

1-1 By: Sheffield H.B. No. 3496  
 1-2 (Senate Sponsor - Creighton, Nichols, Schwertner)  
 1-3 (In the Senate - Received from the House May 8, 2019;  
 1-4 May 10, 2019, read first time and referred to Committee on Business  
 1-5 & Commerce; May 20, 2019, reported favorably by the following vote:  
 1-6 Yeas 8, Nays 1; May 20, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
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 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to the licensing and regulation of certain pharmacies;  
 1-21 providing an administrative penalty.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 560.052(b), Occupations Code, is amended  
 1-24 to read as follows:

1-25 (b) To qualify for a pharmacy license, an applicant must  
 1-26 submit to the board:

1-27 (1) a license fee set by the board, except as provided  
 1-28 by Subsection (d); ~~and~~

1-29 (2) a completed application that:

1-30 (A) is on a form prescribed by the board;

1-31 (B) includes notice that a surety bond may be  
 1-32 required under Section 565.0551;

1-33 (C) is given under oath;

1-34 (D) ~~[(C)]~~ includes proof that:

1-35 (i) a pharmacy license held by the  
 1-36 applicant in this state or another state, if applicable, has not  
 1-37 been restricted, suspended, revoked, or surrendered for any reason;  
 1-38 and

1-39 (ii) no owner of the pharmacy for which the  
 1-40 application is made has held a pharmacist license in this state or  
 1-41 another state, if applicable, that has been restricted, suspended,  
 1-42 revoked, or surrendered for any reason; and

1-43 (E) ~~[(D)]~~ includes a statement of:

1-44 (i) the ownership;

1-45 (ii) the location of the pharmacy;

1-46 (iii) the license number of each pharmacist  
 1-47 who is employed by the pharmacy, if the pharmacy is located in this  
 1-48 state, or who is licensed to practice pharmacy in this state, if the  
 1-49 pharmacy is located in another state;

1-50 (iv) the pharmacist license number of the  
 1-51 pharmacist-in-charge; and

1-52 (v) any other information the board  
 1-53 determines necessary; and

1-54 (3) a disclosure statement required under Section  
 1-55 560.0521, unless:

1-56 (A) the pharmacy for which the application is  
 1-57 made is operated by a publicly traded company;

1-58 (B) the pharmacy for which the application is  
 1-59 made is wholly owned by a retail grocery store chain; or

1-60 (C) the applicant is applying for a Class B or  
 1-61 Class C pharmacy license.

SECTION 2. Subchapter B, Chapter 560, Occupations Code, is amended by adding Section 560.0521 to read as follows:

Sec. 560.0521. SWORN DISCLOSURE STATEMENT. (a) A disclosure statement included with an application under Section 560.052(b)(3) must include:

(1) the name of the pharmacy;

(2) the name of each person who has a direct financial investment in the pharmacy;

(3) the name of each person who:

(A) is not an individual;

(B) has any financial investment in the pharmacy;

and

(C) is not otherwise disclosed under Subdivision (2);

(4) the total amount or percentage of the financial investment made by each person described by Subdivision (2); and

(5) the name of each of the following persons, if applicable, connected to the pharmacy if the person is not otherwise disclosed under Subdivision (2) or (3):

(A) a partner;

(B) an officer;

(C) a director;

(D) a managing employee;

(E) an owner or person who controls the owner;

and

(F) a person who acts as a controlling person of the pharmacy through the exercise of direct or indirect influence or control over the management of the pharmacy, the expenditure of money by the pharmacy, or a policy of the pharmacy, including:

(i) a management company, landlord, marketing company, or similar person who operates or contracts for the operation of a pharmacy and, if the pharmacy is a publicly traded corporation or is controlled by a publicly traded corporation, an officer or director of the corporation but not a shareholder or lender of the corporation;

(ii) an individual who has a personal, familial, or other relationship with an owner, manager, landlord, tenant, or provider of a pharmacy that allows the individual to exercise actual control of the pharmacy; and

(iii) any other person the board by rule requires to be included based on the person's exercise of direct or indirect influence or control.

(b) An applicant shall notify the board not later than the 60th day after the date any administrative sanction or criminal penalty is imposed against a person described by Subsection (a).

(c) The board may adopt rules regarding the disclosure of the source of a financial investment under Subsection (a).

(d) A disclosure statement under this section shall be given under oath as prescribed by board rule.

(e) Information contained in a disclosure statement under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

SECTION 3. Section 565.002(a), Occupations Code, is amended to read as follows:

(a) The board may discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license subject to Section 565.003, if the board finds that the applicant or license holder has:

(1) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(2) advertised a prescription drug or device in a deceitful, misleading, or fraudulent manner;

3-1 (3) violated any provision of this subtitle or any  
3-2 rule adopted under this subtitle or that an owner or employee of a  
3-3 pharmacy has violated any provision of this subtitle or any rule  
3-4 adopted under this subtitle;  
3-5 (4) sold without legal authorization a prescription  
3-6 drug or device to a person other than:  
3-7 (A) a pharmacy licensed by the board;  
3-8 (B) a practitioner;  
3-9 (C) a person who procures a prescription drug or  
3-10 device for lawful research, teaching, or testing, and not for  
3-11 resale;  
3-12 (D) a manufacturer or wholesaler licensed by the  
3-13 commissioner of public health as required by Chapter 431, Health  
3-14 and Safety Code; or  
3-15 (E) a carrier or warehouseman;  
3-16 (5) allowed an employee who is not a pharmacist to  
3-17 practice pharmacy;  
3-18 (6) sold an adulterated or misbranded prescription or  
3-19 nonprescription drug;  
3-20 (7) failed to engage in or ceased to engage in the  
3-21 business described in the application for a license;  
3-22 (8) failed to maintain records as required by this  
3-23 subtitle, Chapter 481 or 483, Health and Safety Code, the  
3-24 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21  
3-25 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle  
3-26 or Chapter 483, Health and Safety Code;  
3-27 (9) failed to establish and maintain effective  
3-28 controls against diversion of prescription drugs into other than a  
3-29 legitimate medical, scientific, or industrial channel as provided  
3-30 by this subtitle, another state statute or rule, or a federal  
3-31 statute or rule;  
3-32 (10) engaged in fraud, deceit, or misrepresentation as  
3-33 defined by board rule in:  
3-34 (A) operating a pharmacy;  
3-35 (B) [~~or in~~] applying for a license to operate a  
3-36 pharmacy; or  
3-37 (C) dispensing drugs for nontherapeutic  
3-38 purposes;  
3-39 (11) violated a disciplinary order;  
3-40 (12) been responsible for a drug audit shortage;  
3-41 (13) been disciplined by the regulatory board of  
3-42 another state for conduct substantially equivalent to conduct  
3-43 described under this subsection; or  
3-44 (14) waived, discounted, or reduced, or offered to  
3-45 waive, discount, or reduce, a patient copayment or deductible for a  
3-46 compounded drug in the absence of:  
3-47 (A) a legitimate, documented financial hardship  
3-48 of the patient; or  
3-49 (B) evidence of a good faith effort to collect  
3-50 the copayment or deductible from the patient.

3-51 SECTION 4. Subchapter B, Chapter 565, Occupations Code, is  
3-52 amended by adding Sections 565.0551 and 565.0591 to read as  
3-53 follows:  
3-54 Sec. 565.0551. SURETY BOND. (a) The executive director of  
3-55 the board may require a license holder to submit a surety bond to  
3-56 the board in an amount as prescribed by board rule, not to exceed  
3-57 \$25,000.  
3-58 (b) The board may use a pharmacy's surety bond to secure the  
3-59 payment of a fine, fee, or penalty imposed on the pharmacy or costs  
3-60 incurred by the board in conducting an investigation of the  
3-61 pharmacy only under Section 565.002(a)(7) or (10) if the pharmacy  
3-62 fails to pay the fine, fee, penalty, or cost as prescribed by board  
3-63 rule.  
3-64 Sec. 565.0591. REVOCATION OF PHARMACY LICENSE FOR FAILURE  
3-65 TO OPERATE. (a) On discovery by the board that a pharmacy licensed  
3-66 under Chapter 560 has ceased to operate for a period of 30 days or  
3-67 longer, the board shall notify the pharmacy that the license will be  
3-68 revoked.  
3-69 (b) The notice must:

4-1 (1) include a statement that the pharmacy license is  
4-2 being revoked for violation of Section 565.002(a)(7); and

4-3 (2) inform the license holder of the license holder's  
4-4 right to a hearing to contest the revocation.

4-5 (c) Not later than the 20th day after the date the license  
4-6 holder receives the notice of revocation under this section, the  
4-7 license holder may submit a written request for a hearing to contest  
4-8 the revocation.

4-9 (d) If the license holder does not request a hearing within  
4-10 the period prescribed by Subsection (c), the board shall:

4-11 (1) enter an order revoking the license; and

4-12 (2) notify the license holder of the order.

4-13 (e) If the license holder requests a hearing within the  
4-14 period prescribed by Subsection (c), a panel of three board members  
4-15 appointed by the president of the board shall conduct the hearing.  
4-16 At the hearing the panel shall determine whether the license holder  
4-17 has violated Section 565.002(a)(7).

4-18 (f) If the panel determines that the license holder  
4-19 committed the violation, the board shall promptly:

4-20 (1) enter an order revoking the license; and

4-21 (2) notify the license holder of the order.

4-22 (g) Chapter 2001, Government Code, does not apply to a  
4-23 determination under Subsection (e).

4-24 SECTION 5. Section 566.001, Occupations Code, is amended to  
4-25 read as follows:

4-26 Sec. 566.001. IMPOSITION OF PENALTY. The board may impose  
4-27 an administrative penalty on:

4-28 (1) a person licensed or regulated under this subtitle  
4-29 who violates this subtitle or a rule or order adopted under this  
4-30 subtitle; and

4-31 (2) an applicant who fails to submit a sworn  
4-32 disclosure statement with an application if required by Section  
4-33 560.052(b)(3).

4-34 SECTION 6. The changes in law made by this Act apply only to  
4-35 an application for a pharmacy license that is submitted on or after  
4-36 the effective date of this Act. An application for a pharmacy  
4-37 license that was submitted before the effective date of this Act is  
4-38 governed by the law in effect on the date the application was  
4-39 submitted, and the former law is continued in effect for that  
4-40 purpose.

4-41 SECTION 7. This Act takes effect January 1, 2020.

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