

By: Truitt, Solomons, Hamric

H.B. No. 1040

Substitute the following for H.B. No. 1040:

By: Jackson

C.S.H.B. No. 1040

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas State Board
3 of Pharmacy.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 551.005, Occupations Code, is amended to
6 read as follows:

7 Sec. 551.005. APPLICATION OF SUNSET ACT. The Texas State
8 Board of Pharmacy is subject to Chapter 325, Government Code (Texas
9 Sunset Act). Unless continued in existence as provided by that
10 chapter, the board is abolished and this subtitle expires September
11 1, 2017 [~~2005~~].

12 SECTION 2. Section 551.003(42), Occupations Code, is
13 amended to read as follows:

14 (42) "Texas trade association" means a [~~nonprofit,~~
15 cooperative~~]~~ and voluntarily joined statewide association of
16 business or professional competitors in this state designed to
17 assist its members and its industry or profession in dealing with
18 mutual business or professional problems and in promoting their
19 common interest.

20 SECTION 3. Section 552.004, Occupations Code, is amended to
21 read as follows:

22 Sec. 552.004. MEMBERSHIP RESTRICTIONS. (a) A person may
23 not be a member of [~~serve on~~] the board if the person is required to
24 register as a lobbyist under Chapter 305, Government Code, because

1 of the person's activities for compensation on behalf of a
2 profession related to the operation of the board.

3 (b) A person may not be a ~~[pharmacist]~~ member of the board if
4 ~~[may not be]~~:

5 (1) the person is ~~[a salaried faculty member at a~~
6 ~~college of pharmacy; or~~

7 ~~[-2-]~~ an officer, employee, or paid consultant of a
8 Texas trade association in the field of health care; or

9 (2) the person's spouse is ~~[of]~~ an officer, manager
10 [employee], or paid consultant of a Texas trade association in the
11 field of health care.

12 SECTION 4. Section 552.006, Occupations Code, is amended to
13 read as follows:

14 Sec. 552.006. BOARD MEMBER TRAINING. (a) A person who is
15 appointed to and qualifies for office as a member of the board may
16 not vote, deliberate, or be counted as a member in attendance at a
17 meeting of the board until the person completes a training program
18 that complies with this section.

19 (b) The training program must provide the person with
20 information regarding:

21 (1) this subtitle and the programs, functions, rules,
22 and budget of the board;

23 (2) the results of the most recent formal audit of the
24 board;

25 (3) the requirements of laws relating to open
26 meetings, public information, administrative procedure, and
27 conflicts-of-interest; and

1 (4) any applicable ethics policies adopted by the
2 board or the Texas Ethics Commission.

3 (c) A person appointed to the board is entitled to
4 reimbursement, as provided by the General Appropriations Act, for
5 the travel expenses incurred in attending the training program
6 regardless of whether the attendance at the program occurs before
7 or after the person qualifies for office. [~~Each board member shall~~
8 ~~comply with the board member training requirements established by~~
9 ~~any other state agency with authority to establish the requirements~~
10 ~~for the board.]~~

11 SECTION 5. Section 552.007(a), Occupations Code, is amended
12 to read as follows:

13 (a) The governor shall designate a member of the board as
14 the president of the board to serve in that capacity at the pleasure
15 of the governor. The board shall elect from its members for
16 one-year terms a [~~president,~~] vice president, treasurer, and other
17 officers the board considers appropriate and necessary to conduct
18 board business.

19 SECTION 6. Section 552.009(b), Occupations Code, is amended
20 to read as follows:

21 (b) A member is entitled to reimbursement for travel
22 [~~transportation~~] expenses as prescribed by the General
23 Appropriations Act. [~~A member may not receive reimbursement for~~
24 ~~any other travel expenses, including expenses for meals and~~
25 ~~lodging.]~~

26 SECTION 7. Section 553.005, Occupations Code, is amended to
27 read as follows:

1 Sec. 553.005. EMPLOYEE RESTRICTIONS. (a) A person may not
2 be an employee of the board employed in a "bona fide executive,
3 administrative, or professional capacity," as that phrase is used
4 for purposes of establishing an exemption to the overtime
5 provisions of the federal Fair Labor Standards Act of 1938 (29
6 U.S.C. Section 201 et seq.), if:

7 (1) the person is an officer, employee, or paid
8 consultant of a Texas trade association in the field of health care;
9 or

10 (2) the person's spouse is an [An] officer, manager
11 [employee], or paid consultant of a Texas trade association in the
12 field of health care [may not be an employee of the board who is
13 exempt from the state's position classification plan or is
14 compensated at or above the amount prescribed by the General
15 Appropriations Act for step 1, salary group A17, of the position
16 classification salary schedule].

17 (b) ~~[A person who is the spouse of an officer, manager, or~~
18 ~~paid consultant of a Texas trade association in the field of health~~
19 ~~care may not be an employee of the board who is exempt from the~~
20 ~~state's position classification plan or is compensated at or above~~
21 ~~the amount prescribed by the General Appropriations Act for step 1,~~
22 ~~salary group A17, of the position classification salary schedule.~~

23 ~~[(c)]~~ A person may not act as general counsel to the board if
24 the person is required to register as a lobbyist under Chapter 305,
25 Government Code, because of the person's activities for
26 compensation on behalf of a profession related to the operation of
27 the board.

1 SECTION 8. Section 554.001, Occupations Code, is amended by
2 adding Subsection (e) to read as follows:

3 (e) The board shall develop formal policies outlining the
4 structure, role, and responsibilities of each committee
5 established under Subsection (b)(2) that contains board members.
6 The board may adopt rules to implement this subsection.

7 SECTION 9. Section 554.007, Occupations Code, is amended to
8 read as follows:

9 Sec. 554.007. FUNDS[~~;~~ ~~STATE PHARMACY ACCOUNT~~]. (a) The
10 board shall deposit revenue[~~, other than an administrative~~
11 ~~penalty,~~] collected under this subtitle to the credit of the [~~state~~
12 ~~pharmacy account in the~~] general revenue fund.

13 (b) The board may receive and spend money from a party,
14 other than the state, in addition to money collected under
15 Subsection (a), in accordance with state law.

16 [~~(c) The board shall pay the expense of administering this~~
17 ~~subtitle out of the state pharmacy account.~~]

18 SECTION 10. Section 555.001, Occupations Code, is amended
19 by adding Subsections (c) and (d) to read as follows:

20 (c) The board shall provide on its website a list of all
21 Internet pharmacies licensed by the board and shall provide
22 information about each pharmacy, including the pharmacy's name,
23 license number, and state of physical location. In this
24 subsection, an Internet pharmacy is a pharmacy physically located
25 in this state or another state that:

26 (1) dispenses a prescription drug or device under a
27 prescription drug order in response to a request received by way of

1 the Internet to dispense the drug or device; and

2 (2) delivers the drug or device to a patient in this
3 state by United States mail, common carrier, or delivery service.

4 (d) Information regarding the home address or home
5 telephone number of a person licensed or registered under this
6 subtitle, including a pharmacy owner, is confidential and not
7 subject to disclosure under Chapter 552, Government Code, but each
8 person licensed or registered must provide the board with a
9 business address or address of record that is subject to disclosure
10 under Chapter 552, Government Code, and that may be posted on the
11 board's Internet site or in the board's licensure verification
12 database.

13 SECTION 11. Section 555.005, Occupations Code, is amended
14 to read as follows:

15 Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint
16 received by the board, the board shall maintain information about
17 parties to the complaint, the subject matter of the complaint, a
18 summary of the results of the review or investigation of the
19 complaint, and its disposition. [~~The board shall keep an~~
20 ~~information file about each complaint filed with the board. The~~
21 ~~information file must be kept current and contain a record for each~~
22 ~~complaint of:~~

23 [~~(1) each person contacted in relation to the~~
24 ~~complaint,~~

25 [~~(2) a summary of the results of the review or~~
26 ~~investigation of the complaint,~~

27 [~~(3) an explanation of the reason the complaint was~~

1 ~~closed without action if the board did not take action;~~

2 ~~[(4) the schedule for disposing of the complaint~~
3 ~~prepared as required by Section 555.007(b) and a notation of any~~
4 ~~change in the schedule; and~~

5 ~~[(5) other relevant information.]~~

6 SECTION 12. Section 555.007, Occupations Code, is amended
7 by amending Subsection (a) and adding Subsection (c) to read as
8 follows:

9 (a) The board shall adopt policies and procedures
10 concerning the investigation of a complaint filed with the board.
11 The policies and procedures must:

12 (1) determine the seriousness of the complaint;

13 (2) ensure that a complaint is not closed without
14 appropriate consideration;

15 (3) ensure that a letter is sent to the person who
16 filed the complaint explaining the action taken on the complaint;

17 (4) ensure that the person who filed the complaint has
18 an opportunity to explain the allegations made in the complaint;

19 ~~[and]~~

20 (5) prescribe guidelines concerning the types of
21 complaints that require the use of a private investigator and the
22 procedures for the board to obtain the services of a private
23 investigator; and

24 (6) allow appropriate employees of the board to
25 dismiss a complaint if an investigation shows that:

26 (A) no violation occurred; or

27 (B) the subject of the complaint is outside the

1 board's jurisdiction.

2 (c) At each public meeting of the board, the executive
3 director shall report to the board each complaint dismissed under
4 Subsection (a)(6) since the board's last public meeting.

5 SECTION 13. Section 558.057(a), Occupations Code, is
6 amended to read as follows:

7 (a) In this section, "preceptor" means a pharmacist
8 licensed in this state to practice pharmacy or another health care
9 professional who meets the preceptor requirements specified by rule
10 and who is recognized [~~certified~~] by the board to supervise and be
11 responsible for the activities and functions of a pharmacist-intern
12 in an internship program.

13 SECTION 14. Subchapter B, Chapter 558, Occupations Code, is
14 amended by adding Section 558.058 to read as follows:

15 Sec. 558.058. ACCESSIBILITY OF EXAMINATION. The board by
16 rule shall ensure that an examination under this subchapter is
17 administered to applicants with disabilities in compliance with the
18 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
19 seq.).

20 SECTION 15. Subchapter B, Chapter 558, Occupations Code, is
21 amended by adding Section 558.059 to read as follows:

22 Sec. 558.059. EXAMINATION FEE REFUND. (a) The board may
23 retain all or part of an examination fee paid by an applicant who is
24 unable to take the examination.

25 (b) The board shall adopt policies allowing the board to
26 refund the examination fee paid by an applicant who:

27 (1) provides advance notice of the applicant's

1 inability to take the examination; or

2 (2) is unable to take the examination because of an
3 emergency.

4 (c) The board's policy must establish the required
5 notification period and the emergencies that warrant a refund.

6 (d) The board shall make efforts to ensure that the policy
7 does not conflict with the policy of a national testing body
8 involved in administering the examination.

9 SECTION 16. Section 558.101, Occupations Code, is amended
10 to read as follows:

11 Sec. 558.101. QUALIFICATIONS FOR LICENSE BY RECIPROCITY.

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

14 (1) submit to the board:

15 (A) a reciprocity fee set by the board; and

16 (B) a completed application in the form
17 prescribed by the board, given under oath;

18 (2) be of good moral character;

19 (3) have graduated and received a professional
20 practice degree, as defined by board rule, from an accredited
21 pharmacy degree program approved by the board;

22 (4) ~~[have possessed, at the time of initial licensing~~
23 ~~as a pharmacist, other qualifications necessary to have been~~
24 ~~eligible for licensing at that time in this state,~~

25 ~~[(5)]~~ have presented to the board:

26 (A) proof of current or initial licensing by
27 examination; and

1 (B) proof that the current license and any other
2 license granted to the applicant by another state has not been
3 restricted, suspended, revoked, or surrendered for any reason; and
4 (5) [~~6~~] pass the Texas Pharmacy Jurisprudence
5 examination.

6 (b) An applicant is not eligible for licensing by
7 reciprocity unless the state in which the applicant is currently or
8 was initially licensed as a pharmacist grants reciprocal licensing
9 to pharmacists licensed by examination in this state, under like
10 circumstances and conditions.

11 SECTION 17. Sections 559.003(b), (c), and (d), Occupations
12 Code, are amended to read as follows:

13 (b) A person whose license has been expired for 90 days or
14 less may renew the expired license by paying to the board [~~the~~
15 ~~required renewal fee and~~] a renewal fee that is equal to one and
16 one-half times the normally required renewal [~~of the examination~~]
17 fee for the license.

18 (c) A person whose license has been expired for more than 90
19 days but less than one year may renew the expired license by paying
20 to the board [~~all unpaid renewal fees and~~] a renewal fee that is
21 equal to two times the normally required renewal [~~examination~~]
22 fee for the license.

23 (d) A person whose [~~If a person's~~] license has been expired
24 for one year or more[~~, the person's license is considered to have~~
25 ~~been canceled and the person~~] may not renew the license. The person
26 may obtain a new license by complying with the requirements and
27 procedures for obtaining an original license, including the

1 examination requirement [~~unless the license is the subject of a~~
2 ~~pending investigation or disciplinary action~~].

3 SECTION 18. Section 560.052, Occupations Code, is amended
4 by amending Subsection (c) and adding Subsection (f) to read as
5 follows:

6 (c) To qualify for a Class E pharmacy license, an applicant,
7 in addition to satisfying the other requirements of this chapter,
8 must provide to the board:

9 (1) evidence that the applicant holds a pharmacy
10 license, registration, or permit in good standing issued by the
11 state in which the pharmacy is located;

12 (2) the name of the owner and pharmacist-in-charge of
13 the pharmacy for service of process;

14 (3) evidence of the applicant's ability to provide to
15 the board a record of a prescription drug order dispensed by the
16 applicant to a resident of this state not later than 72 hours after
17 the time the board requests the record; [~~and~~]

18 (4) an affidavit by the pharmacist-in-charge that
19 states that the pharmacist has read and understands the laws and
20 rules relating to a Class E pharmacy;

21 (5) proof of creditworthiness; and

22 (6) an inspection report issued:

23 (A) not more than two years before the date the
24 license application is received; and

25 (B) by the pharmacy licensing board in the state
26 of the pharmacy's physical location, except as provided by
27 Subsection (f).

1 (f) A Class E pharmacy may submit an inspection report
2 issued by an entity other than the pharmacy licensing board of the
3 state in which the pharmacy is physically located if:

4 (1) the state's licensing board does not conduct
5 inspections;

6 (2) the inspection is substantively equivalent to an
7 inspection conducted by the board, as determined by board rule; and

8 (3) the inspecting entity meets specifications
9 adopted by the board for inspecting entities.

10 SECTION 19. Section 561.003, Occupations Code, is amended
11 by amending Subsection (a) and adding Subsections (c), (d), and (e)
12 to read as follows:

13 (a) The board by rule shall establish:

14 (1) procedures to be followed for renewal of a
15 pharmacy license;

16 (2) the fees to be paid for renewal of a pharmacy
17 license; and

18 (3) ~~[penalties for late renewal of a pharmacy license,~~
19 ~~and~~

20 ~~[(4)]~~ the standards in each classification that each
21 pharmacy and the pharmacy's employees involved in the practice of
22 pharmacy must meet to qualify for relicensing as a pharmacy.

23 (c) A pharmacy whose license has been expired for 90 days or
24 less may renew the expired license by paying to the board a renewal
25 fee that is equal to one and one-half times the normally required
26 renewal fee for the license.

27 (d) A pharmacy whose license has been expired for more than

1 90 days but less than one year may renew the expired license by
2 paying to the board a renewal fee that is equal to two times the
3 normally required renewal fee for the license.

4 (e) If a pharmacy's license has been expired for one year or
5 more, the pharmacy may not renew the license. The pharmacy may
6 obtain a new license by complying with the requirements and
7 procedures for obtaining an original license.

8 SECTION 20. Chapter 561, Occupations Code, is amended by
9 adding Section 561.0031 to read as follows:

10 Sec. 561.0031. ADDITIONAL RENEWAL REQUIREMENT FOR CLASS E
11 PHARMACY. (a) In addition to the renewal requirements under
12 Section 561.003, the board shall require that a Class E pharmacy
13 have on file with the board an inspection report issued:

14 (1) not more than three years before the date the
15 renewal application is received; and

16 (2) by the pharmacy licensing board in the state of the
17 pharmacy's physical location, except as provided by Subsection (b).

18 (b) A Class E pharmacy may have on file with the board an
19 inspection report issued by an entity other than the pharmacy
20 licensing board of the state in which the pharmacy is physically
21 located if the requirements of Section 560.052(f) are met.

22 SECTION 21. Subchapter B, Chapter 562, Occupations Code, is
23 amended by adding Section 562.056 to read as follows:

24 Sec. 562.056. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED.

25 (a) Before dispensing a prescription, a pharmacist shall
26 determine, in the exercise of sound professional judgment, that the
27 prescription is a valid prescription. A pharmacist may not dispense

1 a prescription drug if the pharmacist knows or should know that the
2 prescription was issued on the basis of an Internet-based or
3 telephonic consultation without a valid practitioner-patient
4 relationship.

5 (b) Subsection (a) does not prohibit a pharmacist from
6 dispensing a prescription when a valid practitioner-patient
7 relationship is not present in an emergency.

8 SECTION 22. Subchapter C, Chapter 562, Occupations Code, is
9 amended by adding Section 562.111 to read as follows:

10 Sec. 562.111. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED.

11 (a) A pharmacy shall ensure that its agents and employees, before
12 dispensing a prescription, determine in the exercise of sound
13 professional judgment that the prescription is a valid
14 prescription. A pharmacy may not dispense a prescription drug if an
15 agent or employee of the pharmacy knows or should know that the
16 prescription was issued on the basis of an Internet-based or
17 telephonic consultation without a valid practitioner-patient
18 relationship.

19 (b) Subsection (a) does not prohibit a pharmacy from
20 dispensing a prescription when a valid practitioner-patient
21 relationship is not present in an emergency.

22 SECTION 23. Section 562.1045, Occupations Code, is amended
23 by adding Subsections (c) and (d) to read as follows:

24 (c) A pharmacy subject to this section shall post:

25 (1) on its initial home page general information on
26 how to file a complaint about the pharmacy with the board; and

27 (2) specific information on how to file a complaint

1 with the board not more than two links away from its initial home
2 page.

3 (d) Information under Subsection (c) must include the
4 board's telephone number, mailing address, and Internet website
5 address.

6 SECTION 24. Section 564.051(c), Occupations Code, is
7 amended to read as follows:

8 (c) Funds and surcharges collected under this section shall
9 be deposited in the general revenue fund [~~account created under~~
10 ~~Section 554.007~~] and may only be used by the board to administer the
11 program authorized by this section, including providing for initial
12 evaluation and referral of an impaired pharmacist or pharmacy
13 student by a qualified health professional and paying the
14 administrative costs incurred by the board in connection with that
15 funding. The money may not be used for costs incurred for treatment
16 or rehabilitation after initial evaluation and referral.

17 SECTION 25. Section 565.001(a), Occupations Code, is
18 amended to read as follows:

19 (a) The board may discipline an applicant for or the holder
20 of a current or expired license to practice pharmacy if the board
21 finds that the applicant or license holder has:

22 (1) violated this subtitle or a board rule adopted
23 under this subtitle;

24 (2) engaged in unprofessional conduct as defined by
25 board rule;

26 (3) engaged in gross immorality as defined by board
27 rule;

1 (4) developed an incapacity that prevents the
2 applicant or license holder from practicing pharmacy with
3 reasonable skill, competence, and safety to the public;

4 (5) engaged in fraud, deceit, or misrepresentation, as
5 defined by board rule, in practicing pharmacy or in seeking a
6 license to practice pharmacy;

7 (6) been convicted of or placed on deferred
8 adjudication community supervision or deferred disposition or the
9 applicable federal equivalent for:

10 (A) a misdemeanor:

11 (i) involving moral turpitude; or

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

15 (B) a felony;

16 (7) used alcohol or drugs in an intemperate manner
17 that, in the board's opinion, could endanger a patient's life;

18 (8) failed to maintain records required by this
19 subtitle or failed to maintain complete and accurate records of
20 purchases or disposals of drugs listed in Chapter 481 or 483, Health
21 and Safety Code, or the Comprehensive Drug Abuse Prevention and
22 Control Act of 1970 (21 U.S.C. Section 801 et seq.);

23 (9) violated any provision of:

24 (A) Chapter 481 or 483, Health and Safety Code,
25 or the Comprehensive Drug Abuse Prevention and Control Act of 1970
26 (21 U.S.C. Section 801 et seq.), or rules relating to one of those
27 laws; or

1 (B) Section 485.031, 485.032, 485.033, or
2 485.034, Health and Safety Code;

3 (10) aided or abetted an unlicensed person in the
4 practice of pharmacy if the pharmacist knew or reasonably should
5 have known that the person was unlicensed at the time;

6 (11) refused entry into a pharmacy for an inspection
7 authorized by this subtitle if the pharmacist received notification
8 from which the pharmacist knew or reasonably should have known that
9 the attempted inspection was authorized;

10 (12) violated any pharmacy or drug statute or rule of
11 this state, another state, or the United States;

12 (13) been negligent in the practice of pharmacy;

13 (14) failed to submit to an examination after hearing
14 and being ordered to do so by the board under Section 565.052;

15 (15) dispensed a prescription drug while acting
16 outside the usual course and scope of professional practice; ~~[or]~~

17 (16) been disciplined by the regulatory board of
18 another state ~~[had a license to practice pharmacy issued by another~~
19 ~~state canceled, revoked, surrendered, or suspended]~~ for conduct
20 substantially equivalent to conduct described under this
21 subsection;

22 (17) violated a disciplinary order, including a
23 confidential order or contract under the program to aid impaired
24 pharmacists and pharmacy students under Chapter 564;

25 (18) failed to adequately supervise a task delegated
26 to a pharmacy technician;

27 (19) inappropriately delegated a task delegated to a

1 pharmacy technician; or

2 (20) been responsible for a drug audit shortage.

3 SECTION 26. Section 565.002, Occupations Code, is amended
4 to read as follows:

5 Sec. 565.002. APPLICANT FOR OR HOLDER OF PHARMACY LICENSE.

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

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

13 (A) a misdemeanor:

14 (i) involving moral turpitude; or

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

18 (B) a felony [~~or, if the applicant or license~~
19 holder is a legal business entity, that a managing officer of the
20 applicant or license holder has been convicted of a misdemeanor
21 involving moral turpitude or a felony under the law of this state,
22 another state, or the United States];

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

25 (3) violated any provision of this subtitle or any
26 rule adopted under this subtitle or that an owner or employee of a
27 pharmacy has violated any provision of this subtitle or any rule

1 adopted under this subtitle;

2 (4) sold without legal authorization a prescription
3 drug or device to a person other than:

4 (A) a pharmacy licensed by the board;

5 (B) a practitioner;

6 (C) a person who procures a prescription drug or
7 device for lawful research, teaching, or testing, and not for
8 resale;

9 (D) a manufacturer or wholesaler licensed by the
10 commissioner of public health as required by Chapter 431, Health
11 and Safety Code; or

12 (E) a carrier or warehouseman;

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

15 (6) sold an adulterated or misbranded prescription or
16 nonprescription drug;

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

19 (8) failed to maintain records as required by this
20 subtitle, Chapter 481 or 483, Health and Safety Code, the
21 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
22 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle
23 or Chapter 483, Health and Safety Code;

24 (9) failed to establish and maintain effective
25 controls against diversion of prescription drugs into other than a
26 legitimate medical, scientific, or industrial channel as provided
27 by this subtitle, another state statute or rule, or a federal

1 statute or rule; ~~[or]~~

2 (10) engaged in fraud, deceit, or misrepresentation as
3 defined by board rule in operating a pharmacy or in applying for a
4 license to operate a pharmacy;

5 (11) violated a disciplinary order;

6 (12) been responsible for a drug audit shortage; or

7 (13) been disciplined by the regulatory board of
8 another state for conduct substantially equivalent to conduct
9 described under this subsection.

10 (b) This subsection applies only to an applicant or license
11 holder that is a legal business entity. The board may discipline an
12 applicant for or the holder of a pharmacy license, including a Class
13 E pharmacy license, if the board finds that a managing officer of
14 the applicant or license holder has been convicted of or placed on
15 deferred adjudication community supervision or deferred
16 disposition or the applicable federal equivalent for:

17 (1) a misdemeanor:

18 (A) involving moral turpitude; or

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

22 (2) a felony.

23 (c) A certified copy of the record of the state taking
24 action described by Subsection (a)(13) is conclusive evidence of
25 the action taken by that state.

26 SECTION 27. Section 565.051, Occupations Code, is amended
27 to read as follows:

1 Sec. 565.051. DISCIPLINE AUTHORIZED. [~~(a)~~] On a
2 determination that a ground for discipline exists under Subchapter
3 A, or that a violation of this subtitle or [~~to the extent~~
4 ~~authorized by Subsection (b),~~] a rule adopted under this
5 subtitle[~~7~~] has been committed by a license holder or applicant for
6 a license or renewal of a license, the board may:

7 (1) suspend the person's license;

8 (2) revoke the person's license;

9 (3) restrict the person's license to prohibit the
10 person from performing certain acts or from practicing pharmacy or
11 operating a pharmacy in a particular manner for a term and under
12 conditions determined by the board;

13 (4) impose an administrative penalty under Chapter
14 566;

15 (5) refuse to issue or renew the person's license;

16 (6) place the offender's license on probation and
17 supervision by the board for a period determined by the board and
18 impose a requirement that the license holder:

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

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

23 (C) continue or review professional education
24 until the license holder attains a degree of skill satisfactory to
25 the board in each area that is the basis of the probation; or

26 (D) pay the board a probation fee to defray the
27 costs of monitoring the license holder during the period of

1 probation;

2 (7) reprimand the person;

3 (8) retire the person's license as provided by board
4 rule; or

5 (9) impose more than one of the sanctions listed in
6 this subsection.

7 ~~[(b) On a determination that a rule of the board has been~~
8 ~~violated, the board may impose only a sanction listed in Subsection~~
9 ~~(a)(1), (3), (4), (6), or (7). This subsection does not preclude~~
10 ~~imposition of any sanction for violation of a board rule regarding a~~
11 ~~controlled substance.]~~

12 SECTION 28. Section 565.053, Occupations Code, is amended
13 to read as follows:

14 Sec. 565.053. DISCIPLINE OF CLASS E PHARMACY; NOTICE TO
15 RESIDENT STATE. ~~[(a)]~~ The board shall give notice of ~~[Except in~~
16 ~~the case of an emergency that creates an immediate danger to the~~
17 ~~public health or safety, before initiating]~~ a disciplinary action
18 by the board against the holder of a Class E pharmacy license to
19 ~~[license, the board must file a complaint against the license~~
20 ~~holder with]~~ the regulatory or licensing agency of the state in
21 which the pharmacy is located.

22 ~~[(b) The board may initiate the board's own action to~~
23 ~~discipline the holder of a Class E pharmacy license if the~~
24 ~~regulatory or licensing agency of the state in which the pharmacy is~~
25 ~~located:~~

26 ~~[(1) fails to initiate an action before the 61st day~~
27 ~~after the date the board files a complaint under this section,~~

1 ~~[(2) fails to resolve the complaint on or before the~~
2 ~~181st day after the date the complaint is filed, or~~

3 ~~[(3) lacks or fails to exercise jurisdiction.]~~

4 SECTION 29. Section 565.059, Occupations Code, is amended
5 to read as follows:

6 Sec. 565.059. TEMPORARY SUSPENSION OF LICENSE OR
7 REGISTRATION. (a) The president of the board shall appoint a
8 three-member disciplinary panel consisting of board members to
9 determine whether a license or registration under this subtitle
10 should be temporarily suspended or restricted. If a majority of the
11 disciplinary panel [~~board~~] determines from evidence or information
12 presented to the panel [~~board~~] that the holder of a license or
13 registration [~~pharmacist~~] by continuation in practice would
14 constitute a continuing threat to the public welfare, the panel
15 [~~board~~] shall temporarily suspend the [~~pharmacist's~~] license or
16 registration.

17 (b) The disciplinary panel [~~board~~] may temporarily suspend
18 the license or registration without notice or hearing if, at the
19 time the suspension is ordered, a hearing before the panel [~~board~~]
20 on whether disciplinary proceedings under this chapter should be
21 initiated against the [~~license~~] holder of a license or registration
22 is scheduled to be held not later than the 14th day after the date of
23 the suspension.

24 (c) A second hearing on the suspended license or
25 registration shall be held by the State Office of Administrative
26 Hearings not later than the 60th day after the date of the
27 suspension. If the State Office of Administrative Hearings does

1 not hold the second hearing in the time required by this subsection,
2 the suspended license or registration is automatically reinstated.

3 (d) Notwithstanding Chapter 551, Government Code, the
4 disciplinary panel may hold a meeting by telephone conference call
5 if immediate action is required and convening of the panel at one
6 location is inconvenient for any member of the disciplinary panel.

7 SECTION 30. Section 566.002, Occupations Code, is amended
8 by amending Subsection (a) and adding Subsection (d) to read as
9 follows:

10 (a) The [~~Except as provided by this subsection, the~~] amount
11 of the administrative penalty may not exceed \$5,000 [~~\$2,500~~] for
12 each violation, including [~~. The amount of the administrative~~
13 ~~penalty for~~] a violation involving the diversion of a controlled
14 substance [~~may not exceed \$5,000 for each violation~~].

15 (d) The board by rule shall adopt an administrative penalty
16 schedule for violations of this subtitle or board rules to ensure
17 that the amounts of penalties imposed are appropriate to the
18 violation.

19 SECTION 31. Section 566.051(a), Occupations Code, is
20 amended to read as follows:

21 (a) The attorney general at the request of the board may
22 petition a district court for an injunction to prohibit a person who
23 is violating this subtitle from continuing the violation.

24 SECTION 32. Subchapter B, Chapter 566, Occupations Code, is
25 amended by adding Section 566.052 to read as follows:

26 Sec. 566.052. CEASE AND DESIST ORDER. (a) If it appears to
27 the board that a person is engaging in an act or practice that

1 constitutes the practice of pharmacy without a license or
2 registration under this subtitle, the board, after notice and
3 opportunity for a hearing, may issue a cease and desist order
4 prohibiting the person from engaging in the activity.

5 (b) A violation of an order issued under this section
6 constitutes grounds for imposing an administrative penalty under
7 Subchapter A.

8 SECTION 33. Section 568.003, Occupations Code, is amended
9 to read as follows:

10 Sec. 568.003. GROUNDS FOR [~~REFUSAL TO ISSUE OR RENEW~~
11 ~~REGISTRATION;~~] DISCIPLINARY ACTION. (a) The board may take
12 disciplinary action under Section 568.0035 [~~refuse to issue or~~
13 ~~renew a registration or may suspend or revoke any registration~~
14 ~~issued by the board~~] if the board determines that the applicant or
15 registrant has:

16 (1) violated this subtitle or a rule adopted under
17 this subtitle;

18 (2) engaged in gross immorality, as that term is
19 defined by the rules of the board;

20 (3) engaged in any fraud, deceit, or
21 misrepresentation, as those terms are defined by the rules of the
22 board, in seeking a registration to act as a pharmacy technician;

23 (4) been convicted of or placed on deferred
24 adjudication community supervision or deferred disposition or the
25 applicable federal equivalent for:

26 (A) a misdemeanor:

27 (i) involving moral turpitude; or

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

4 (B) a felony;

5 (5) a drug or alcohol dependency;

6 (6) violated:

7 (A) Chapter 481 or 483, Health and Safety Code,
8 or rules relating to those chapters;

9 (B) Sections 485.031-485.035, Health and Safety
10 Code; or

11 (C) a rule adopted under Section 485.011, Health
12 and Safety Code;

13 (7) violated the pharmacy or drug laws or rules of this
14 state, another state, or the United States; or

15 (8) had a registration as a pharmacy technician issued
16 by another state revoked, surrendered, or suspended for conduct
17 substantially equivalent to conduct described by Subdivisions
18 (1)-(6).

19 (b) A certified copy of the record of a state taking action
20 described by Subsection (a)(8) is conclusive evidence of the action
21 taken by the state.

22 SECTION 34. Chapter 568, Occupations Code, is amended by
23 adding Section 568.0035 to read as follows:

24 Sec. 568.0035. DISCIPLINE AUTHORIZED. On a determination
25 that a ground for discipline exists under Section 568.003, the
26 board may:

27 (1) suspend the person's registration;

1 (2) revoke the person's registration;

2 (3) restrict the person's registration to prohibit the
3 person from performing certain acts or from practicing as a
4 pharmacy technician in a particular manner for a term and under
5 conditions determined by the board;

6 (4) impose an administrative penalty under Chapter
7 566;

8 (5) refuse to issue or renew the person's
9 registration;

10 (6) place the offender's registration on probation and
11 supervision by the board for a period determined by the board and
12 impose a requirement that the registrant:

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

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

17 (C) continue or review professional education
18 until the registrant attains a degree of skill satisfactory to the
19 board in each area that is the basis of the probation; or

20 (D) pay the board a probation fee to defray the
21 costs of monitoring the registrant during the period of probation;

22 (7) reprimand the person;

23 (8) retire the person's registration as provided by
24 board rule; or

25 (9) impose more than one of the sanctions listed in
26 this section.

27 SECTION 35. Chapter 568, Occupations Code, is amended by

1 adding Section 568.007 to read as follows:

2 Sec. 568.007. REGISTRATION OF PHARMACY TECHNICIAN TRAINEE.

3 (a) A person must register with the board before beginning work in
4 a pharmacy in this state as a pharmacy technician trainee.

5 (b) An application for registration as a pharmacy
6 technician trainee must be on a form prescribed by the board.

7 (c) A person's registration as a pharmacy technician
8 trainee remains in effect as long as the person meets the
9 qualifications specified by board rule.

10 (d) The board may, on a determination that a ground for
11 discipline exists under Section 568.003, take disciplinary action
12 against a pharmacy technician trainee under Section 568.0035.

13 SECTION 36. Sections 565.003(a) and 565.060, Occupations
14 Code, are repealed.

15 SECTION 37. On the effective date of this Act the state
16 pharmacy account is abolished and the comptroller shall transfer
17 money in the account to the general revenue fund.

18 SECTION 38. (a) The changes in law made by this Act to
19 Section 552.004, Occupations Code, do not affect the entitlement of
20 a member serving on the Texas State Board of Pharmacy immediately
21 before September 1, 2005, to continue to serve and function as a
22 member of the Texas State Board of Pharmacy for the remainder of the
23 term the member is serving on that date. Those changes in law apply
24 only to a member appointed on or after September 1, 2005.

25 (b) The changes in law made by this Act governing the
26 eligibility of a person or pharmacy for a license under Chapter 558
27 or 560, Occupations Code, apply only to an application for a license

1 filed with the Texas State Board of Pharmacy on or after the
2 effective date of this Act. A license application filed before the
3 effective date of this Act is governed by the law in effect at the
4 time the application was filed, and the former law is continued in
5 effect for that purpose.

6 (c) Sections 559.003 and 561.003, Occupations Code, as
7 amended by this Act, and Section 561.0031, Occupations Code, as
8 added by this Act, apply only to the renewal of a license to
9 practice pharmacy or a pharmacy license that expires on or after the
10 effective date of this Act. A license that expires before that date
11 is governed by the law in effect on the date the license expires,
12 and the former law is continued in effect for that purpose.

13 (d) The changes in law made by this Act to Chapter 565,
14 Occupations Code, relating to conduct that is grounds for
15 imposition of a disciplinary sanction apply only to conduct that
16 occurs on or after the effective date of this Act. Conduct that
17 occurs before the effective date of this Act is governed by the law
18 in effect on the date the conduct occurred, and the former law is
19 continued in effect for that purpose.

20 SECTION 39. This Act takes effect September 1, 2005.