

CHAPTER 499

S.B. No. 670

An Act relating to the issuing and dispensing of controlled substances and to the definition of "practitioner"; amending the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), by amending Subdivision (24), Section 1.02 and Subsections (b), (c), and (e), Section 3.08 and by adding Subsection (i) to Section 3.08; amending the Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes), by amending Subdivision (30), Section 5 and Subsection (g), Section 40.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (24), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

"(24) 'Practitioner' means:

"(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

"(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state; or

"(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state."

SECTION 2. Subsections (b), (c), and (e), Section 3.08, Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) Except when dispensed directly to an ultimate user by a practitioner, *as defined in Paragraph (A) of Subdivision (24) of Section 1.02 of this Act* [other than a pharmacy], a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, shall not be dispensed without a written, oral, or telephonically communicated prescription of such [a] practitioner. A prescription for a Schedule III or IV drug shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

"(c) A telephonically communicated prescription of a practitioner, *as defined in Paragraph (A) of Subdivision (24) of Section 1.02 of this Act*, under this subchapter may be communicated only by the practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone. Such telephonically communicated prescriptions shall be reduced promptly to writing by the pharmacy and filed and retained in conformity with this subchapter. The written designation of an agent authorized to communicate prescriptions shall be maintained in the usual place of business of the practitioner and shall be available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety."

"(e) A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07, of this Act, may not be dispensed without the prescription of a practitioner, *as defined in Paragraph (A) of Subdivision (24) of Section 1.02 of this Act*, except when dispensed directly to an ultimate user by such [a] practitioner [other than a pharmacy], and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

SECTION 3. Section 3.08, Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), is amended by adding a new Subsection (i) to read as follows:

"(i) A pharmacist licensed in this state may only dispense a Schedule III, IV, or V controlled substance pursuant to an original written prescription issued by a practitioner, *as defined in Paragraph (C) of Subdivision (24) of Section 1.02 of this Act*, upon the determination of such pharmacist that such prescription was issued for a valid medical purpose and in the course of professional practice. Prescriptions issued pursuant to this subsection may not be filled or refilled more than six months from the initial date of issuance and such prescriptions authorized to be refilled on the original written prescription may not be refilled more than five times. No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner on a form that meets the requirements of and is filled in by the practitioner in accordance with Section 3.09 of this Act, and the practitioner is registered pursuant to Section 3.03 of this Act."

SECTION 4. Subdivision (30), Section 5, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

"(30) 'Practitioner' means:

"(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state; or

"(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and

licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state. 'Practitioner' does not include a person licensed under this Act."

SECTION 5. Subsection (g), Section 40, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

"(g) No written prescription issued by a practitioner, as such term is defined in Paragraph (A) of Subdivision (30) of Section 5 of this Act, may be dispensed unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words 'product selection permitted,' and under the other signature line shall be printed clearly the words 'dispense as written.' The practitioner shall communicate dispensing instructions to the pharmacist by signing on the appropriate line. If the practitioner's signature does not clearly indicate that the prescription must be dispensed as written, generically equivalent drug selection is permitted. No prescription form furnished a practitioner shall contain a preprinted order for a drug product by brand name, generic name, or manufacturer."

SECTION 6. EFFECTIVE DATE. This Act takes effect September 1, 1985.

SECTION 7. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 26, 1985, by a viva-voce vote; Senate concurred in House amendments on May 15, 1985, by a viva-voce vote; passed the House, with amendments, on May 9, 1985, by a non-record vote.

Approved: June 12, 1985

Effective: September 1, 1985