

CHAPTER 351

S.B. No. 621

AN ACT

relating to the continuation and functions of the Texas State Board of Pharmacy and to the regulation of the practice of pharmacy; providing penalties.

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

SECTION 1. Section 3, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. SUNSET PROVISION. The Texas State Board of Pharmacy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [1993].

SECTION 2. Section 7, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. MEMBERSHIP. (a) The board consists of nine members, *six* [seven] of whom must be licensed pharmacists and *three* [two] of whom must be representatives of the general public. There shall be representation on the board for licensed pharmacists who are primarily employed in Class A and Class C pharmacies.

(b) A person [~~who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of his activities as a member of a trade or professional association in the regulated profession~~] may not act as general counsel or serve as a member of the board *if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board.*

SECTION 3. Section 8, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. QUALIFICATIONS. (a) A licensed pharmacist member of the board may not be a salaried faculty member at a college of pharmacy and must at the time of his appointment:

(1) be a resident of this state;

(2) be licensed for the five years immediately preceding appointment and be in good standing to engage in the practice of pharmacy in this state; *and*

(3) be engaged in the practice of pharmacy in this state[; ~~and~~

~~[(4) not be an officer, employee, or paid consultant of a trade association in the regulated industry or be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry].~~

(b) A person is not eligible for appointment as a public member *of the board* if the person or the person's spouse:

(1) is *registered, certified, or* licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a [~~an agency or~~] business entity *or other organization regulated by the board or receiving funds from the board* [~~that provides health care services or that sells, manufactures, or distributes health care supplies or equipment~~]; [~~or~~]

(3) owns *or*[,] controls[, ~~or has an interest in~~], directly or indirectly, more than a 10 percent interest in [~~of~~] a business entity *or other organization regulated by the board or receiving funds from the board*; *or*

(4) *uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board member-*

ship, attendance, or expenses [that provides health care services or that sells, manufactures, or distributes health care supplies or equipment].

(c) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment or does not maintain during his service on the board the qualifications required by Sections 7(a) and (b) of this Act; ~~Subsection (a) or (b) of this section, as appropriate; or]~~

(2) violates the prohibition prescribed by Section 7(b) of this Act *or Subsection (a) of this section;*

(3) *cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or*

(4) *is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.*

(d) *The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.*

(e) *If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the ground. The president shall then notify the governor that a potential ground for removal exists.*

SECTION 4. Subsection (a), Section 9, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The governor shall appoint the members of the board with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, disability ~~[ereed]~~, sex, religion, age, or national origin of the appointee.

SECTION 5. Section 12, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by amending Subsections (c), (d), and (e) and by adding Subsection (f) to read as follows:

(c) The board shall employ a licensed pharmacist who shall serve as a secretary to and be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and other duties as the board may direct. The executive director may not perform any discretionary or decision-making functions for which the board is solely responsible. *The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.*

(d) The executive director or *the executive director's [his] designee* shall develop within one year of the effective date of this Act an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions *concurrently with [for at least 10 days prior to] any public posting.*

(e) The executive director or *the executive director's [his] designee* shall develop ~~[within one year of the effective date of this Act]~~ a system of annual performance evaluations ~~[based on measurable job tasks]~~. ~~All [Within two years of the effective date of this Act, all] merit pay for board employees [authorized by the executive director]~~ must be based on the system established by this subsection.

(f) *Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.*

SECTION 6. Section 15, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and by adding Subsections (d), (e), and (f) to read as follows:

(c) ~~An [employee of the board may not be an] officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule [regulated industry or be related within the~~

~~second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry].~~

(d) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member and may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(e) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(f) The board shall provide to its members and employees, as often as necessary, information regarding their qualification for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 7. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 15A to read as follows:

Sec. 15A. EQUAL EMPLOYMENT OPPORTUNITIES. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 8. Section 16, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) If the board determines it necessary in order to protect the health and welfare of the citizens of this state, it may make a rule concerning the operation of a licensed pharmacy located in this state also applicable to pharmacies licensed by the board that are located in another state.

(c) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(d) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

SECTION 9. Subsection (f), Section 17, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) The board shall submit whatever reports are required by state law. ~~The [Before December 1 of each year, the]~~ board shall file *annually with the governor and the presiding officer of each house of the legislature a complete and detailed [a] written report accounting [with the legislature and the governor in which the board accounts]* for all funds received and disbursed by the board during the preceding fiscal year. *The annual report must be in the form and reported in the time provided by the General Appropriations Act.*

SECTION 10. Subsection (m), Section 17, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(m) The board shall maintain an office where permanent records are kept and preserve a record of its proceedings. ~~[The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board shall, at least semiannually, notify the parties to the complaint as to the status of the complaint until final disposition, unless the notification would jeopardize an undercover investigation.]~~

SECTION 11. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Sections 17A, 17B, 17C, 17D, and 17E to read as follows:

Sec. 17A. **PUBLIC INTEREST INFORMATION AND COMPLAINTS; PUBLIC ACCESS TO BOARD FUNCTIONS.** (a) *The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.*

(b) *The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:*

- (1) *on each registration form, application, or written contract for services of an individual or entity regulated under this Act;*
- (2) *on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or*
- (3) *in a bill for service provided by an individual or entity regulated under this Act.*

(c) *The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.*

(d) *The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.*

(e) *The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.*

Sec. 17B. **RECORDS OF COMPLAINTS.** (a) *The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:*

- (1) *all persons contacted in relation to the complaint;*
- (2) *a summary of the results of the review or investigation of the complaint;*
- (3) *for complaints for which the board took no action, an explanation of the reason the complaint was closed without action; and*
- (4) *other relevant information.*

(b) *If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as every four months and until final disposition of the*

complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form for the filing of complaints made to the board. The board shall notify the complainant not later than the 30th day after the date of receipt by the board of the complaint and shall provide an estimated time for resolution of the complaint.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Sec. 17C. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt policies and procedures concerning the investigation of a complaint filed with the board. The policies and procedures adopted under this subsection shall:

- (1) determine the seriousness of the complaint;
- (2) ensure that complaints are not closed without appropriate consideration;
- (3) ensure that a letter is sent to the person who filed the complaint explaining the action taken on the complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the types of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a time line for conducting each phase of a complaint that is under the control of the board. The time line shall be kept in the information file for the complaint. A change in the time line must be noted in the complaint information file.

(c) The executive director of the board shall notify the board of the number of complaints that extend beyond two years after the date of the filing of the complaint. The executive director shall provide the board with an explanation of the reason that the complaints have not been resolved. The notice and explanation shall be provided to the board periodically at regularly scheduled board meetings.

Sec. 17D. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant, when applicable and permitted by law, and the licensee an opportunity to be heard and must require the presence of an attorney to advise the board or the board's employees. The attorney must be a member of the board's legal staff, if the board has a legal staff. If the board does not have a legal staff, the attorney must be an employee of the office of the attorney general.

Sec. 17E. MONITORING OF LICENSE HOLDER. The board shall develop policies and procedures for monitoring license holders' compliance with the requirements of this Act. Policies and procedures adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

SECTION 12. Subsections (c) and (d), Section 21, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The examinations for licensing required under this section shall be given by the board at least two times during the fiscal year of the state. The board shall determine the content and subject matter of each examination and determine which persons have successfully passed the examination. An applicant who fails the examination may retake the examination

two additional times. Before an applicant who has failed the examination three times is allowed to retake the examination, the applicant shall provide documentation from a college of pharmacy that additional college course work in subject areas the applicant failed in the examination has been successfully completed. If requested in writing by a person who fails the licensing examination administered under this Act [~~so requests in writing~~], the board shall furnish the person with an analysis of the person's [his] performance on the examination.

(d) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed the examination. A written examination prepared or offered by the board, including standardized national examinations, shall be validated by an independent testing professional.

SECTION 13. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 22A to read as follows:

Sec. 22A. **PROVISIONAL LICENSE.** (a) *The State Board of Pharmacy may, in the discretion of the board in each instance, on payment by the applicant for registration of a fee set by the board, grant a provisional license to an applicant who presents proof of current licensure in another state, the District of Columbia, or a territory of the United States that maintains professional standards considered by the board to be equivalent to those set forth in this Act. An applicant for the provisional license under this section must:*

(1) *be licensed in good standing as a pharmacist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;*

(2) *have passed a national or other examination recognized by the board relating to pharmacy; and*

(3) *be sponsored by a person licensed by the board under this Act with whom the provisional license holder may practice under this section.*

(b) *An applicant for a provisional license may be excused from Subsection (a)(3) of this section if the board determines that compliance with that section constitutes a hardship to the applicant.*

(c) *A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:*

(1) *the provisional license holder passes the jurisprudence examination required by this Act;*

(2) *the board verifies that the provisional license holder has the academic and experience requirements for a license under this Act; and*

(3) *the provisional license holder satisfies any other license requirements under this Act.*

(d) *The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later.*

SECTION 14. Section 24, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. **LICENSE RENEWAL.** (a) A license to practice pharmacy expires on December 31 of each year or of every other year, as determined by the board. To be eligible to renew the license, a licensee must comply with the continuing education requirements prescribed by the board.

(b) The license may be renewed for one or two years, as determined by the board, by payment of a renewal fee as determined by the board and by filing a completed application, given under oath, with the board for a license renewal certificate before the expiration date of the license. The application must state that the mandatory [~~number of hours of~~] continuing

education requirements have been completed by the licensee during the preceding license period.

(c) On timely receipt of the completed application, the renewal fee, and proof of completion of the continuing education requirements prescribed by Section 24A of this Act, the board shall issue a license renewal certificate bearing the pharmacist's license number, the period for which it is renewed, and other information the board determines necessary.

(d) If a person's license has been expired for ~~[not more than]~~ 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(e) If a person's license has been expired for more than 90 days but less than *one year* ~~[two years]~~, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(f) If a person's license has been expired for *one year* ~~[two years]~~ or more, the person may not renew the license ~~[and must apply for a new license]~~. The board may issue a new license to that person if the person has not had a license granted by any other state suspended, revoked, canceled, surrendered, or otherwise restricted for any reason, and if the person:

(1) was licensed as a pharmacist in this state, moved to another state, is licensed in the other state and has been engaged in the practice of pharmacy in the other state for the two years preceding the application for a new license, pays to the board an amount equal to the examination fee for the license, and passes the Texas Drug and Pharmacy Jurisprudence examination;

(2) was licensed as a pharmacist in this state, pays to the board an amount equal to the examination fee for the license, successfully passes the Texas Drug and Pharmacy Jurisprudence examination and any other examination required by the board, and, in addition to or in lieu of passing the examination as required by the board, participates in continuing pharmacy education and practices under conditions set by the board; or

(3) submits to reexamination and complies with the requirements and procedures for obtaining an original license.

~~(g) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board [The board shall notify each licensee in writing of the licensee's impending license expiration at least 60 days before the expiration date and again two weeks before the expiration date. The notice must state the number of continuing education hours the licensee must complete to be eligible to renew the license. If the licensee exceeded the number of hours of continuing education required for renewal during the preceding license period, the notice must include the number of hours the licensee may carry forward.~~

~~(h) The board shall specify by rule the procedures to be followed and the fees to be paid for renewal and penalties for late renewal of licenses].~~

~~(h) [(i)]~~ Practicing pharmacy without an annual or biennial renewal certificate for the current year, as provided by this Act, shall have the same effect and be subject to all penalties of practicing pharmacy without a license.

~~(i) [(j)]~~ A license to practice pharmacy or annual or biennial renewal certificate issued by the board may not be duplicated in any manner except as expressly provided by this Act. The board may in its discretion issue duplicate copies of either the license to practice pharmacy or the annual or biennial renewal certificate on request from the holder and on payment of a fee as determined by the board.

SECTION 15. Section 24A, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24A. **MANDATORY CONTINUING EDUCATION REQUIREMENTS.** (a) To renew a license to practice pharmacy, a licensee must demonstrate to the satisfaction of the board completion of the requirement for continuing professional education as required by this section. Each licensee shall execute a certified statement at the time of renewal attesting that the licensee has satisfied the continuing education requirement.

(b) The continuing education requirement may be met either by completing continuing education programs approved by the board or by taking and passing a standardized pharmacy examination approved by the board. A licensee who elects to take the examination must pay the examination fee assessed by the board under Section 39 of this Act.

(c) The board shall adopt rules relating to the approval of continuing education programs and providers. In adopting the rules, the board may consider providers approved by the American Council on Pharmaceutical Education and programs approved by the Texas Pharmacy Foundation. The board shall approve home study courses, correspondence courses, or other similar programs. Each program approved by the board shall issue a certificate of completion to a licensee who completes the program in a satisfactory manner.

(d) An applicant who satisfies the continuing education requirement through completion of approved programs must present evidence satisfactory to the board of completion of at least 12 hours of continuing education during the preceding license period. A licensee who completes more than 12 hours during the preceding license period may carry forward a maximum of 12 hours for the next license period.

(e) Each licensee shall maintain records for three years evidencing completion of the continuing education programs completed by the licensee. On an audit by the board, a licensee is considered in compliance with the continuing education requirements if the licensee submits to the board:

- (1) an affidavit stating that the licensee has complied with those requirements; and
- (2) records evidencing completion of the continuing education programs.

(f) The board shall adopt rules relating to the operation of the *mandatory* continuing education programs. *In establishing the requirement for continuing education, the board shall consider:*

- (1) *factors that lead to the competent performance of professional duties; and*
- (2) *the continuing education needs of licensees.*

(g) *The board shall adopt rules relating to the adoption or approval of mandatory continuing education programs and providers and shall adopt rules to evaluate the effectiveness of the programs and a licensee's participation and performance in the programs.*

(h) The board by rule may grant an extension to the *mandatory* continuing education requirements for good cause.

(i) ~~[(g)]~~ The board may adopt rules to exempt persons from all or a portion of the *mandatory* continuing education requirements ~~[during their initial license period]~~.

SECTION 16. Subsection (a), Section 24B, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board by rule shall adopt a system for the placement on inactive status of a license held by a person who is licensed by the board to practice pharmacy but who is not eligible to renew the license for failure to comply with the *mandatory* continuing education requirements of Section 24A of this Act and who is not engaged in the practice of pharmacy in this state. *The board may restrict the length of time a license holder may remain on inactive status.*

SECTION 17. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 24C to read as follows:

Sec. 24C. *TEMPORARY LICENSE. The board by rule may provide for the issuance of a temporary license.*

SECTION 18. Section 26, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. **GROUND FOR DISCIPLINE.** (a) Grounds for Disciplining a Holder of *or Applicant for* a Pharmacist License: The board shall refuse to issue a pharmacist license for failure to meet the requirements of Section 21 or 22 of this Act. The board may in its discretion refuse to issue or renew a license or may *assess a penalty [fine]*, reprimand, revoke, restrict, cancel, retire, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has:

(1) violated any provision of this Act or any of the rules of the board adopted under this Act;

(2) engaged in unprofessional conduct as that term is defined by the rules of the board;

(3) engaged in gross immorality as that term is defined by the rules of the board;

(4) developed an incapacity of a nature that prevents a pharmacist *or applicant* from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public. In enforcing this subdivision, the board shall, on probable cause, request a pharmacist *or applicant* to submit to a mental or physical examination by physicians designated by the board. If the pharmacist *or applicant* refuses to submit to the examination, the board shall issue an order requiring the pharmacist *or applicant* to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the pharmacist *or applicant*. The pharmacist *or applicant* shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the pharmacist *or applicant* and *an* [his] attorney are entitled to present any testimony and other evidence to show why the pharmacist *or applicant* should not be required to submit to the examination. After the hearing, the board shall issue an order either requiring the pharmacist *or applicant* to submit to the examination or withdrawing the request for examination;

(5) engaged in any fraud, deceit, or misrepresentation as those words are defined by the rules of the board in the practice of pharmacy or in seeking a license to act as a pharmacist;

(6) been convicted of a felony or a misdemeanor involving moral turpitude by a court of competent jurisdiction;

(7) a drug or alcohol dependency;

(8) failed to keep and maintain records required by this Act or failed to keep and maintain complete and accurate records of purchases and disposals of drugs listed in the Controlled Substances Act or the Dangerous Drug Act;

(9) violated any provision of the Controlled Substances Act or Dangerous Drug Act or a rule relating to those acts or any provision of Sections 485.031–485.035, Health and Safety Code, or a rule adopted under Section 485.011, Health and Safety Code;

(10) aided or abetted an unlicensed individual to engage in the practice of pharmacy if the pharmacist knew or reasonably should have known that the individual was unlicensed at the time;

(11) refused an entry into any pharmacy for any inspection authorized by this Act if the pharmacist had received notification from which the pharmacist knew or reasonably should have known that the attempted inspection was authorized;

(12) violated the pharmacy or drug laws or rules of this state or any other state or of the United States;

(13) been negligent in the practice of pharmacy;

(14) failed to submit to an examination after hearing and being ordered to do so by the board pursuant to Subdivision (4) of this subsection;

(15) dispensed prescription drugs while acting outside the usual course and scope of professional practice; or

(16) had a license to practice pharmacy issued by another state canceled, revoked, surrendered, or suspended for conduct substantially equivalent to conduct described in Subdivisions (1) through (15) of this subsection. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

(b) Grounds for Disciplining a Holder of a Pharmacy License: The board shall refuse to issue a pharmacy license for failure to meet the requirements of Section 29 or 30 of this Act. The board may in its discretion refuse to issue or renew a license or may *assess a penalty* [fine], reprimand, revoke, restrict, cancel, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has:

(1) been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant or licensee is an association, joint stock company, partnership, or corporation, that

a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude under the law of this state, another state, or the United States;

(2) advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner;

(3) violated any provision of this Act or any rule adopted under this Act or that any owner or employee of a pharmacy has violated any provision of this Act or any rule adopted under this Act;

(4) sold without legal authorization prescription drugs or devices to persons other than:

(A) a pharmacy licensed by the board;

(B) a practitioner;

(C) a person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale;

(D) a manufacturer or wholesaler registered with the commissioner of health as required by Chapter 431, Health and Safety Code; or

(E) a carrier or warehouseman;

(5) allowed an employee who is not a licensed pharmacist to practice pharmacy;

(6) sold adulterated or misbranded prescription or nonprescription drugs;

(7) failed to engage in or ceased to engage in the business described in the application for a license;

(8) failed to keep and maintain records as required by this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted under this Act or the Dangerous Drug Act; or

(9) failed to establish and maintain effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this Act or other state or federal laws or rules.

SECTION 19. Subsections (a) and (b), Section 26A, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) On the entry of an initial order against a person licensed by the board to practice pharmacy, the board may *refuse to issue a license to an applicant* or suspend the person's license. On the person's final conviction, the board may revoke the person's license.

(b) On the entry of an initial order against *an applicant for a pharmacy license* or a person who has been issued a license or renewal license for a pharmacy under this Act, or against a managing officer of the licensee or applicant if the licensee or applicant is an association, joint-stock company, partnership, or corporation, the board may *refuse to issue the license or may* suspend the license. On final conviction, the board may revoke the license.

SECTION 20. Subsection (a), Section 26B, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board may in its discretion refuse to issue or renew a license or may *assess a penalty [fine]* or reprimand any licensee or revoke, restrict, cancel, or suspend any license granted by the board, if the board finds that an applicant or licensee has:

(1) dispensed a drug, quantity, or strength of drug other than that which is ordered for the patient by a practitioner or labeled a prescription with incorrect directions for use;

(2) violated any of the following provisions of this Act:

(A) Section 29(a), (b)(5), or (c)(5);

(B) Section 30(i) or (j); or

(C) Section 32(a);

(3) failed to comply with the following requirements unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located:

(A) Section 481.074 or 481.075, Health and Safety Code;

(B) Texas substitution requirements regarding:

- (i) the practitioner's directions relative to generic substitution;
- (ii) the patient's right to refuse generic substitution; or
- (iii) notification to the patient of the patient's right to refuse substitution; [✗]

(C) board rules relating to the provision of drug information to the patient or patient's agent in written form or by telephone; or

(D) board rules adopted pursuant to Section 16(a) of this Act and determined by the board to be applicable pursuant to Section 16(b) of this Act; or

- (4) engaged in conduct which caused serious bodily injury to a Texas resident.

SECTION 21. Section 27A, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (d) and adding Subsection (j) to read as follows:

(d) The records and proceedings of the board, its authorized agents, or any pharmaceutical organization committee as set out in Subsections (a) and (b) of this section shall be confidential and are not considered open records for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes); provided, however, the board may disclose this confidential information only:

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to the pharmacist licensing or disciplinary authorities of other jurisdictions; [✗]

(3) pursuant to an order of a court of competent jurisdiction; or

(4) pursuant to Subsection (j) of this section.

(j) The board may disclose that the license of a pharmacist who is the subject of an order of the board that is confidential under Subsection (d) of this section is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any manner otherwise limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board's action.

SECTION 22. Subsection (a), Section 28, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) On the finding of the existence of grounds for discipline of any person holding a license or seeking a license or a renewal license under this Act, the board may impose one or more of the following penalties:

(1) suspension of the offender's license;

(2) revocation of the offender's license;

(3) restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy or operating a pharmacy in a particular manner for a term and under conditions to be determined by the board;

~~(4) imposition of an administrative penalty under Section 28B of this Act [a fine not to exceed \$1,000 for each offense involving diversion of controlled substances or a fine not to exceed \$250 for any other offense];~~

(5) refusal to issue or renew the offender's license;

(6) placement of the offender's license on probation and supervision by the board for a period to be determined by the board *and imposition of a requirement that the licensee:*

(A) report regularly to the board on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the board; or

(C) continue or review professional education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation;

(7) reprimand;

(8) cancellation of the offender's license; [✗]

(9) retirement of the offender's license as provided by board rule; or

(10) imposition of a civil penalty that does not exceed \$1,000 for each day of each violation and that may be collected in a suit initiated by the board.

SECTION 23. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 28A to read as follows:

Sec. 28A. TEMPORARY SUSPENSION OF LICENSE. If the majority of the board determines from the evidence or information presented to it that a pharmacist by continuation in practice would constitute a continuing threat to the public welfare, the board shall temporarily suspend the license of the pharmacist. The license may be temporarily suspended without notice or hearing if, at the time the suspension is ordered, a hearing before the board on whether disciplinary proceedings under this Act should be initiated against the license holder is scheduled to be held not later than the 14th day after the date of the suspension. A second hearing on the suspended license shall be held by the State Office of Administrative Hearings not later than the 60th day after the date of the suspension. If the second hearing is not held in the time required by this subsection, the suspended license is automatically reinstated.

SECTION 24. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 28B to read as follows:

Sec. 28B. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation involving the diversion of controlled substances may be in an amount not to exceed \$5,000 for each day of each violation. The penalty for other violations may be in an amount not to exceed \$2,500 for each day of each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty, to the extent possible, shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The executive director, or staff designee, on determination that a violation has occurred may issue to the board a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is approved by the board and issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by the board, except that a hearing involving the diversion of controlled substances shall be held by an administrative law judge of the State Office of Administrative Hearings. The board or the administrative law judge, as appropriate, shall make findings of fact and

conclusions of law and, if the hearing is held by an administrative law judge, the judge promptly shall issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and any proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) An executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to

depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(s) This section does not limit the ability of the board to impose an administrative penalty pursuant to a consent order entered in accordance with board rules and requirements of Section 17D of this Act.

SECTION 25. Section 33, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) A practitioner may not issue a prescription to be dispensed unless the prescription contains the following typed, printed, or stamped information:

- (1) the practitioner's name, address, and phone number; and
- (2) the practitioner's required identification number.

SECTION 26. Section 39, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 39. FEES. The board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act [may not charge more than the following fees for the performance of the following duties and functions to carry out the purposes of this Act:

- ~~(1) for processing application and administration of examination for licensure—\$250;~~
- ~~(2) for processing application for licensure by reciprocity—\$250 (plus the applicable license fee);~~
- ~~(3) for processing application and issuance of a pharmacist license or renewal of a pharmacist license—\$100 a year;~~
- ~~(4) for processing of an application and issuance of a pharmacy license or renewal of a pharmacy license—\$150; and~~
- ~~(5) for processing an application and the issuance or renewal of a pharmacist license for a pharmacist who has been licensed by the board for at least 50 years and who does not actively practice pharmacy—\$75 a year].~~

SECTION 27. Subdivision (41), Section 481.002, Health and Safety Code, is amended to read as follows:

(41) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

- (A) the date of issue;
- (B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;
- (C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically; [and]
- (D) directions for the use of the drug; and

(E) the legibly printed or stamped name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business.

SECTION 28. Subsection (i), Section 481.074, Health and Safety Code, is amended to read as follows:

(i) A prescription for a controlled substance must show:

- (1) the quantity of the substance prescribed:
 - (A) written as a word if the prescription is written; or
 - (B) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;
- (2) the date of issue;
- (3) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;
- (4) the name and strength of the controlled substance prescribed;
- (5) the directions for use of the controlled substance; and
- (6) the *legibly stamped or printed* name, address, [and] Federal Drug Enforcement Administration registration number, *and telephone number* of the practitioner *at the practitioner's usual place of business*.

SECTION 29. Subdivision (13), Section 483.001, Health and Safety Code, is amended to read as follows:

(13) "Prescription" means an order from a practitioner, or an agent of the practitioner designated in writing as authorized to communicate prescriptions, or an order made in accordance with Section 3.06(d)(5), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), to a pharmacist for a dangerous drug to be dispensed that states:

- (A) the date of the order's issue;
- (B) the name and address of the patient;
- (C) if the drug is prescribed for an animal, the species of the animal;
- (D) the name and quantity of the drug prescribed; [and]
- (E) the directions for the use of the drug; *and*

(F) the legibly printed or stamped name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business.

SECTION 30. Under the provisions of Subsection (h), Section 403.094, Government Code, the dedication of the fund of the Texas State Board of Pharmacy is reenacted, and the fund is established as a special account within the state treasury.

SECTION 31. (a) The changes in law made by this Act relating to an administrative or civil penalty that may be imposed apply only to a violation of the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) or a rule adopted by the Texas State Board of Pharmacy that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for this purpose.

(b)(1) As the terms of members of the Texas State Board of Pharmacy expire or as a vacancy occurs on the board, the governor shall appoint members to the board to achieve, as soon as possible, the membership plan prescribed for the board by this Act.

(2) As the terms of members expire or as a vacancy occurs on the board, the governor shall appoint members to the board and designate members to serve terms so that every two years the terms of one public member and two licensed pharmacist members expire on the same date.

(c) The changes in law made by this Act in the qualifications of members of the Texas State Board of Pharmacy do not affect the entitlement of a member appointed before September 1, 1993, to continue to hold office on the board for the term for which the member was appointed. The changes in the qualifications apply only to a member appointed on or after September 1, 1993.

SECTION 32. Subsection (v), Section 17, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is repealed.

SECTION 33. This Act takes effect September 1, 1993.

SECTION 34. 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 House, with amendments, on May 18, 1993, by a non-record vote; passed the Senate on April 28, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 19, 1993, by a viva-voce vote.

Approved May 30, 1993.

Effective Sept. 1, 1993.