

By: Whitmire

S.B. No. 410

A BILL TO BE ENTITLED

AN ACT

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

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

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

Sec. 551.005. APPLICATION OF SUNSET ACT. 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 subtitle expires September 1, 2017 [~~2005~~].

SECTION 2. Section 552.117, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) With regard to a pharmacist or owner of a pharmacy licensed under Subtitle J, Title 3, Occupations Code, the person's home address, home telephone number, or both, are excepted from the requirements of Section 552.021 if the person has designated the information as confidential under Section 555.001(d) of that code.

SECTION 3. Section 551.003(42), Occupations Code, is amended to read as follows:

(42) "Texas trade association" means a [~~nonprofit~~] cooperative[~~7~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their
2 common interest.

3 SECTION 4. Section 552.004, Occupations Code, is amended to
4 read as follows:

5 Sec. 552.004. MEMBERSHIP RESTRICTIONS. (a) A person may
6 not be a member of [~~serve on~~] the board if the person is required to
7 register as a lobbyist under Chapter 305, Government Code, because
8 of the person's activities for compensation on behalf of a
9 profession related to the operation of the board.

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

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

14 [~~(2)~~] an officer, employee, or paid consultant of a
15 Texas trade association in the field of health care; or

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

19 SECTION 5. Section 552.006, Occupations Code, is amended to
20 read as follows:

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

26 (b) The training program must provide the person with
27 information regarding:

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

3 (2) the results of the most recent formal audit of the
4 board;

5 (3) the requirements of laws relating to open
6 meetings, public information, administrative procedure, and
7 conflicts-of-interest; and

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

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

18 SECTION 6. Section 552.007(a), Occupations Code, is amended
19 to read as follows:

20 (a) The governor shall designate a member of the board as
21 the president of the board to serve in that capacity at the pleasure
22 of the governor. The board shall elect from its members for
23 one-year terms a [~~president,~~] vice president, treasurer, and other
24 officers the board considers appropriate and necessary to conduct
25 board business.

26 SECTION 7. Section 552.009(b), Occupations Code, is amended
27 to read as follows:

1 (b) A member is entitled to reimbursement for travel
2 [~~transportation~~] expenses as prescribed by the General
3 Appropriations Act. [~~A member may not receive reimbursement for~~
4 ~~any other travel expenses, including expenses for meals and~~
5 ~~lodging.~~]

6 SECTION 8. Section 553.005, Occupations Code, is amended to
7 read as follows:

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

14 (1) the person is an officer, employee, or paid
15 consultant of a Texas trade association in the field of health care;
16 or

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

24 (b) [~~A person who is the spouse of an officer, manager, or~~
25 ~~paid consultant of a Texas trade association in the field of health~~
26 ~~care may not be an employee of the board who is exempt from the~~
27 ~~state's position classification plan or is compensated at or above~~

1 ~~the amount prescribed by the General Appropriations Act for step 1,~~
2 ~~salary group A17, of the position classification salary schedule.~~

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

8 SECTION 9. Section 554.001, Occupations Code, is amended by
9 adding Subsection (e) to read as follows:

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

14 SECTION 10. Section 554.007, Occupations Code, is amended
15 to read as follows:

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

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

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

25 SECTION 11. Section 555.001, Occupations Code, is amended
26 by adding Subsections (c) and (d) to read as follows:

27 (c) The board shall provide on its website a list of all

1 Internet pharmacies licensed by the board and shall provide
2 information about each pharmacy, including the pharmacy's name,
3 license number, and state of physical location. In this
4 subsection, an Internet pharmacy is a pharmacy physically located
5 in this state or another state that:

6 (1) dispenses a prescription drug or device under a
7 prescription drug order in response to a request received by way of
8 the Internet to dispense the drug or device; and

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

11 (d) A pharmacist or pharmacy owner may request that the
12 board designate the pharmacist's or owner's home address, home
13 telephone number, or both as confidential and not post the
14 information on the board's Internet site or in the board's licensure
15 verification database or otherwise make the information available
16 to the public. For each pharmacist or pharmacy owner who makes a
17 request for confidentiality under this subsection, the board shall
18 comply with the request and maintain an address of record or
19 business address that the board may post and that is subject to
20 disclosure under the public information law, Chapter 552,
21 Government Code.

22 SECTION 12. Section 555.005, Occupations Code, is amended
23 to read as follows:

24 Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint
25 received by the board, the board shall maintain information about
26 parties to the complaint, the subject matter of the complaint, a
27 summary of the results of the review or investigation of the

1 complaint, and its disposition. [~~The board shall keep an~~
2 ~~information file about each complaint filed with the board. The~~
3 ~~information file must be kept current and contain a record for each~~
4 ~~complaint of:~~

5 [~~(1) each person contacted in relation to the~~
6 ~~complaint;~~

7 [~~(2) a summary of the results of the review or~~
8 ~~investigation of the complaint;~~

9 [~~(3) an explanation of the reason the complaint was~~
10 ~~closed without action if the board did not take action;~~

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

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

15 SECTION 13. Section 555.007, Occupations Code, is amended
16 by amending Subsection (a) and adding Subsection (c) to read as
17 follows:

18 (a) The board shall adopt policies and procedures
19 concerning the investigation of a complaint filed with the board.
20 The policies and procedures must:

21 (1) determine the seriousness of the complaint;

22 (2) ensure that a complaint is not closed without
23 appropriate consideration;

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

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

1 ~~[and]~~

2 (5) prescribe guidelines concerning the types of
3 complaints that require the use of a private investigator and the
4 procedures for the board to obtain the services of a private
5 investigator; and

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

8 (A) no violation occurred; or

9 (B) the subject of the complaint is outside the
10 board's jurisdiction.

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

14 SECTION 14. Section 556.054, Occupations Code, is amended
15 to read as follows:

16 Sec. 556.054. LIMITATION ON INSPECTION. (a) Except as
17 provided by Subsection (b), unless ~~[Unless]~~ the owner, pharmacist,
18 or agent in charge of a facility consents in writing, an inspection
19 of the facility authorized by this chapter may not extend to:

20 (1) financial data;

21 (2) sales data, other than shipment data; or

22 (3) pricing data.

23 (b) The board may inspect and copy financial, pricing, or
24 sales data if the board has reasonable cause to investigate a
25 pharmacy or pharmacist for illegally dispensing drugs or for
26 violating this subtitle or a board rule and the data is relevant to
27 that investigation.

1 (c) Data inspected under Subsection (b) is subject to public
2 disclosure only if it is used by the board in a disciplinary action.
3 If the board determines that a pharmacy or pharmacist has not
4 illegally dispensed drugs or violated this subtitle or a board
5 rule, the board shall maintain the confidentiality of the data.

6 SECTION 15. Subchapter B, Chapter 558, Occupations Code, is
7 amended by adding Section 558.058 to read as follows:

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

13 SECTION 16. Subchapter B, Chapter 558, Occupations Code, is
14 amended by adding Section 558.059 to read as follows:

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

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

20 (1) provides advance notice of the applicant's
21 inability to take the examination; or

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

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

26 (d) The board shall make efforts to ensure that the policy
27 does not conflict with the policy of a national testing body

1 involved in administering the examination.

2 SECTION 17. Section 558.101, Occupations Code, is amended
3 to read as follows:

4 Sec. 558.101. QUALIFICATIONS FOR LICENSE BY RECIPROCITY.

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

7 (1) submit to the board:

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

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

11 (2) be of good moral character;

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

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

18 [~~5~~] have presented to the board:

19 (A) proof of current or initial licensing by
20 examination; and

21 (B) proof that the current license and any other
22 license granted to the applicant by another state has not been
23 restricted, suspended, revoked, or surrendered for any reason; and

24 (5) [~~6~~] pass the Texas Pharmacy Jurisprudence
25 examination.

26 (b) An applicant is not eligible for licensing by
27 reciprocity unless the state in which the applicant is currently or

1 was initially licensed as a pharmacist grants reciprocal licensing
2 to pharmacists licensed by examination in this state, under like
3 circumstances and conditions.

4 SECTION 18. Sections 559.003(b), (c), and (d), Occupations
5 Code, are amended to read as follows:

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

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

16 (d) A person whose [~~If a person's~~] license has been expired
17 for one year or more[, ~~the person's license is considered to have~~
18 ~~been canceled and the person~~] may not renew the license. The person
19 may obtain a new license by complying with the requirements and
20 procedures for obtaining an original license, including the
21 examination requirement [~~unless the license is the subject of a~~
22 ~~pending investigation or disciplinary action~~].

23 SECTION 19. Section 560.052, Occupations Code, is amended
24 by amending Subsection (c) and adding Subsection (f) to read as
25 follows:

26 (c) To qualify for a Class E pharmacy license, an applicant,
27 in addition to satisfying the other requirements of this chapter,

1 must provide to the board:

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

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

7 (3) evidence of the applicant's ability to provide to
8 the board a record of a prescription drug order dispensed by the
9 applicant to a resident of this state not later than 72 hours after
10 the time the board requests the record; ~~and~~

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

14 (5) proof of creditworthiness; and

15 (6) an inspection report issued:

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

18 (B) by the pharmacy licensing board in the state
19 of the pharmacy's physical location, except as provided by
20 Subsection (f).

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

24 (1) the state's licensing board does not conduct
25 inspections;

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

1 (3) the inspecting entity meets specifications
2 adopted by the board for inspecting entities.

3 SECTION 20. Section 561.003, Occupations Code, is amended
4 by amending Subsection (a) and adding Subsections (c), (d), and (e)
5 to read as follows:

6 (a) The board by rule shall establish:

7 (1) procedures to be followed for renewal of a
8 pharmacy license;

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

11 (3) [~~penalties for late renewal of a pharmacy license,~~
12 ~~and~~

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

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

20 (d) A pharmacy whose license has been expired for more than
21 90 days but less than one year may renew the expired license by
22 paying to the board a renewal fee that is equal to two times the
23 normally required renewal fee for the license.

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

1 SECTION 21. Chapter 561, Occupations Code, is amended by
2 adding Section 561.0031 to read as follows:

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

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

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

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

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

17 Sec. 562.056. PHYSICIAN-PATIENT RELATIONSHIP REQUIRED. (a)
18 Before dispensing a prescription, a pharmacist shall determine, in
19 the exercise of sound professional judgment, that the prescription
20 is a valid prescription. A pharmacist may not dispense a
21 prescription drug if the pharmacist knows or should know that the
22 prescription was issued on the basis of an Internet-based or
23 telephonic consultation without a valid physician-patient
24 relationship, as that relationship is defined by the Texas State
25 Board of Medical Examiners in relation to the use of the Internet in
26 medical practice.

27 (b) Subsection (a) does not prohibit a pharmacist from

1 dispensing a prescription when a valid physician-patient
2 relationship is not present in an emergency.

3 SECTION 23. Subchapter C, Chapter 562, Occupations Code, is
4 amended by adding Section 562.111 to read as follows:

5 Sec. 562.111. PHYSICIAN-PATIENT RELATIONSHIP REQUIRED.

6 (a) A pharmacy shall ensure that its agents and employees, before
7 dispensing a prescription, determine in the exercise of sound
8 professional judgment that the prescription is a valid
9 prescription. A pharmacy may not dispense a prescription drug if an
10 agent or employee of the pharmacy knows or should know that the
11 prescription was issued on the basis of an Internet-based or
12 telephonic consultation without a valid physician-patient
13 relationship, as that relationship is defined by the Texas State
14 Board of Medical Examiners in relation to the use of the Internet in
15 medical practice.

16 (b) Subsection (a) does not prohibit a pharmacy from
17 dispensing a prescription when a valid physician-patient
18 relationship is not present in an emergency.

19 SECTION 24. Section 562.1045, Occupations Code, is amended
20 by adding Subsections (c) and (d) to read as follows:

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

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

24 (2) specific information on how to file a complaint
25 with the board not more than two links away from its initial home
26 page.

27 (d) Information under Subsection (c) must include the

1 board's telephone number, mailing address, and Internet website
2 address.

3 SECTION 25. Section 564.051(c), Occupations Code, is
4 amended to read as follows:

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

14 SECTION 26. Section 565.001(a), Occupations Code, is
15 amended to read as follows:

16 (a) The board may discipline an applicant for or the holder
17 of a license to practice pharmacy if the board finds that the
18 applicant or license holder has:

19 (1) violated this subtitle or a board rule adopted
20 under this subtitle;

21 (2) engaged in unprofessional conduct as defined by
22 board rule;

23 (3) engaged in gross immorality as defined by board
24 rule;

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

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

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

7 (A) a misdemeanor:

8 (i) involving moral turpitude; or

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

12 (B) a felony;

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

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

20 (9) violated any provision of:

21 (A) Chapter 481 or 483, Health and Safety Code,
22 or the Comprehensive Drug Abuse Prevention and Control Act of 1970
23 (21 U.S.C. Section 801 et seq.), or rules relating to one of those
24 laws; or

25 (B) Section 485.031, 485.032, 485.033, or
26 485.034, Health and Safety Code;

27 (10) aided or abetted an unlicensed person in the

1 practice of pharmacy if the pharmacist knew or reasonably should
2 have known that the person was unlicensed at the time;

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

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

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

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

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

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

19 (17) violated a board order, including a confidential
20 order or contract under the program to aid impaired pharmacists and
21 pharmacy students under Chapter 564;

22 (18) failed to adequately supervise a task delegated
23 to a pharmacy technician;

24 (19) inappropriately delegated a task delegated to a
25 pharmacy technician; or

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

27 SECTION 27. Section 565.002, Occupations Code, is amended

1 to read as follows:

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

3 (a) The board may discipline an applicant for or the holder of a
4 pharmacy license, including a Class E pharmacy license, if the
5 board finds that the applicant or license holder has:

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

9 (A) a misdemeanor:

10 (i) involving moral turpitude; or

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

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

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

21 (3) violated any provision of this subtitle or any
22 rule adopted under this subtitle or that an owner or employee of a
23 pharmacy has violated any provision of this subtitle or any rule
24 adopted under this subtitle;

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

27 (A) a pharmacy licensed by the board;

1 (B) a practitioner;

2 (C) a person who procures a prescription drug or
3 device for lawful research, teaching, or testing, and not for
4 resale;

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

8 (E) a carrier or warehouseman;

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

11 (6) sold an adulterated or misbranded prescription or
12 nonprescription drug;

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

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

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

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

1 (11) violated a board order, including a confidential
2 order or contract under the program to aid impaired pharmacists and
3 pharmacy students under Chapter 564;

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

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

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

15 (1) a misdemeanor:

16 (A) involving moral turpitude; or

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

20 (2) a felony.

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

24 SECTION 28. Section 565.003(a), Occupations Code, is
25 amended to read as follows:

26 (a) In addition to the grounds for discipline under Section
27 565.002, the [The] board may discipline an applicant for or the

1 holder of a Class E pharmacy license if the board finds that the
2 applicant or license holder has:

3 (1) dispensed a drug, quantity of drug, or strength of
4 drug other than as ordered for the patient by a practitioner;

5 (2) labeled a prescription with incorrect directions
6 for use;

7 (3) violated Section 560.001, 560.051(a)(5),
8 560.052(c), 561.002, 562.101(f), 562.104, 562.105, or 562.106(a),
9 (b), or (c); ~~or~~

10 (4) engaged in conduct that caused serious bodily
11 injury to a resident of this state; or

12 (5) been disciplined by the regulatory board of
13 another state for conduct substantially equivalent to conduct
14 described under this subsection.

15 SECTION 29. Section 565.051, Occupations Code, is amended
16 to read as follows:

17 Sec. 565.051. DISCIPLINE AUTHORIZED. ~~[(a)]~~ On a
18 determination that a ground for discipline exists under Subchapter
19 A, or that a violation of this subtitle or ~~[, to the extent~~
20 ~~authorized by Subsection (b),]~~ a rule adopted under this
21 subtitle ~~[,]~~ has been committed by a license holder or applicant for
22 a license or renewal of a license, the board may:

23 (1) suspend the person's license;

24 (2) revoke the person's license;

25 (3) restrict the person's license to prohibit the
26 person from performing certain acts or from practicing pharmacy or
27 operating a pharmacy in a particular manner for a term and under

1 conditions determined by the board;

2 (4) impose an administrative penalty under Chapter
3 566;

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

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

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

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

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

15 (D) pay the board a probation fee to defray the
16 costs of monitoring the license holder during the period of
17 probation;

18 (7) reprimand the person;

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

21 (9) impose more than one of the sanctions listed in
22 this subsection.

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

1 SECTION 30. Section 565.053, Occupations Code, is amended
2 to read as follows:

3 Sec. 565.053. DISCIPLINE OF CLASS E PHARMACY; NOTICE TO
4 RESIDENT STATE. [~~(a)~~] The board shall give notice of [~~Except in~~
5 ~~the case of an emergency that creates an immediate danger to the~~
6 ~~public health or safety, before initiating]~~ a disciplinary action
7 by the board against the holder of a Class E pharmacy license to
8 [~~license, the board must file a complaint against the license~~
9 ~~holder with]~~ the regulatory or licensing agency of the state in
10 which the pharmacy is located.

11 [~~(b) The board may initiate the board's own action to~~
12 ~~discipline the holder of a Class E pharmacy license if the~~
13 ~~regulatory or licensing agency of the state in which the pharmacy is~~
14 ~~located.~~

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

17 [~~(2) fails to resolve the complaint on or before the~~
18 ~~181st day after the date the complaint is filed, or~~

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

20 SECTION 31. Section 565.059, Occupations Code, is amended
21 to read as follows:

22 Sec. 565.059. TEMPORARY SUSPENSION OF LICENSE. (a) The
23 president of the board shall appoint a three-member disciplinary
24 panel consisting of board members to determine whether a pharmacy
25 license or license to practice pharmacy should be temporarily
26 suspended or restricted. If a majority of the disciplinary panel
27 [~~board~~] determines from evidence or information presented to the

1 panel [~~board~~] that a pharmacist or pharmacy by continuation in
2 practice would constitute a continuing threat to the public
3 welfare, the panel [~~board~~] shall temporarily suspend the
4 pharmacist's license.

5 (b) The disciplinary panel [~~board~~] may temporarily suspend
6 the license without notice or hearing if, at the time the suspension
7 is ordered, a hearing before the panel [~~board~~] on whether
8 disciplinary proceedings under this chapter should be initiated
9 against the license holder is scheduled to be held not later than
10 the 14th day after the date of the suspension.

11 (c) A second hearing on the suspended license shall be held
12 by the State Office of Administrative Hearings not later than the
13 60th day after the date of the suspension. If the State Office of
14 Administrative Hearings does not hold the second hearing in the
15 time required by this subsection, the suspended license is
16 automatically reinstated.

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

21 SECTION 32. Section 566.002, Occupations Code, is amended
22 by amending Subsection (a) and adding Subsection (d) to read as
23 follows:

24 (a) The [~~Except as provided by this subsection, the~~] amount
25 of the administrative penalty may not exceed \$5,000 [~~\$2,500~~] for
26 each violation, including [~~. The amount of the administrative~~
27 ~~penalty for~~] a violation involving the diversion of a controlled

1 substance [~~may not exceed \$5,000 for each violation~~].

2 (d) The board by rule shall adopt an administrative penalty
3 schedule for violations of this subtitle or board rules to ensure
4 that the amounts of penalties imposed are appropriate to the
5 violation.

6 SECTION 33. Section 566.051(a), Occupations Code, is
7 amended to read as follows:

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

11 SECTION 34. Subchapter B, Chapter 566, Occupations Code, is
12 amended by adding Section 566.052 to read as follows:

13 Sec. 566.052. CEASE AND DESIST ORDER. (a) If it appears to
14 the board that a person is engaging in an act or practice that
15 constitutes the practice of pharmacy without a license or
16 registration under this subtitle, the board, after notice and
17 opportunity for a hearing, may issue a cease and desist order
18 prohibiting the person from engaging in the activity.

19 (b) A violation of an order issued under this section
20 constitutes grounds for imposing an administrative penalty under
21 Subchapter A.

22 SECTION 35. Section 568.003, Occupations Code, is amended
23 to read as follows:

24 Sec. 568.003. GROUNDS FOR [~~REFUSAL TO ISSUE OR RENEW~~
25 ~~REGISTRATION,~~] DISCIPLINARY ACTION. (a) The board may take
26 disciplinary action under Section 568.0035 [~~refuse to issue or~~
27 ~~renew a registration or may suspend or revoke any registration~~

1 ~~issued by the board]~~ if the board determines that the applicant or
2 registrant has:

3 (1) violated this subtitle or a rule adopted under
4 this subtitle;

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

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

10 (4) been convicted of a misdemeanor involving moral
11 turpitude or a felony;

12 (5) a drug or alcohol dependency;

13 (6) violated:

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

16 (B) Sections 485.031-485.035, Health and Safety
17 Code; or

18 (C) a rule adopted under Section 485.011, Health
19 and Safety Code;

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

22 (8) had a registration as a pharmacy technician issued
23 by another state revoked, surrendered, or suspended for conduct
24 substantially equivalent to conduct described by Subdivisions
25 (1)-(6).

26 (b) A certified copy of the record of a state taking action
27 described by Subsection (a)(8) is conclusive evidence of the action

1 taken by the state.

2 SECTION 36. Chapter 568, Occupations Code, is amended by
3 adding Section 568.0035 to read as follows:

4 Sec. 568.0035. DISCIPLINE AUTHORIZED. On a determination
5 that a ground for discipline exists under Section 568.003, the
6 board may:

7 (1) suspend the person's registration;

8 (2) revoke the person's registration;

9 (3) restrict the person's registration to prohibit the
10 person from performing certain acts or from practicing as a
11 pharmacy technician 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
16 registration;

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

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

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

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

27 (D) pay the board a probation fee to defray the

- 1 costs of monitoring the registrant during the period of probation;
2 (7) reprimand the person;
3 (8) retire the person's registration as provided by
4 board rule; or
5 (9) impose more than one of the sanctions listed in
6 this section.

7 SECTION 37. Chapter 568, Occupations Code, is amended by
8 adding Section 568.007 to read as follows:

9 Sec. 568.007. REGISTRATION OF PHARMACY
10 TECHNICIANS-IN-TRAINING. (a) A person must register with the
11 board before beginning work in a pharmacy in this state as a
12 pharmacy technician-in-training.

13 (b) An application for registration as a pharmacy
14 technician-in-training must be on a form prescribed by the board.

15 (c) A person's registration as a pharmacy
16 technician-in-training remains in effect as long as the person
17 meets the qualifications specified by board rule.

18 (d) The board may:

19 (1) refuse to issue a registration to an applicant; or

20 (2) restrict, suspend, or revoke the registration of a
21 pharmacy technician-in-training for a violation of this subtitle.

22 SECTION 38. Section 565.060, Occupations Code, is repealed.

23 SECTION 39. On the effective date of this Act the state
24 pharmacy account is abolished and the comptroller shall transfer
25 money in the account to the general revenue fund.

26 SECTION 40. (a) The changes in law made by this Act to
27 Section 552.004, Occupations Code, do not affect the entitlement of

1 a member serving on the Texas State Board of Pharmacy immediately
2 before September 1, 2005, to continue to serve and function as a
3 member of the Texas State Board of Pharmacy for the remainder of the
4 term the member is serving on that date. Those changes in law apply
5 only to a member appointed on or after September 1, 2005.

6 (b) The changes in law made by this Act governing the
7 eligibility of a person or pharmacy for a license under Chapter 558
8 or 560, Occupations Code, apply only to an application for a license
9 filed with the Texas State Board of Pharmacy on or after the
10 effective date of this Act. A license application filed before the
11 effective date of this Act is governed by the law in effect at the
12 time the application was filed, and the former law is continued in
13 effect for that purpose.

14 (c) Sections 559.003 and 561.003, Occupations Code, as
15 amended by this Act, and Section 561.0031, Occupations Code, as
16 added by this Act, apply only to the renewal of a license to
17 practice pharmacy or a pharmacy license that expires on or after the
18 effective date of this Act. A license that expires before that date
19 is governed by the law in effect on the date the license expires,
20 and the former law is continued in effect for that purpose.

21 (d) The changes in law made by this Act to Chapter 565,
22 Occupations Code, relating to conduct that is grounds for
23 imposition of a disciplinary sanction apply only to conduct that
24 occurs on or after the effective date of this Act. Conduct that
25 occurs before the effective date of this Act is governed by the law
26 in effect on the date the conduct occurred, and the former law is
27 continued in effect for that purpose.

1 SECTION 41. This Act takes effect September 1, 2005.