15 (2) [~~this subtitle and~~] the programs, functions,
 3-16 rules, and budget of the board;

3-17 (3) the scope of and limitations on the rulemaking
 3-18 authority of the board;

3-19 (4) [~~(2)~~] the results of the most recent formal audit
 3-20 of the board;

3-21 (5) [~~(3)~~] the requirements of:

3-22 (A) laws relating to open meetings, public
 3-23 information, administrative procedure, and disclosing conflicts of
 3-24 interest; and

3-25 (B) other laws applicable to members of the board
 3-26 in performing their duties; and

3-27 (6) [~~(4)~~] any applicable ethics policies adopted by
 3-28 the board or the Texas Ethics Commission.

3-29 (d) The executive director shall create a training manual
 3-30 that includes the information required by Subsection (b). The
 3-31 executive director shall distribute a copy of the training manual
 3-32 annually to each board member. On receipt of the training manual,
 3-33 each board member shall sign and submit to the executive director a
 3-34 statement acknowledging receipt of the training manual. The board
 3-35 shall publish a copy of each signed statement on the board's
 3-36 Internet website.

3-37 SECTION 8. Section 553.003(b), Occupations Code, is amended
 3-38 to read as follows:

3-39 (b) The executive director is a full-time employee of the
 3-40 board and shall:

3-41 (1) serve as secretary to the board; [~~and~~]

3-42 (2) perform the regular administrative functions of
 3-43 the board and any other duty as the board directs; and

3-44 (3) under the direction of the board, perform the
 3-45 duties required by this subtitle or designated by the board.

3-46 SECTION 9. Subchapter A, Chapter 554, Occupations Code, is
 3-47 amended by adding Section 554.0011 to read as follows:

3-48 Sec. 554.0011. USE OF ALTERNATIVE RULEMAKING AND DISPUTE
 3-49 RESOLUTION. (a) The board shall develop a policy to encourage the
 3-50 use of:

3-51 (1) negotiated rulemaking procedures under Chapter
 3-52 2008, Government Code, for the adoption of board rules; and

3-53 (2) appropriate alternative dispute resolution
 3-54 procedures under Chapter 2009, Government Code, to assist in the
 3-55 resolution of internal and external disputes under the board's
 3-56 jurisdiction.

3-57 (b) The board's procedures relating to alternative dispute
 3-58 resolution must conform, to the extent possible, to any model
 3-59 guidelines issued by the State Office of Administrative Hearings
 3-60 for the use of alternative dispute resolution by state agencies.

3-61 (c) The board shall:

3-62 (1) coordinate the implementation of the policy
 3-63 adopted under Subsection (a);

3-64 (2) provide training as needed to implement the
 3-65 procedures for negotiated rulemaking or alternative dispute
 3-66 resolution; and

3-67 (3) collect data concerning the effectiveness of those
 3-68 procedures.

3-69 SECTION 10. Section 558.051(a), Occupations Code, is

4-1 amended to read as follows:

4-2 (a) To qualify for a license to practice pharmacy, an
4-3 applicant for licensing by examination must submit to the board:

4-4 (1) a license fee set by the board; and

4-5 (2) a completed application on a form prescribed by
4-6 the board with satisfactory sworn evidence that the applicant:

4-7 (A) is at least 18 years of age;

4-8 (B) ~~[is of good moral character,~~

4-9 ~~[(C)]~~ has completed a minimum of a 1,000-hour
4-10 internship or other program that has been approved by the board or
4-11 has demonstrated, to the board's satisfaction, experience in the
4-12 practice of pharmacy that meets or exceeds the board's minimum
4-13 internship requirements;

4-14 (C) ~~[(D)]~~ has graduated and received a
4-15 professional practice degree, as defined by board rule, from an
4-16 accredited pharmacy degree program approved by the board;

4-17 (D) ~~[(E)]~~ has passed the examination required by
4-18 the board; and

4-19 (E) ~~[(F)]~~ has not had a pharmacist license
4-20 granted by another state restricted, suspended, revoked, or
4-21 surrendered, for any reason.

4-22 SECTION 11. Section 558.101(a), Occupations Code, is
4-23 amended to read as follows:

4-24 (a) To qualify for a license to practice pharmacy, an
4-25 applicant for licensing by reciprocity must:

4-26 (1) submit to the board:

4-27 (A) a reciprocity fee set by the board; and

4-28 (B) a completed application in the form
4-29 prescribed by the board, given under oath;

4-30 (2) ~~[be of good moral character,~~

4-31 ~~[(3)]~~ have graduated and received a professional
4-32 practice degree, as defined by board rule, from an accredited
4-33 pharmacy degree program approved by the board;

4-34 (3) ~~[(4)]~~ have presented to the board:

4-35 (A) proof of current or initial licensing by
4-36 examination; and

4-37 (B) proof that the current license and any other
4-38 license granted to the applicant by another state has not been
4-39 restricted, suspended, revoked, or surrendered for any reason; and

4-40 (4) ~~[(5)]~~ pass the Texas Pharmacy Jurisprudence
4-41 examination.

4-42 SECTION 12. Section 559.003, Occupations Code, is amended
4-43 by adding Subsection (f) to read as follows:

4-44 (f) The board may refuse to renew a license to practice
4-45 pharmacy for a license holder who is in violation of a board order.

4-46 SECTION 13. Section 568.002(c), Occupations Code, is
4-47 amended to read as follows:

4-48 (c) An applicant for registration as a pharmacy technician
4-49 or a pharmacy technician trainee must~~[-~~

4-50 ~~[(1) be of good moral character, and~~

4-51 ~~[(2)]~~ submit an application on a form prescribed by
4-52 the board.

4-53 SECTION 14. Section 568.004, Occupations Code, is amended
4-54 to read as follows:

4-55 Sec. 568.004. RENEWAL OF REGISTRATION. (a) The board may
4-56 adopt a system in which the registrations of pharmacy technicians
4-57 and pharmacy technician trainees expire on various dates during the
4-58 year.

4-59 (b) To renew a pharmacy technician registration, the
4-60 registrant must, before the expiration date of the registration:

4-61 (1) pay a renewal fee as determined by the board under
4-62 Section 568.005; and

4-63 (2) comply with the continuing education requirements
4-64 prescribed by the board in accordance with Section 568.0045.

4-65 (c) A person whose pharmacy technician registration has
4-66 been expired for 90 days or less may renew the expired registration
4-67 by paying to the board a renewal fee that is equal to one and
4-68 one-half times the normally required renewal fee for the
4-69 registration.

5-1 (d) A person whose pharmacy technician registration has
 5-2 been expired for more than 90 days but less than one year may renew
 5-3 the expired registration by paying to the board a renewal fee that
 5-4 is equal to two times the normally required renewal fee for the
 5-5 registration.

5-6 (e) A person whose pharmacy technician registration has
 5-7 been expired for one year or more may not renew the
 5-8 registration. The person may register by complying with the
 5-9 requirements and procedures for initially registering, including
 5-10 the examination requirement.

5-11 (f) The board may refuse to renew a pharmacy technician
 5-12 registration for a registrant who is in violation of a board order.

5-13 SECTION 15. Chapter 568, Occupations Code, is amended by
 5-14 adding Section 568.0045 to read as follows:

5-15 Sec. 568.0045. RULES RELATING TO CONTINUING EDUCATION. The
 5-16 board shall adopt rules relating to the continuing education
 5-17 required for pharmacy technicians. The rules must include
 5-18 requirements for:

5-19 (1) the number of hours of continuing education;

5-20 (2) the methods for meeting the continuing education
 5-21 requirements;

5-22 (3) the approval of continuing education programs;

5-23 (4) reporting completion of continuing education;

5-24 (5) records of completion of continuing education; and

5-25 (6) board audits to ensure compliance with the
 5-26 continuing education requirements.

5-27 SECTION 16. A pharmacist is not required to comply with a
 5-28 rule adopted under Section 481.0761(j), Health and Safety Code, as
 5-29 added by this Act, before January 1, 2018.

5-30 SECTION 17. Section 481.0763, Health and Safety Code, as
 5-31 added by this Act, applies only to a pharmacist who dispenses a
 5-32 controlled substance on or after January 1, 2018.

5-33 SECTION 18. (a) Except as provided by Subsection (b) of
 5-34 this section, Section 552.006, Occupations Code, as amended by this
 5-35 Act, applies to a member of the Texas State Board of Pharmacy
 5-36 appointed before, on, or after the effective date of this Act.

5-37 (b) A member of the Texas State Board of Pharmacy who,
 5-38 before the effective date of this Act, completed the training
 5-39 program required by Section 552.006, Occupations Code, as that law
 5-40 existed before the effective date of this Act, is required to
 5-41 complete additional training only on subjects added by this Act to
 5-42 the training program as required by Section 552.006, Occupations
 5-43 Code, as amended by this Act. A board member described by this
 5-44 subsection may not vote, deliberate, or be counted as a member in
 5-45 attendance at a meeting of the board held on or after December 1,
 5-46 2017, until the member completes the additional training.

5-47 SECTION 19. Sections 558.051, 558.101, and 568.002,
 5-48 Occupations Code, as amended by this Act, apply only to an
 5-49 application for a license to practice pharmacy or for registration
 5-50 as a pharmacy technician or pharmacy technician trainee filed on or
 5-51 after the effective date of this Act. An application for a license
 5-52 or registration filed before the effective date of this Act is
 5-53 governed by the law in effect on the date the application was filed,
 5-54 and the former law is continued in effect for that purpose.

5-55 SECTION 20. Section 559.003, Occupations Code, as amended
 5-56 by this Act, and Sections 568.004(b), (e), and (f), Occupations
 5-57 Code, as added by this Act, apply only to the renewal of a license to
 5-58 practice pharmacy or of a pharmacy technician registration on or
 5-59 after the effective date of this Act. The renewal of a license or
 5-60 registration before that date is governed by the law in effect
 5-61 immediately before the effective date of this Act, and the former
 5-62 law is continued in effect for that purpose.

5-63 SECTION 21. As soon as practicable after the effective date
 5-64 of this Act, the Texas State Board of Pharmacy shall adopt rules to
 5-65 reduce the amount of the fees imposed by the board for the renewal
 5-66 of an expired pharmacy technician registration to reflect the
 5-67 amounts provided for by Sections 568.004(c) and (d), Occupations
 5-68 Code, as added by this Act. A pharmacy technician who renews an
 5-69 expired registration certificate on or after the effective date of

6-1 this Act shall pay the amount provided for by Section 568.004(c) or
6-2 (d), Occupations Code, as added by this Act, instead of the amount
6-3 provided for under board rules adopted before that date.

6-4 SECTION 22. This Act takes effect September 1, 2017.

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