

1-1 By: Whitmire S.B. No. 410
1-2 (In the Senate - Filed February 14, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Government
1-4 Organization; April 28, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 April 28, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 410 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas State Board
1-11 of Pharmacy; providing administrative penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 551.005, Occupations Code, is amended to
1-14 read as follows:

1-15 Sec. 551.005. APPLICATION OF SUNSET ACT. The Texas State
1-16 Board of Pharmacy is subject to Chapter 325, Government Code (Texas
1-17 Sunset Act). Unless continued in existence as provided by that
1-18 chapter, the board is abolished and this subtitle expires September
1-19 1, 2017 [~~2005~~].

1-20 SECTION 2. Subdivision (42), Section 551.003, Occupations
1-21 Code, is amended to read as follows:

1-22 (42) "Texas trade association" means a [~~nonprofit,~~
1-23 cooperative~~]~~ and voluntarily joined statewide association of
1-24 business or professional competitors in this state designed to
1-25 assist its members and its industry or profession in dealing with
1-26 mutual business or professional problems and in promoting their
1-27 common interest.

1-28 SECTION 3. Section 552.004, Occupations Code, is amended to
1-29 read as follows:

1-30 Sec. 552.004. MEMBERSHIP RESTRICTIONS. (a) A person may
1-31 not be a member of [~~serve on~~] the board if the person is required to
1-32 register as a lobbyist under Chapter 305, Government Code, because
1-33 of the person's activities for compensation on behalf of a
1-34 profession related to the operation of the board.

1-35 (b) A person may not be a [~~pharmacist~~] member of the board if
1-36 [~~may not be~~]:

1-37 (1) the person is [~~a salaried faculty member at a~~
1-38 ~~college of pharmacy, or~~

1-39 [~~2~~] an officer, employee, or paid consultant of a
1-40 Texas trade association in the field of health care; or

1-41 (2) the person's spouse is [~~of~~] an officer, manager
1-42 [~~employee~~], or paid consultant of a Texas trade association in the
1-43 field of health care.

1-44 SECTION 4. Section 552.006, Occupations Code, is amended to
1-45 read as follows:

1-46 Sec. 552.006. BOARD MEMBER TRAINING. (a) A person who is
1-47 appointed to and qualifies for office as a member of the board may
1-48 not vote, deliberate, or be counted as a member in attendance at a
1-49 meeting of the board until the person completes a training program
1-50 that complies with this section.

1-51 (b) The training program must provide the person with
1-52 information regarding:

1-53 (1) this subtitle and the programs, functions, rules,
1-54 and budget of the board;

1-55 (2) the results of the most recent formal audit of the
1-56 board;

1-57 (3) the requirements of laws relating to open
1-58 meetings, public information, administrative procedure, and
1-59 conflicts of interest; and

1-60 (4) any applicable ethics policies adopted by the
1-61 board or the Texas Ethics Commission.

1-62 (c) A person appointed to the board is entitled to
1-63 reimbursement, as provided by the General Appropriations Act, for

2-1 the travel expenses incurred in attending the training program
 2-2 regardless of whether the attendance at the program occurs before
 2-3 or after the person qualifies for office [~~Each board member shall~~
 2-4 ~~comply with the board member training requirements established by~~
 2-5 ~~any other state agency with authority to establish the requirements~~
 2-6 ~~for the board].~~

2-7 SECTION 5. Subsection (a), Section 552.007, Occupations
 2-8 Code, is amended to read as follows:

2-9 (a) The governor shall designate a member of the board as
 2-10 the president of the board to serve in that capacity at the pleasure
 2-11 of the governor. The board shall elect from its members for
 2-12 one-year terms a [president,] vice president, treasurer, and other
 2-13 officers the board considers appropriate and necessary to conduct
 2-14 board business.

2-15 SECTION 6. Subsection (b), Section 552.009, Occupations
 2-16 Code, is amended to read as follows:

2-17 (b) A member is entitled to reimbursement for travel
 2-18 [~~transportation]~~ expenses as prescribed by the General
 2-19 Appropriations Act. [A member may not receive reimbursement for
 2-20 any other travel expenses, including expenses for meals and
 2-21 lodging.]

2-22 SECTION 7. Section 553.005, Occupations Code, is amended to
 2-23 read as follows:

2-24 Sec. 553.005. EMPLOYEE RESTRICTIONS. (a) A person may not
 2-25 be an employee of the board employed in a "bona fide executive,
 2-26 administrative, or professional capacity," as that phrase is used
 2-27 for purposes of establishing an exemption to the overtime
 2-28 provisions of the federal Fair Labor Standards Act of 1938 (29
 2-29 U.S.C. Section 201 et seq.), if:

2-30 (1) the person is an officer, employee, or paid
 2-31 consultant of a Texas trade association in the field of health care;
 2-32 or

2-33 (2) the person's spouse is an [An] officer, manager
 2-34 [~~employee], or paid consultant of a Texas trade association in the~~
 2-35 ~~field of health care [may not be an employee of the board who is~~
 2-36 ~~exempt from the state's position classification plan or is~~
 2-37 ~~compensated at or above the amount prescribed by the General~~
 2-38 ~~Appropriations Act for step 1, salary group A17, of the position~~
 2-39 ~~classification salary schedule].~~

2-40 (b) [~~A person who is the spouse of an officer, manager, or~~
 2-41 ~~paid consultant of a Texas trade association in the field of health~~
 2-42 ~~care may not be an employee of the board who is exempt from the~~
 2-43 ~~state's position classification plan or is compensated at or above~~
 2-44 ~~the amount prescribed by the General Appropriations Act for step 1,~~
 2-45 ~~salary group A17, of the position classification salary schedule.~~

2-46 [~~(c)] A person may not act as general counsel to the board if~~
 2-47 ~~the person is required to register as a lobbyist under Chapter 305,~~
 2-48 ~~Government Code, because of the person's activities for~~
 2-49 ~~compensation on behalf of a profession related to the operation of~~
 2-50 ~~the board.~~

2-51 SECTION 8. Section 554.001, Occupations Code, is amended by
 2-52 adding Subsection (e) to read as follows:

2-53 (e) The board shall develop formal policies outlining the
 2-54 structure, role, and responsibilities of each committee
 2-55 established under Subsection (b)(2) that contains board members.
 2-56 The board may adopt rules to implement this subsection.

2-57 SECTION 9. Section 554.007, Occupations Code, is amended to
 2-58 read as follows:

2-59 Sec. 554.007. FUNDS[~~, STATE PHARMACY ACCOUNT~~]. (a) The
 2-60 board shall deposit revenue[~~, other than an administrative~~
 2-61 ~~penalty,] collected under this subtitle to the credit of the [~~state~~
 2-62 ~~pharmacy account in the] general revenue fund.~~~~

2-63 (b) The board may receive and spend money from a party,
 2-64 other than the state, in addition to money collected under
 2-65 Subsection (a), in accordance with state law.

2-66 [~~(c) The board shall pay the expense of administering this~~
 2-67 ~~subtitle out of the state pharmacy account.]~~

2-68 SECTION 10. Section 555.001, Occupations Code, is amended
 2-69 by adding Subsections (c) and (d) to read as follows:

3-1 (c) The board shall provide on its website a list of all
 3-2 Internet pharmacies licensed by the board and shall provide
 3-3 information about each pharmacy, including the pharmacy's name,
 3-4 license number, and state of physical location. In this
 3-5 subsection, an Internet pharmacy is a pharmacy physically located
 3-6 in this state or another state that:

3-7 (1) dispenses a prescription drug or device under a
 3-8 prescription drug order in response to a request received by way of
 3-9 the Internet to dispense the drug or device; and

3-10 (2) delivers the drug or device to a patient in this
 3-11 state by United States mail, common carrier, or delivery service.

3-12 (d) Information regarding the home address or home
 3-13 telephone number of a person licensed or registered under this
 3-14 subtitle, including a pharmacy owner, is confidential and not
 3-15 subject to disclosure under Chapter 552, Government Code, but each
 3-16 person licensed or registered must provide the board with a
 3-17 business address or address of record that is subject to disclosure
 3-18 under Chapter 552, Government Code, and that may be posted on the
 3-19 board's Internet site or in the board's licensure verification
 3-20 database.

3-21 SECTION 11. Section 555.005, Occupations Code, is amended
 3-22 to read as follows:

3-23 Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint
 3-24 received by the board, the board shall maintain information about
 3-25 parties to the complaint, the subject matter of the complaint, a
 3-26 summary of the results of the review or investigation of the
 3-27 complaint, and its disposition [~~The board shall keep an information~~
 3-28 ~~file about each complaint filed with the board. The information~~
 3-29 ~~file must be kept current and contain a record for each complaint~~
 3-30 ~~of:~~

3-31 [~~(1) each person contacted in relation to the~~
 3-32 ~~complaint;~~

3-33 [~~(2) a summary of the results of the review or~~
 3-34 ~~investigation of the complaint;~~

3-35 [~~(3) an explanation of the reason the complaint was~~
 3-36 ~~closed without action if the board did not take action;~~

3-37 [~~(4) the schedule for disposing of the complaint~~
 3-38 ~~prepared as required by Section 555.007(b) and a notation of any~~
 3-39 ~~change in the schedule; and~~

3-40 [~~(5) other relevant information].~~

3-41 SECTION 12. Section 555.007, Occupations Code, is amended
 3-42 by amending Subsection (a) and adding Subsection (c) to read as
 3-43 follows:

3-44 (a) The board shall adopt policies and procedures
 3-45 concerning the investigation of a complaint filed with the board.
 3-46 The policies and procedures must:

3-47 (1) determine the seriousness of the complaint;

3-48 (2) ensure that a complaint is not closed without
 3-49 appropriate consideration;

3-50 (3) ensure that a letter is sent to the person who
 3-51 filed the complaint explaining the action taken on the complaint;

3-52 (4) ensure that the person who filed the complaint has
 3-53 an opportunity to explain the allegations made in the complaint;
 3-54 [~~and~~]

3-55 (5) prescribe guidelines concerning the types of
 3-56 complaints that require the use of a private investigator and the
 3-57 procedures for the board to obtain the services of a private
 3-58 investigator; and

3-59 (6) allow appropriate employees of the board to
 3-60 dismiss a complaint if an investigation shows that:

3-61 (A) no violation occurred; or

3-62 (B) the subject of the complaint is outside the
 3-63 board's jurisdiction.

3-64 (c) At each public meeting of the board, the executive
 3-65 director shall report to the board each complaint dismissed under
 3-66 Subsection (a)(6) since the board's last public meeting.

3-67 SECTION 13. Subsection (a), Section 558.057, Occupations
 3-68 Code, is amended to read as follows:

3-69 (a) In this section, "preceptor" means a pharmacist

4-1 licensed in this state to practice pharmacy or another health care
 4-2 professional who meets the preceptor requirements specified by rule
 4-3 and who is recognized [~~certified~~] by the board to supervise and be
 4-4 responsible for the activities and functions of a pharmacist-intern
 4-5 in an internship program.

4-6 SECTION 14. Subchapter B, Chapter 558, Occupations Code, is
 4-7 amended by adding Section 558.058 to read as follows:

4-8 Sec. 558.058. ACCESSIBILITY OF EXAMINATION. The board by
 4-9 rule shall ensure that an examination under this subchapter is
 4-10 administered to applicants with disabilities in compliance with the
 4-11 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
 4-12 seq.).

4-13 SECTION 15. Subchapter B, Chapter 558, Occupations Code, is
 4-14 amended by adding Section 558.059 to read as follows:

4-15 Sec. 558.059. EXAMINATION FEE REFUND. (a) The board may
 4-16 retain all or part of an examination fee paid by an applicant who is
 4-17 unable to take the examination.

4-18 (b) The board shall adopt policies allowing the board to
 4-19 refund the examination fee paid by an applicant who:

4-20 (1) provides advance notice of the applicant's
 4-21 inability to take the examination; or

4-22 (2) is unable to take the examination because of an
 4-23 emergency.

4-24 (c) The board's policy must establish the required
 4-25 notification period and the emergencies that warrant a refund.

4-26 (d) The board shall make efforts to ensure that the policy
 4-27 does not conflict with the policy of a national testing body
 4-28 involved in administering the examination.

4-29 SECTION 16. Section 558.101, Occupations Code, is amended
 4-30 to read as follows:

4-31 Sec. 558.101. QUALIFICATIONS FOR LICENSE BY RECIPROCITY.
 4-32 (a) To qualify for a license to practice pharmacy, an applicant
 4-33 for licensing by reciprocity must:

4-34 (1) submit to the board:

4-35 (A) a reciprocity fee set by the board; and

4-36 (B) a completed application in the form
 4-37 prescribed by the board, given under oath;

4-38 (2) be of good moral character;

4-39 (3) have graduated and received a professional
 4-40 practice degree, as defined by board rule, from an accredited
 4-41 pharmacy degree program approved by the board;

4-42 (4) [~~have possessed, at the time of initial licensing~~
 4-43 ~~as a pharmacist, other qualifications necessary to have been~~
 4-44 ~~eligible for licensing at that time in this state,~~

4-45 [~~(5)~~] have presented to the board:

4-46 (A) proof of current or initial licensing by
 4-47 examination; and

4-48 (B) proof that the current license and any other
 4-49 license granted to the applicant by another state has not been
 4-50 restricted, suspended, revoked, or surrendered for any reason; and

4-51 (5) [~~(6)~~] pass the Texas Pharmacy Jurisprudence
 4-52 examination.

4-53 (b) An applicant is not eligible for licensing by
 4-54 reciprocity unless the state in which the applicant is currently or
 4-55 was initially licensed as a pharmacist grants reciprocal licensing
 4-56 to pharmacists licensed by examination in this state, under like
 4-57 circumstances and conditions.

4-58 SECTION 17. Subsections (b), (c), and (d), Section 559.003,
 4-59 Occupations Code, are amended to read as follows:

4-60 (b) A person whose license has been expired for 90 days or
 4-61 less may renew the expired license by paying to the board [~~the~~
 4-62 ~~required renewal fee and~~] a renewal fee that is equal to one and
 4-63 one-half times the normally required renewal [~~of the examination~~]
 4-64 fee for the license.

4-65 (c) A person whose license has been expired for more than 90
 4-66 days but less than one year may renew the expired license by paying
 4-67 to the board [~~all unpaid renewal fees and~~] a renewal fee that is
 4-68 equal to two times the normally required renewal [~~examination~~]
 4-69 fee for the license.

5-1 (d) A person whose [If a person's] license has been expired
 5-2 for one year or more[, the person's license is considered to have
 5-3 been canceled and the person] may not renew the license. The person
 5-4 may obtain a new license by complying with the requirements and
 5-5 procedures for obtaining an original license, including the
 5-6 examination requirement [unless the license is the subject of a
 5-7 pending investigation or disciplinary action].

5-8 SECTION 18. Section 560.052, Occupations Code, is amended
 5-9 by amending Subsection (c) and adding Subsection (f) to read as
 5-10 follows:

5-11 (c) To qualify for a Class E pharmacy license, an applicant,
 5-12 in addition to satisfying the other requirements of this chapter,
 5-13 must provide to the board:

5-14 (1) evidence that the applicant holds a pharmacy
 5-15 license, registration, or permit in good standing issued by the
 5-16 state in which the pharmacy is located;

5-17 (2) the name of the owner and pharmacist-in-charge of
 5-18 the pharmacy for service of process;

5-19 (3) evidence of the applicant's ability to provide to
 5-20 the board a record of a prescription drug order dispensed by the
 5-21 applicant to a resident of this state not later than 72 hours after
 5-22 the time the board requests the record; ~~and~~

5-23 (4) an affidavit by the pharmacist-in-charge that
 5-24 states that the pharmacist has read and understands the laws and
 5-25 rules relating to a Class E pharmacy;

5-26 (5) proof of creditworthiness; and

5-27 (6) an inspection report issued:

5-28 (A) not more than two years before the date the
 5-29 license application is received; and

5-30 (B) by the pharmacy licensing board in the state
 5-31 of the pharmacy's physical location, except as provided by
 5-32 Subsection (f).

5-33 (f) A Class E pharmacy may submit an inspection report
 5-34 issued by an entity other than the pharmacy licensing board of the
 5-35 state in which the pharmacy is physically located if:

5-36 (1) the state's licensing board does not conduct
 5-37 inspections;

5-38 (2) the inspection is substantively equivalent to an
 5-39 inspection conducted by the board, as determined by board rule; and

5-40 (3) the inspecting entity meets specifications
 5-41 adopted by the board for inspecting entities.

5-42 SECTION 19. Section 561.003, Occupations Code, is amended
 5-43 by amending Subsection (a) and adding Subsections (c), (d), and (e)
 5-44 to read as follows:

5-45 (a) The board by rule shall establish:

5-46 (1) procedures to be followed for renewal of a
 5-47 pharmacy license;

5-48 (2) the fees to be paid for renewal of a pharmacy
 5-49 license; and

5-50 (3) ~~[penalties for late renewal of a pharmacy license,~~
 5-51 ~~and~~

5-52 ~~[(4)]~~ the standards in each classification that each
 5-53 pharmacy and the pharmacy's employees involved in the practice of
 5-54 pharmacy must meet to qualify for relicensing as a pharmacy.

5-55 (c) A pharmacy whose license has been expired for 90 days or
 5-56 less may renew the expired license by paying to the board a renewal
 5-57 fee that is equal to one and one-half times the normally required
 5-58 renewal fee for the license.

5-59 (d) A pharmacy whose license has been expired for more than
 5-60 90 days but less than one year may renew the expired license by
 5-61 paying to the board a renewal fee that is equal to two times the
 5-62 normally required renewal fee for the license.

5-63 (e) If a pharmacy's license has been expired for one year or
 5-64 more, the pharmacy may not renew the license. The pharmacy may
 5-65 obtain a new license by complying with the requirements and
 5-66 procedures for obtaining an original license.

5-67 SECTION 20. Chapter 561, Occupations Code, is amended by
 5-68 adding Section 561.0031 to read as follows:

5-69 Sec. 561.0031. ADDITIONAL RENEWAL REQUIREMENT FOR CLASS E

6-1 PHARMACY. (a) In addition to the renewal requirements under
6-2 Section 561.003, the board shall require that a Class E pharmacy
6-3 have on file with the board an inspection report issued:

6-4 (1) not more than three years before the date the
6-5 renewal application is received; and

6-6 (2) by the pharmacy licensing board in the state of the
6-7 pharmacy's physical location, except as provided by Subsection (b).

6-8 (b) A Class E pharmacy may have on file with the board an
6-9 inspection report issued by an entity other than the pharmacy
6-10 licensing board of the state in which the pharmacy is physically
6-11 located if the requirements of Section 560.052(f) are met.

6-12 SECTION 21. Subchapter B, Chapter 562, Occupations Code, is
6-13 amended by adding Section 562.056 to read as follows:

6-14 Sec. 562.056. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED.

6-15 (a) Before dispensing a prescription, a pharmacist shall
6-16 determine, in the exercise of sound professional judgment, that the
6-17 prescription is a valid prescription. A pharmacist may not dispense
6-18 a prescription drug if the pharmacist knows or should know that the
6-19 prescription was issued on the basis of an Internet-based or
6-20 telephonic consultation without a valid practitioner-patient
6-21 relationship.

6-22 (b) Subsection (a) does not prohibit a pharmacist from
6-23 dispensing a prescription when a valid practitioner-patient
6-24 relationship is not present in an emergency.

6-25 SECTION 22. Subchapter C, Chapter 562, Occupations Code, is
6-26 amended by adding Section 562.111 to read as follows:

6-27 Sec. 562.111. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED.

6-28 (a) A pharmacy shall ensure that its agents and employees, before
6-29 dispensing a prescription, determine in the exercise of sound
6-30 professional judgment that the prescription is a valid
6-31 prescription. A pharmacy may not dispense a prescription drug if an
6-32 agent or employee of the pharmacy knows or should know that the
6-33 prescription was issued on the basis of an Internet-based or
6-34 telephonic consultation without a valid practitioner-patient
6-35 relationship.

6-36 (b) Subsection (a) does not prohibit a pharmacy from
6-37 dispensing a prescription when a valid practitioner-patient
6-38 relationship is not present in an emergency.

6-39 SECTION 23. Section 562.1045, Occupations Code, is amended
6-40 by adding Subsections (c) and (d) to read as follows:

6-41 (c) A pharmacy subject to this section shall post:

6-42 (1) on its initial home page general information on
6-43 how to file a complaint about the pharmacy with the board; and

6-44 (2) specific information on how to file a complaint
6-45 with the board not more than two links away from its initial home
6-46 page.

6-47 (d) Information under Subsection (c) must include the
6-48 board's telephone number, mailing address, and Internet website
6-49 address.

6-50 SECTION 24. Subsection (c), Section 564.051, Occupations
6-51 Code, is amended to read as follows:

6-52 (c) Funds and surcharges collected under this section shall
6-53 be deposited in the general revenue fund [~~account created under~~
6-54 Section 554.007] and may only be used by the board to administer the
6-55 program authorized by this section, including providing for initial
6-56 evaluation and referral of an impaired pharmacist or pharmacy
6-57 student by a qualified health professional and paying the
6-58 administrative costs incurred by the board in connection with that
6-59 funding. The money may not be used for costs incurred for treatment
6-60 or rehabilitation after initial evaluation and referral.

6-61 SECTION 25. Subsection (a), Section 565.001, Occupations
6-62 Code, is amended to read as follows:

6-63 (a) The board may discipline an applicant for or the holder
6-64 of a current or expired license to practice pharmacy if the board
6-65 finds that the applicant or license holder has:

6-66 (1) violated this subtitle or a board rule adopted
6-67 under this subtitle;

6-68 (2) engaged in unprofessional conduct as defined by
6-69 board rule;

7-1 (3) engaged in gross immorality as defined by board
7-2 rule;

7-3 (4) developed an incapacity that prevents the
7-4 applicant or license holder from practicing pharmacy with
7-5 reasonable skill, competence, and safety to the public;

7-6 (5) engaged in fraud, deceit, or misrepresentation, as
7-7 defined by board rule, in practicing pharmacy or in seeking a
7-8 license to practice pharmacy;

7-9 (6) been convicted of or placed on deferred
7-10 adjudication community supervision or deferred disposition or the
7-11 applicable federal equivalent for:

7-12 (A) a misdemeanor:
7-13 (i) involving moral turpitude; or
7-14 (ii) under Chapter 481 or 483, Health and
7-15 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
7-16 Act of 1970 (21 U.S.C. Section 801 et seq.); or

7-17 (B) a felony;

7-18 (7) used alcohol or drugs in an intemperate manner
7-19 that, in the board's opinion, could endanger a patient's life;

7-20 (8) failed to maintain records required by this
7-21 subtitle or failed to maintain complete and accurate records of
7-22 purchases or disposals of drugs listed in Chapter 481 or 483, Health
7-23 and Safety Code, or the Comprehensive Drug Abuse Prevention and
7-24 Control Act of 1970 (21 U.S.C. Section 801 et seq.);

7-25 (9) violated any provision of:

7-26 (A) Chapter 481 or 483, Health and Safety Code,
7-27 or the Comprehensive Drug Abuse Prevention and Control Act of 1970
7-28 (21 U.S.C. Section 801 et seq.), or rules relating to one of those
7-29 laws; or

7-30 (B) Section 485.031, 485.032, 485.033, or
7-31 485.034, Health and Safety Code;

7-32 (10) aided or abetted an unlicensed person in the
7-33 practice of pharmacy if the pharmacist knew or reasonably should
7-34 have known that the person was unlicensed at the time;

7-35 (11) refused entry into a pharmacy for an inspection
7-36 authorized by this subtitle if the pharmacist received notification
7-37 from which the pharmacist knew or reasonably should have known that
7-38 the attempted inspection was authorized;

7-39 (12) violated any pharmacy or drug statute or rule of
7-40 this state, another state, or the United States;

7-41 (13) been negligent in the practice of pharmacy;

7-42 (14) failed to submit to an examination after hearing
7-43 and being ordered to do so by the board under Section 565.052;

7-44 (15) dispensed a prescription drug while acting
7-45 outside the usual course and scope of professional practice; ~~or~~

7-46 (16) been disciplined by the regulatory board of
7-47 another state [had a license to practice pharmacy issued by another
7-48 state canceled, revoked, surrendered, or suspended] for conduct
7-49 substantially equivalent to conduct described under this
7-50 subsection;

7-51 (17) violated a disciplinary order, including a
7-52 confidential order or contract under the program to aid impaired
7-53 pharmacists and pharmacy students under Chapter 564;

7-54 (18) failed to adequately supervise a task delegated
7-55 to a pharmacy technician;

7-56 (19) inappropriately delegated a task delegated to a
7-57 pharmacy technician; or

7-58 (20) been responsible for a drug audit shortage.

7-59 SECTION 26. Section 565.002, Occupations Code, is amended
7-60 to read as follows:

7-61 Sec. 565.002. APPLICANT FOR OR HOLDER OF PHARMACY LICENSE.
7-62 (a) The board may discipline an applicant for or the holder of a
7-63 pharmacy license, including a Class E pharmacy license subject to
7-64 Section 565.003(b), if the board finds that the applicant or
7-65 license holder has:

7-66 (1) been convicted of or placed on deferred
7-67 adjudication community supervision or deferred disposition or the
7-68 applicable federal equivalent for:

7-69 (A) a misdemeanor;

8-1 (i) involving moral turpitude; or
8-2 (ii) under Chapter 481 or 483, Health and
8-3 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
8-4 Act of 1970 (21 U.S.C. Section 801 et seq.); or

8-5 (B) a felony [~~or, if the applicant or license~~
8-6 ~~holder is a legal business entity, that a managing officer of the~~
8-7 ~~applicant or license holder has been convicted of a misdemeanor~~
8-8 ~~involving moral turpitude or a felony under the law of this state,~~
8-9 ~~another state, or the United States];~~

8-10 (2) advertised a prescription drug or device in a
8-11 deceitful, misleading, or fraudulent manner;

8-12 (3) violated any provision of this subtitle or any
8-13 rule adopted under this subtitle or that an owner or employee of a
8-14 pharmacy has violated any provision of this subtitle or any rule
8-15 adopted under this subtitle;

8-16 (4) sold without legal authorization a prescription
8-17 drug or device to a person other than:

8-18 (A) a pharmacy licensed by the board;

8-19 (B) a practitioner;

8-20 (C) a person who procures a prescription drug or
8-21 device for lawful research, teaching, or testing, and not for
8-22 resale;

8-23 (D) a manufacturer or wholesaler licensed by the
8-24 commissioner of public health as required by Chapter 431, Health
8-25 and Safety Code; or

8-26 (E) a carrier or warehouseman;

8-27 (5) allowed an employee who is not a pharmacist to
8-28 practice pharmacy;

8-29 (6) sold an adulterated or misbranded prescription or
8-30 nonprescription drug;

8-31 (7) failed to engage in or ceased to engage in the
8-32 business described in the application for a license;

8-33 (8) failed to maintain records as required by this
8-34 subtitle, Chapter 481 or 483, Health and Safety Code, the
8-35 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
8-36 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle
8-37 or Chapter 483, Health and Safety Code;

8-38 (9) failed to establish and maintain effective
8-39 controls against diversion of prescription drugs into other than a
8-40 legitimate medical, scientific, or industrial channel as provided
8-41 by this subtitle, another state statute or rule, or a federal
8-42 statute or rule; [~~or~~]

8-43 (10) engaged in fraud, deceit, or misrepresentation as
8-44 defined by board rule in operating a pharmacy or in applying for a
8-45 license to operate a pharmacy;

8-46 (11) violated a disciplinary order;

8-47 (12) been responsible for a drug audit shortage; or

8-48 (13) been disciplined by the regulatory board of
8-49 another state for conduct substantially equivalent to conduct
8-50 described under this subsection.

8-51 (b) This subsection applies only to an applicant or license
8-52 holder that is a legal business entity. The board may discipline an
8-53 applicant for or the holder of a pharmacy license, including a Class
8-54 E pharmacy license, if the board finds that a managing officer of
8-55 the applicant or license holder has been convicted of or placed on
8-56 deferred adjudication community supervision or deferred
8-57 disposition or the applicable federal equivalent for:

8-58 (1) a misdemeanor:

8-59 (A) involving moral turpitude; or

8-60 (B) under Chapter 481 or 483, Health and Safety
8-61 Code, or the Comprehensive Drug Abuse Prevention and Control Act of
8-62 1970 (21 U.S.C. Section 801 et seq.); or

8-63 (2) a felony.

8-64 (c) A certified copy of the record of the state taking
8-65 action described by Subsection (a)(13) is conclusive evidence of
8-66 the action taken by that state.

8-67 SECTION 27. Section 565.051, Occupations Code, is amended
8-68 to read as follows:

8-69 Sec. 565.051. DISCIPLINE AUTHORIZED. [~~a~~] On a

determination that a ground for discipline exists under Subchapter A, or that a violation of this subtitle or ~~[, to the extent authorized by Subsection (b),]~~ a rule adopted under this subtitle~~[,]~~ has been committed by a license holder or applicant for a license or renewal of a license, the board may:

- (1) suspend the person's license;
- (2) revoke the person's license;
- (3) restrict the person's license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the board;

(4) impose an administrative penalty under Chapter 566;

- (5) refuse to issue or renew the person's license;
- (6) place the offender's license on probation and supervision by the board for a period determined by the board and impose a requirement that the license holder:

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

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

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

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

(7) reprimand the person;

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

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

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

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

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

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

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

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

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

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

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

10-1 (b) The disciplinary panel [~~board~~] may temporarily suspend
 10-2 the license or registration without notice or hearing if, at the
 10-3 time the suspension is ordered, a hearing before the panel [~~board~~]
 10-4 on whether disciplinary proceedings under this chapter should be
 10-5 initiated against the [~~license~~] holder of a license or registration
 10-6 is scheduled to be held not later than the 14th day after the date of
 10-7 the suspension.

10-8 (c) A second hearing on the suspended license or
 10-9 registration shall be held by the State Office of Administrative
 10-10 Hearings not later than the 60th day after the date of the
 10-11 suspension. If the State Office of Administrative Hearings does
 10-12 not hold the second hearing in the time required by this subsection,
 10-13 the suspended license or registration is automatically reinstated.

10-14 (d) Notwithstanding Chapter 551, Government Code, the
 10-15 disciplinary panel may hold a meeting by telephone conference call
 10-16 if immediate action is required and convening of the panel at one
 10-17 location is inconvenient for any member of the disciplinary panel.

10-18 SECTION 30. Section 566.002, Occupations Code, is amended
 10-19 by amending Subsection (a) and adding Subsection (d) to read as
 10-20 follows:

10-21 (a) ~~The [Except as provided by this subsection, the]~~ amount
 10-22 of the administrative penalty may not exceed \$5,000 [~~\$2,500~~] for
 10-23 each violation, including~~[. The amount of the administrative~~
 10-24 ~~penalty for]~~ a violation involving the diversion of a controlled
 10-25 substance [~~may not exceed \$5,000 for each violation~~].

10-26 (d) The board by rule shall adopt an administrative penalty
 10-27 schedule for violations of this subtitle or board rules to ensure
 10-28 that the amounts of penalties imposed are appropriate to the
 10-29 violation.

10-30 SECTION 31. Subsection (a), Section 566.051, Occupations
 10-31 Code, is amended to read as follows:

10-32 (a) The attorney general at the request of the board may
 10-33 petition a district court for an injunction to prohibit a person who
 10-34 is violating this subtitle from continuing the violation.

10-35 SECTION 32. Subchapter B, Chapter 566, Occupations Code, is
 10-36 amended by adding Section 566.052 to read as follows:

10-37 Sec. 566.052. CEASE AND DESIST ORDER. (a) If it appears to
 10-38 the board that a person is engaging in an act or practice that
 10-39 constitutes the practice of pharmacy without a license or
 10-40 registration under this subtitle, the board, after notice and
 10-41 opportunity for a hearing, may issue a cease and desist order
 10-42 prohibiting the person from engaging in the activity.

10-43 (b) A violation of an order issued under this section
 10-44 constitutes grounds for imposing an administrative penalty under
 10-45 Subchapter A.

10-46 SECTION 33. Section 568.003, Occupations Code, is amended
 10-47 to read as follows:

10-48 Sec. 568.003. GROUNDS FOR [REFUSAL TO ISSUE OR RENEW
 10-49 REGISTRATION,] DISCIPLINARY ACTION. (a) The board may take
 10-50 disciplinary action under Section 568.0035 [refuse to issue or
 10-51 renew a registration or may suspend or revoke any registration
 10-52 issued by the board] if the board determines that the applicant or
 10-53 registrant has:

10-54 (1) violated this subtitle or a rule adopted under
 10-55 this subtitle;

10-56 (2) engaged in gross immorality, as that term is
 10-57 defined by the rules of the board;

10-58 (3) engaged in any fraud, deceit, or
 10-59 misrepresentation, as those terms are defined by the rules of the
 10-60 board, in seeking a registration to act as a pharmacy technician;

10-61 (4) been convicted of or placed on deferred
 10-62 adjudication community supervision or deferred disposition or the
 10-63 applicable federal equivalent for:

10-64 (A) a misdemeanor:
 10-65 (i) involving moral turpitude; or
 10-66 (ii) under Chapter 481 or 483, Health and

10-67 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
 10-68 Act of 1970 (21 U.S.C. Section 801 et seq.); or

10-69 (B) a felony;

- 11-1 (5) a drug or alcohol dependency;
- 11-2 (6) violated:
- 11-3 (A) Chapter 481 or 483, Health and Safety Code,
- 11-4 or rules relating to those chapters;
- 11-5 (B) Sections 485.031-485.035, Health and Safety
- 11-6 Code; or
- 11-7 (C) a rule adopted under Section 485.011, Health
- 11-8 and Safety Code;
- 11-9 (7) violated the pharmacy or drug laws or rules of this
- 11-10 state, another state, or the United States; or
- 11-11 (8) had a registration as a pharmacy technician issued
- 11-12 by another state revoked, surrendered, or suspended for conduct
- 11-13 substantially equivalent to conduct described by Subdivisions
- 11-14 (1)-(6).

11-15 (b) A certified copy of the record of a state taking action
 11-16 described by Subsection (a)(8) is conclusive evidence of the action
 11-17 taken by the state.

11-18 SECTION 34. Chapter 568, Occupations Code, is amended by
 11-19 adding Section 568.0035 to read as follows:

11-20 Sec. 568.0035. DISCIPLINE AUTHORIZED. On a determination
 11-21 that a ground for discipline exists under Section 568.003, the
 11-22 board may:

- 11-23 (1) suspend the person's registration;
- 11-24 (2) revoke the person's registration;
- 11-25 (3) restrict the person's registration to prohibit the
 11-26 person from performing certain acts or from practicing as a
 11-27 pharmacy technician in a particular manner for a term and under
 11-28 conditions determined by the board;
- 11-29 (4) impose an administrative penalty under Chapter
 11-30 566;
- 11-31 (5) refuse to issue or renew the person's
 11-32 registration;
- 11-33 (6) place the offender's registration on probation and
 11-34 supervision by the board for a period determined by the board and
 11-35 impose a requirement that the registrant:
- 11-36 (A) report regularly to the board on matters that
 11-37 are the basis of the probation;
- 11-38 (B) limit practice to the areas prescribed by the
 11-39 board;
- 11-40 (C) continue or review professional education
 11-41 until the registrant attains a degree of skill satisfactory to the
 11-42 board in each area that is the basis of the probation; or
- 11-43 (D) pay the board a probation fee to defray the
 11-44 costs of monitoring the registrant during the period of probation;
- 11-45 (7) reprimand the person;
- 11-46 (8) retire the person's registration as provided by
 11-47 board rule; or
- 11-48 (9) impose more than one of the sanctions listed in
 11-49 this section.

11-50 SECTION 35. Chapter 568, Occupations Code, is amended by
 11-51 adding Section 568.007 to read as follows:

11-52 Sec. 568.007. REGISTRATION OF PHARMACY TECHNICIAN TRAINEE.
 11-53 (a) A person must register with the board before beginning work in
 11-54 a pharmacy in this state as a pharmacy technician trainee.

11-55 (b) An application for registration as a pharmacy
 11-56 technician trainee must be on a form prescribed by the board.

11-57 (c) A person's registration as a pharmacy technician
 11-58 trainee remains in effect as long as the person meets the
 11-59 qualifications specified by board rule.

11-60 (d) The board may, on a determination that a ground for
 11-61 discipline exists under Section 568.003, take disciplinary action
 11-62 against a pharmacy technician trainee under Section 568.0035.

11-63 SECTION 36. Subsection (a), Section 565.003, and Section
 11-64 565.060, Occupations Code, are repealed.

11-65 SECTION 37. On the effective date of this Act the state
 11-66 pharmacy account is abolished and the comptroller of public
 11-67 accounts shall transfer money in the account to the general revenue
 11-68 fund.

11-69 SECTION 38. (a) The changes in law made by this Act to

Section 552.004, Occupations Code, do not affect the entitlement of a member serving on the Texas State Board of Pharmacy immediately before September 1, 2005, to continue to serve and function as a member of the Texas State Board of Pharmacy for the remainder of the term the member is serving on that date. Those changes in law apply only to a member appointed on or after September 1, 2005.

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

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

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

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

* * * * *