

CHAPTER 262

S.B. No. 1161

AN ACT

relating to the regulation of pharmacists, pharmacies, and dangerous drugs.

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

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

(c) *Except as otherwise provided by this subsection, all [AII] board meetings and hearings shall be open to the public. The board may, in its discretion and in accordance*

with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), conduct any portion of its meeting in executive session. The board may in its discretion conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to licensee disciplinary action, the board shall vote and announce its decision relative to the licensee in open session. *The board in executive session may conduct disciplinary hearings relating to a pharmacist or pharmacy student who is impaired because of chemical abuse or mental or physical illness.*

SECTION 2. Subsection (j), Section 17, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) The board or any officer of the board may issue subpoenas ad testificandum and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, [and] documents, or other items, may administer oaths, and may take testimony concerning the matters within its or his jurisdiction. *A subpoena issued under this subsection may be served by any person designated in the subpoena.*

SECTION 3. Subsection (a), Section 21, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) To qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board with satisfactory sworn evidence that he:

- (1) is at least 18 years old;
- (2) is of good moral character;
- (3) has completed a minimum of a 1,000-hour internship or other program that has been approved by the board or has demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the minimum internship requirements of the board;
- (4) has graduated and received *the first [a] professional undergraduate degree or the advanced professional practice degree* from an accredited [~~college of~~] *pharmacy degree program [that has been]* approved by the board; [and]
- (5) has passed the examination required by the board; *and*
- (6) *has not had a pharmacist license granted by another state suspended, revoked, canceled, surrendered, or otherwise restricted for any reason.*

SECTION 4. Subsection (a), Section 22, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

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

- (1) submit to the board a reciprocity fee as determined by the board and a completed application given under oath, in the form prescribed by the board;
- (2) have good moral character;
- (3) have graduated and received *the first [a] professional undergraduate degree or the advanced professional practice degree* from an accredited [~~college of~~] *pharmacy degree program [that has been]* approved by the board;
- (4) have possessed at the time of initial licensing as a pharmacist other qualifications necessary to have been eligible for licensing at that time in this state;
- (5) have presented to the board proof of initial licensing by examination and proof that the license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, *surrendered*, or otherwise restricted for any reason; and
- (6) pass the Texas Drug and Pharmacy Jurisprudence examination.

SECTION 5. Section 24, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. LICENSE RENEWAL CERTIFICATE. (a) A license to practice pharmacy expires on December 31 of each year or of every other year, as determined 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 or license renewal certificate.

(c) On timely receipt of the completed application and renewal fee, 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, 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 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 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 ~~[person may obtain a new license by submitting]~~ to reexamination and complies ~~[complying]~~ with the requirements and procedures for obtaining an original license.

(g) The board shall notify each licensee in writing of the licensee's impending license expiration at least 30 days prior to the expiration date.

(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.

(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.

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

Sec. 26. GROUNDS FOR DISCIPLINE. (a) 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 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 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 to submit to a mental or physical examination by physicians designated by the board. If the pharmacist refuses to submit to the examination, the board shall issue an order requiring the pharmacist 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. The pharmacist shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the pharmacist and his attorney are entitled to present any testimony and other evidence to show why the pharmacist should not be required to submit to the examination. After the hearing, the board shall issue an order either requiring the pharmacist 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 rules relating to those acts;

(10) aided or abetted an unlicensed individual to engage in the practice of pharmacy *if the pharmacist knew or reasonably should have known that that 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 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; ~~[or]~~

(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) [~~(1)-(14)~~] 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) 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 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 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 the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes); or

(E) a carrier or warehouseman;

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

(6) sold *adulterated or misbranded* [mislabelled] 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 7. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 26A to read as follows:

Sec. 26A. FELONY DRUG CONVICTIONS; SUSPENSION AND REVOCATION OF LICENSE. (a) On the entry of an initial order against a person licensed by the board to practice pharmacy, the board may 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 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 if the licensee is an association, joint-stock company, partnership, or corporation, the board may suspend the license. On final conviction, the board may revoke the license.

(c) Any disciplinary action taken by the board under this section is governed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and the rules of practice and procedure adopted by the board.

(d) In this section:

(1) "Initial order" means an order by a state or federal court granting deferred adjudication or a suspended or probated sentence based either on a finding that a person is guilty or on the entry of a plea of nolo contendere or a plea of guilty by the person with respect to a felony offense under the Controlled Substances Act or Dangerous Drug Act.

(2) "Final conviction" means the entry of an order by state or federal court imposing a punishment of incarceration or a fine on a felony offense under the Controlled Substances Act or Dangerous Drug Act.

SECTION 8. Section 27A, Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (e), and (i) to read as follows:

(a) Any person or pharmaceutical peer review committee may report relevant facts to the board relating to the acts of any pharmacist in this state or student of pharmacy who is enrolled in the ~~[last three years of a]~~ professional *sequence of an accredited* pharmacy degree program approved by the board ~~[at an accredited college of pharmacy]~~, if ~~[in]~~ the person or ~~[opinion of the]~~ peer review committee ~~has~~~~[, they have]~~ knowledge relating to the pharmacist or pharmacy student which might provide grounds for disciplinary action as specified in Subdivision (4) or (7) of Subsection (a) of Section 26 of this Act.

(e) An employee or member of the board, peer review committee member, pharmaceutical organization committee member, pharmaceutical organization district or local intervenor, or any other person furnishing information, data, reports, or records for the purpose of aiding the impaired pharmacist or pharmacy student shall by reason of furnishing such information in good faith, be immune from civil liability. This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.

(i) Funds and surcharges collected under this section shall be deposited in the fund created under Subsection (g) of Section 17 of this Act, and may be used by the board only to administer the program authorized by this section, including the provision of initial evaluation and referral services of a qualified health professional to an impaired pharmacist or pharmacy student, but not for costs incurred subsequent to such initial evaluation and referral services.

SECTION 9. The Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes) is amended by adding Section 27B to read as follows:

Sec. 27B. REPORTING REQUIREMENTS; CONFIDENTIALITY; IMMUNITY. (a) Any person may report relevant facts, records, or information or may provide assistance to the board relating to any pharmacist or pharmacy licensed by the board, if the person has knowledge relating to the pharmacist or pharmacy that constitutes a ground for disciplinary action under Section 26 of this Act or rules adopted under that section. Such a person is immune from any civil liability arising from the provision of information or assistance. This provision shall be liberally construed to accomplish the purposes of this section and is in addition to any other immunity provided by law.

(b) A person who reports to or assists the board under this section is presumed to have acted in good faith. A person who alleges a lack of good faith has the burden of proof on that issue.

(c) The identity of a person who reports to or assists the board under this section and any document that could disclose the identity of that person is confidential and does not constitute public information for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(d) If such a person is named as a defendant in any civil action filed as a result of information or assistance provided to the board, the person may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, attorney's fees, and any damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous, unreasonable, without foundation, or brought in bad faith.

(e) If an employee, agent, or member of the board is named as a defendant in any civil action filed as a result of an act taken in the person's official capacity or in the course and scope of the employment, the employee, agent, or board member may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, attorney's fees, and any damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous, unreasonable, without foundation, or brought in bad faith.

SECTION 10. 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 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;
- (7) reprimand; ~~or~~
- (8) cancellation of the offender's license; *or*
- (9) *retirement of the offender's license as provided by board rule.*

SECTION 11. Section 31, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by adding Subsections (f) and (g) to read as follows:

(f) *The board may adopt a system in which licenses to operate a pharmacy expire on various dates during the year.*

(g) *For the year in which the expiration date is changed, the board shall prorate the license renewal fee due on May 31 so that each licensee shall pay only that portion of the license fee allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is due.*

SECTION 12. Section 33, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), as amended by Chapters 231 and 890, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

Sec. 33. ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS. (a) A person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician, that are used or required to meet the immediate needs of such physician's patients. Such administration or provision as ordered by a physician may be delegated through the physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as such orders are defined by the Texas State Board of Medical Examiners. Such administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to dangerous drugs. A physician or person or persons acting under the supervision of a physician may not, except as provided by Subsection (c) of this section, keep a pharmacy, advertised or otherwise, for the retailing of such drugs without complying with the applicable laws relating to same.

(b) A person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons, acting under such physician's supervision, the act or acts of administering or providing dangerous drugs, if such provision is provided through a facility licensed by the board pursuant to Section 29(b)(4) of this Act, as ordered by such physician, that are used or required to meet the needs of such physician's patients. Such administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as such orders are defined by the Texas State Board of Medical Examiners. Such provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the board. Such administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice

of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. A physician or person or persons acting under the supervision of a physician may not, except as provided by Subsection (c) of this section, keep a pharmacy, advertised or otherwise, for the retailing of such dangerous drugs without complying with applicable laws relating to same. Such dangerous drug shall be supplied in a suitable container that has been labeled in compliance with applicable drug laws; provided, however, a qualified and trained person or persons acting under the supervision of a physician may be permitted to specify at the time of such provision the inclusion of the date of provision and the patient's name and address.

(c) A licensed physician who practices medicine in a rural area in which there is no pharmacy may maintain a supply of dangerous drugs in the office of the physician to be dispensed in the course of treating the physician's patients and may be reimbursed for the cost of supplying those drugs without obtaining a license under this Act. Such physicians shall comply personally with all appropriate labeling sections of this Act, and oversee compliance with packaging and recordkeeping sections applicable to the class of drugs. Physicians desiring to dispense dangerous drugs under this subsection shall notify both the Texas State Board of Pharmacy and the Texas State Board of Medical Examiners that such physician practices in a rural area, as hereinafter defined. Such physician may continue to so dispense dangerous drugs until the State Board of Pharmacy shall determine, upon notice and hearing to such physician, that such physician no longer practices in a rural area as hereinafter defined. For the purposes of this subsection:

(1) the term "rural area" means an area in which there is no pharmacy within a 15-mile radius of the physician's office and is within:

(A) a county with a total population of 5,000 or less according to the most recent federal census; or

(B) a city or town, incorporated or unincorporated, with a population of less than 2,500, according to the most recent federal census, but shall not include a city or town, incorporated or unincorporated, whose boundaries are adjacent to an incorporated city or town with an equal or greater population.

(2) the term "reimbursed for cost" shall mean an additional charge separate from that made for the physician's professional services which include the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service but not including a separate fee for the act of dispensing the drug product itself.

(d) [(e)] A licensed veterinarian may administer or provide in his office or at the premises of the patient dangerous drugs that are used or required to meet the needs of the veterinarian's patient or patients, and may itemize and be compensated for such administration or provision performed in the course of treating a patient or patients. A licensed veterinarian may delegate the administration or provision of dangerous drugs to a qualified and properly trained person who acts under the veterinarian's supervision. The administration or provision of dangerous drugs must comply with laws relating to the practice of veterinary medicine and with state and federal laws relating to dangerous drugs. This section does not permit a veterinarian to otherwise keep a pharmacy for the retailing of drugs without complying with applicable laws.

SECTION 13. Section 39, Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 39. FEES. The board 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 [\$150];

(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—\$85 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 14. Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. For the purposes of this Act:

(a) The term "dangerous drug" means any drug or device that is not included in Penalty Groups I through IV of the Texas Controlled Substances Act and that is unsafe for self-medication, and includes *any* ~~the following:~~

~~(1) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2 1/2%) strength.~~

~~(2) Any~~ drug or device which bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.

(c) *The term "dispense" means preparing, packaging, compounding, or labeling a dangerous drug or device in the course of professional practice for delivery to an ultimate user or the user's agent pursuant to the lawful order of a practitioner.*

(d) The term "patient" means, as the case may be:

(1) The individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(2) The owner or the agent of the owner of the animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(e) ~~(4)~~ The term "person" includes individual, corporation, partnership, and association.

(f) ~~(6)~~ The term "practitioner" means a person licensed by the State Board of Medical Examiners, State Board of Dental Examiners, State Board of *Podiatry* ~~[Chiroprody]~~ Examiners, and State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs.

(g) ~~(4)~~ The term "pharmacist" shall mean a person licensed by the State Board of Pharmacy to practice ~~[the profession of] pharmacy [and to prepare, compound, and dispense practitioners' prescriptions, drugs, medicines, and poisons].~~

(h) ~~(5)~~ The term "prescription" means a written order ~~or [and in cases of emergency, a]~~ telephonic order, by a practitioner ~~or by an agent of the practitioner who is designated in writing as authorized to communicate prescriptions by telephone, [or his agent as designated in writing to the pharmacist]~~ to a pharmacist for a dangerous drug ~~to be dispensed [for a particular patient]~~, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

(i) ~~(4)~~ The term "manufacturer" means persons other than pharmacists who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

(j) ~~(4)~~ The term "wholesaler" means persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in Subdivisions (1) to (6) inclusive of Section 4.

(k) ~~(4)~~ The term "warehouseman" means persons who store dangerous drugs for others and who have no control over the disposition of such dangerous drugs except for the purpose of such storage.

(l) ~~(4)~~ The term "Board" means Texas State Board of Pharmacy.

(m) The term "pharmacy" means a facility in which the practice of pharmacy occurs.

(n) The term "practice of pharmacy" means the interpretation and evaluation of prescription or medication orders, the dispensing and labeling of drugs or devices, the selection of drugs and the review of drug utilization, the storage of prescription drugs and devices and the maintenance of prescription drug records in a pharmacy, the giving of advice or consultation when necessary or required by law about the therapeutic value, content, hazard, or use of drugs or devices, or the offer to perform or the performance of the services and transactions necessary to operate a pharmacy. For the purposes of this subsection, "device" has the meaning assigned by the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

SECTION 15. Section 3, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

(a) The delivery or offer of delivery of any dangerous drug unless:

(1) Such dangerous drug is delivered or offered to be delivered by a pharmacist, pursuant to a ~~[upon an original]~~ prescription issued by a practitioner, and there is affixed to the immediate container in which such drug is delivered or offered to be delivered a label bearing the name and address of the pharmacy ~~[owner of the establishment]~~ from which such drug was delivered or offered to be delivered; the date on which the prescription for such drug was dispensed ~~[filled]~~; the number of such prescription as filed in the prescription files of the pharmacy from which the ~~[pharmacist who filled such]~~ prescription was dispensed; the name of the practitioner who prescribed such drug; the name of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; or

(2) Such dangerous drug is delivered or offered to be delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered or offered to be delivered bears a label on which appears the date of delivery, the name of the drug, the strength of the drug, the directions for use of such drug, the name and address of such practitioner, the name of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal.

(b) The refilling of any prescription for a dangerous drug, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

(c) The delivery of a dangerous drug upon prescription unless the pharmacist who dispensed ~~[filled]~~ such prescription files and retains it as required in Section 5 of this Act ~~[6]~~.

(d) The possession of a dangerous drug by any person unless such person obtained the drug under the specific provision of Section 3(a)(1) and (2) of this Act.

(e) The refusal to permit any inspection authorized by ~~[make available and to accord full opportunity to check any record or file as required by Section 5 and]~~ Section 6 of this Act.

(f) The failure to keep records as required by Section 5 of this Act ~~[and Section 6]~~.

(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6 of this Act, concerning any method or process which as a trade secret is entitled to protection.

(h) Except as otherwise provided in this Act, the possession for sale of any dangerous drug defined in this Act.

(i) *The telephonic ordering of a prescription by an agent of a practitioner unless the agent is designated in writing by the practitioner as authorized to communicate prescriptions by telephone.*

SECTION 16. Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 3A to read as follows:

Sec. 3A. (a) Each practitioner shall designate in writing the name of each agent authorized to communicate prescriptions by telephone for that practitioner. A list of the agents designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific agent.

(b) This section does not relieve a practitioner or the practitioner's agent from the requirements of Section 40, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes). The practitioner remains personally responsible for the actions of each agent who communicates prescriptions to a pharmacist.

SECTION 17. Section 5, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. (a) The following persons or facilities shall maintain records of acquisitions and disposals of dangerous drugs:

- (1) pharmacies;*
- (2) practitioners;*
- (3) persons who procure dangerous drugs for the purpose of lawful research, teaching, or testing and not for resale;*
- (4) hospitals that procure dangerous drugs for lawful administration by practitioners; and*
- (5) manufacturers and wholesalers registered with the Commissioner of Health as required by the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes).*

(b) A person or facility required to maintain records under this section must maintain the records for two years after the date of the acquisition or disposal of a dangerous drug.

(c) In addition to the requirements of Subsection (b) of this section, a pharmacy must retain prescriptions of dangerous drugs dispensed by the pharmacy for two years from the date of the initial dispensing or the last refilling of the prescription, whichever date is later. [Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

~~[(a)(1) Make a complete record of all stocks of drugs set forth in Section 2(a)(1) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and~~

~~[(2) Retain each commercial or other record relating to those drugs set forth in Section 2(a)(1) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a)(1) hereof.~~

~~[(b) Pharmacies as set forth in Section 4(b)(1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a)(1) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a)(1) hereof.]~~

SECTION 18. Section 6, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. Persons required to keep ~~[files and]~~ records of dangerous ~~[relating to those]~~ drugs ~~[set forth in Section 2(a)(1) hereof, by Section 5]~~ shall:

(1) make *those* ~~[such files or]~~ records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

(2) accord to such officer or employee full opportunity to make inventory of all stocks of dangerous ~~[those]~~ drugs ~~[set forth in Section 2(a)(1) hereof,]~~ on hand; ~~and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness].~~

SECTION 19. Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 15B to read as follows:

Sec. 15B. The board may adopt rules consistent with this Act for the proper administration and enforcement of this Act.

SECTION 20. Article 2.12, Code of Criminal Procedure, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

- (1) sheriffs and their deputies;
- (2) constables and deputy constables;
- (3) marshals or police officers of an incorporated city, town, or village;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
- (6) law enforcement agents of the Alcoholic Beverage Commission;
- (7) each member of an arson investigating unit of a city, county or the state;
- (8) any private person specially appointed to execute criminal process;
- (9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;
- (10) officers commissioned by the State Purchasing and General Services Commission;
- (11) law enforcement officers commissioned by the Parks and Wildlife Commission;
- (12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier;
- (13) municipal park and recreational patrolmen and security officers;
- (14) security officers commissioned as peace officers by the State Treasurer;
- (15) officers commissioned by a water control and improvement district under Section 51.132, Water Code;
- (16) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);
- (17) investigators commissioned by the Texas State Board of Medical Examiners;
- (18) officers commissioned by the board of managers of the Dallas County Hospital District under Section 16, Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4494n, Vernon's Texas Civil Statutes);
- (19) county park rangers commissioned under Article 6869d-1, Revised Statutes; ~~and~~
- (20) stewards and judges employed by the Texas Racing Commission; *and*
- (21) *officers commissioned by the Texas State Board of Pharmacy.*

SECTION 21. Subsection (a), Section 46.03, Penal Code, as amended, is amended to read as follows:

- (a) The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a private security guard to protect persons or property, in which event he must comply with Subdivision (5) of this subsection;

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity if the weapon is a type commonly used in the activity;

(5) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view; or

(6) who is a peace officer, *other than a person commissioned by the Texas State Board of Pharmacy.*

SECTION 22. (a) This Act takes effect September 1, 1987, and applies only to a pharmacist or pharmacy license issued or renewed on or after that date.

(b) Section 39, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), as amended by this Act, applies to the application fee for an application filed with the board on or after September 1, 1987.

SECTION 23. 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 April 24, 1987, by a viva-voce vote. Passed the House on May 15, 1987, by a non-record vote.

Approved May 28, 1987.

Effective Sept. 1, 1987.