By: McClendon H.B. No. 3714

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of controlled substances and the establishment of an electronic system for monitoring controlled substances; providing criminal penalties.

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

SECTION 1. Subtitle J, Title 3, Occupations Code, is amended by adding Chapter 570 to read as follows:

CHAPTER 570. CONTROLLED SUBSTANCE REGISTRATION; PRESCRIPTION DRUG ORDER MONITORING PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 570.001. PURPOSE. This chapter is intended to improve the state's ability to identify and stop diversion of Schedule II-V controlled substance prescription drug orders or other prescription drug orders in an efficient and cost-effective manner that will not impede the appropriate medical utilization of controlled substances or other potentially abusable drugs.

Sec. 570.002. DEFINITIONS. In this chapter:

(1) "Administer," "agent," "chemical laboratory apparatus," "chemical precursor," "controlled premises," "controlled substance," "controlled substance analogue," "deliver," "dispense," "dispenser," "distribute," "distributor," "drug," "federal Controlled Substances Act," "federal Drug Enforcement Administration," "institutional practitioner," "lawful possession," "manufacture," "medical purpose," "narcotic

drug," "patient," "person," "pharmacist," "pharmacy," "possession," "practitioner," "prescribe," and "prescription" have the meanings assigned by Section 481.002, Health and Safety Code.

(2) "Board" has the meaning assigned by Section 551.003.

(3) "Hospital" means:

(A) a general or special hospital as defined by Section 241.003, Health and Safety Code; or

(B) an ambulatory surgical center as defined by Section 243.002, Health and Safety Code, and approved by the federal government to perform surgery paid by Medicaid on patients admitted for a period of not more than 24 hours.

(4) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(5) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this chapter and other laws relating to pharmacy.

(6) "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(7) "Ultimate user" means a person who has lawfully

obtained and possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household.

Sec. 570.003. RULES. (a) The board may adopt the rules necessary to implement this chapter.

(b) The board by rule shall establish and revise as necessary a standardized database format that may be used by a pharmacy to transmit the information required by this chapter to the board electronically.

(c) The board, in consultation with the Department of State Health Services, the Department of Public Safety, and the Texas Medical Board, by rule may:

(1) remove a controlled substance listed in Schedules II through V under Subchapter B, Chapter 481, Health and Safety Code, from the prescription drug order monitoring program, if the board determines that the burden imposed by the program substantially outweighs the risk of diversion of the particular controlled substance; or

(2) add a substance not listed in Schedules II through V under Subchapter B, Chapter 481, Health and Safety Code, to the prescription drug order monitoring program, if the board determines that the risk of diversion substantially outweighs the burden imposed by the program on the particular substance.

(d) The board by rule may:

(1) remove from or return to the prescription drug order monitoring program any aspect of a practitioner's or

pharmacist's hospital practice, including administering or dispensing substances subject to the prescription drug order monitoring program;

(2) waive or delay any requirement relating to the time or manner of reporting to the prescription drug order monitoring program;

(3) establish compatibility protocols for electronic data transfer hardware, software, or format;

(4) establish a procedure to control the release of information under this chapter; and

(5) establish a minimum level of prescription drug order activity below which a reporting activity may be modified or discontinued.

(e) The board by rule shall authorize a practitioner to determine whether it is necessary to obtain an individual's patient identification number and to provide the number on the prescription drug order.

Sec. 570.004. AUTHORITY TO CONTRACT. The board may authorize a contract between the board and another agency of this state or a private vendor as necessary to ensure the effective operation of the prescription drug order monitoring program.

Sec. 570.005. ECONOMIC IMPACT CONSIDERATION. In adopting a rule relating to the electronic transfer of information under this chapter, the board shall:

(1) consider the economic impact of the proposed rule on practitioners and pharmacists, including potential costs related to computer hardware or software or to the transfer of

information; and

(2) to the extent permitted by law, act to minimize any negative economic effect on practitioners or pharmacists.

Sec. 570.006. FEES. (a) The board may use fees collected under Subchapter B to administer this chapter.

(b) The board may not impose a fee for the electronic transfer of information in addition to the fees authorized by Subchapter B.

(c) The board may charge:

(1) a nonrefundable fee of not more than $25 before processing an application for annual registration; and

(2) a late fee of not more than $50 for each application for renewal the board receives after the date the applicant's registration expires.

(d) The board by rule shall set the fees under Subsection (c) in the amounts necessary to cover the cost of administering and enforcing this chapter.

(e) The board shall deposit the fees collected under this chapter to the credit of the general revenue fund.

Sec. 570.007. GIFTS AND GRANTS. The board may accept gifts or grants from private individuals, foundations, or the federal government for the purposes authorized by this chapter.

[Sections 570.008-570.050 reserved for expansion]

SUBCHAPTER B. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSATION OF CONTROLLED SUBSTANCES, CHEMICAL PRECURSORS, AND CHEMICAL LABORATORY APPARATUS

Sec. 570.051. REGISTRATION REQUIRED. (a) Except as

otherwise provided by this chapter, a person may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state unless the person is registered by the board under this subchapter.

(b) A person who is registered by the board to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may possess, manufacture, distribute, analyze, dispense, or conduct research with that substance to the extent authorized by the person's registration and in conformity with this subchapter.

(c) Except as provided by Subsection (d), a separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, analyzes, dispenses, or possesses a controlled substance.

(d) The board may not require separate registration for a practitioner engaged in research with a nonnarcotic controlled substance listed in Schedules II through V under Subchapter B, Chapter 481, Health and Safety Code, if the practitioner is already registered under this subchapter in another capacity.

Sec. 570.052. EXEMPTIONS. (a) The following persons are not required to register under this subchapter and may possess a controlled substance under this chapter:

(1) an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance acting in the usual course of business or employment;

(2) a common or contract carrier, a warehouseman, or

an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V under Subchapter B, Chapter 481, Health and Safety Code;

(4) an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties; or

(5) if the substance is tetrahydrocannabinol or one of its derivatives:

(A) a Department of State Health Services official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G, Chapter 481, Health and Safety Code; or

(B) a practitioner or an ultimate user possessing the substance as a participant in a federally approved therapeutic research program that the executive director has reviewed and found, in writing, to contain a medically responsible research protocol.

(b) The board by rule may waive the requirement for registration of certain manufacturers, distributors, or dispensers if the board finds it consistent with the public health and safety

and if the attorney general of the United States has issued a similar waiver under the federal Controlled Substances Act.

Sec. 570.053. EXCEPTIONS. (a) This subchapter does not apply to an educational or research program of a school district or a public or private institution of higher education. This subchapter does not apply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or furnishes materials covered by this subchapter to those educational or research programs.

(b) The board and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding that establishes the responsibilities of each agency and the public or private institutions of higher education in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of institutions of higher education.

(c) The board and the Texas Education Agency shall adopt a memorandum of understanding that establishes the responsibilities of the agency, the board, and school districts in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of those schools and school districts.

Sec. 570.054. REGISTRATION APPLICATION. An applicant for registration under this subchapter shall submit an application to the board on a form prescribed by the board.

Sec. 570.055. ISSUANCE OR DENIAL OF REGISTRATION. (a) The board may refuse to issue a registration to a person to manufacture, distribute, analyze, or conduct research with a controlled substance if the person fails or refuses to provide to the board a consent form signed by the person granting the board the right to inspect the person's controlled premises and any record, controlled substance, or other item covered by this chapter.

(b) The board may not issue a registration to a person to dispense a controlled substance unless the board receives a consent form signed by the person granting the board the right to inspect records as required by this chapter.

(c) The board shall register a person to manufacture, distribute, or analyze a controlled substance listed in Schedules II through V under Subchapter B, Chapter 481, Health and Safety Code, if:

(1) the person furnishes the board evidence that the person is registered for that purpose under the federal Controlled Substances Act;

(2) the person has made proper application and paid the applicable fee; and

(3) the person has not been found by the board to have violated a provision of Section 570.056.

(d) The board shall register a person to dispense or conduct research with a controlled substance listed in Schedules II through V under Subchapter B, Chapter 481, Health and Safety Code, if the person:

(1) is a practitioner licensed under the laws of this

state;

(2) has made proper application and paid the applicable fee; and

(3) has not been found by the board to have violated a provision of Section 570.056.

Sec. 570.056. DENIAL; PROBATION. (a) An application for registration to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may be denied on a finding that the applicant:

(1) has furnished material information in an application filed under this chapter that the applicant knows is false or fraudulent;

(2) has been convicted of or placed on community supervision or other probation for:

(A) a felony;

(B) a violation of this chapter or of Chapters 481-485, Health and Safety Code; or

(C) an offense reasonably related to the registration sought;

(3) has voluntarily surrendered or has had suspended, denied, or revoked a registration or application for registration to manufacture, distribute, analyze, or dispense controlled substances under the federal Controlled Substances Act;

(4) has had suspended, probated, or revoked a registration or a practitioner's license under the laws of this state or another state;

(5) has intentionally or knowingly failed to establish

and maintain effective security controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws, this chapter, or a rule adopted under this chapter;

(6) has intentionally or knowingly failed to maintain records required to be kept by this chapter or a rule adopted under this chapter;

(7) has refused to allow an inspection authorized by this chapter or a rule adopted under this chapter;

(8) has intentionally or knowingly violated this chapter or a rule adopted under this chapter; or

(9) has voluntarily surrendered a registration that has not been reinstated.

(b) Chapter 2001, Government Code, does not apply to a denial of a registration under Subsection (a)(2)(A) or (B), (a)(3), (a)(4), or (a)(9).

(c) For good cause shown, the board may probate the denial of an application for registration. If a denial of an application is probated, the board may require the person to report regularly to the board on matters that are the basis of the probation or may limit activities of the person to those prescribed by the board, or both.

Sec. 570.057. INSPECTION. The board may inspect the premises or establishment of an applicant for registration in accordance with this chapter.

Sec. 570.058. TERM OF REGISTRATION. A registration is valid

until the first anniversary of the date of issuance and may be renewed annually under rules adopted by the board, unless a rule provides for a longer period of validity or renewal.

Sec. 570.059. REGISTRATION FEES. (a) The board may charge a nonrefundable fee of not more than $25 before processing an application for annual registration and may charge a late fee of not more than $50 for each application for renewal the board receives after the date the registration expires.

(b) Not later than 60 days before the date the registration expires, the board shall send a renewal notice to the registrant at the last known address of the registrant according to board records.

(c) The board shall deposit the fees collected under this section to the credit of the general revenue fund.

Sec. 570.060. AUTHORIZATION FOR CERTAIN ACTIVITIES. (a) The board may authorize the possession, distribution, planting, and cultivation of controlled substances by a person engaged in research, training animals to detect controlled substances, or designing or calibrating devices to detect controlled substances. A person who obtains an authorization under this subsection does not commit an offense involving the possession or distribution of controlled substances to the extent that the possession or distribution is authorized.

(b) A person may conduct research with or analyze substances listed in Schedule I under Subchapter B, Chapter 481, Health and Safety Code, in this state only if the person is a practitioner registered under federal law to conduct research with or analyze

those substances and the person provides the board with evidence of federal registration.

Sec. 570.061. VOLUNTARY SURRENDER, CANCELLATION, SUSPENSION, PROBATION, OR REVOCATION OF REGISTRATION. (a) The board may accept a voluntary surrender of a registration.

(b) The board may cancel, suspend, or revoke a registration, place on probation a person whose license has been suspended, or reprimand a registrant for a cause described by Section 570.056(a).

(c) The board may cancel a registration that was issued in error.

(d) The board may limit the cancellation, suspension, probation, or revocation to the particular schedule or controlled substance within a schedule under Subchapter B, Chapter 481, Health and Safety Code, for which grounds for cancellation, suspension, probation, or revocation exist.

(e) After accepting the voluntary surrender of a registration or ordering the cancellation, suspension, probation, or revocation of a registration, the board may seize or place under seal all controlled substances owned or possessed by the registrant under the authority of that registration. If the board orders the cancellation, suspension, probation, or revocation of a registration, a disposition may not be made of the seized or sealed substances until the time for administrative appeal of the order has elapsed or until all appeals have been concluded, except that the board may order the sale of perishable substances and deposit of the proceeds of the sale in a special interest-bearing account in the general revenue fund. When a surrender or cancellation,

suspension, probation, or revocation order becomes final, all controlled substances may be forfeited to this state as provided under Subchapter E, Chapter 481, Health and Safety Code.

(f) The operation of a registrant in violation of this section is a public nuisance, and the board may apply to any court of competent jurisdiction for an injunction suspending the registration of the registrant.

(g) Chapter 2001, Government Code, applies to a proceeding under this section to the extent that that chapter does not conflict with this subchapter. Chapter 2001, Government Code, does not apply to a cancellation, suspension, probation, or revocation of a registration for a cause described by Section 570.056(a)(2)(A) or (B), (a)(3), (a)(4), or (a)(9).

(h) The board shall promptly notify appropriate state agencies of an order accepting a voluntary surrender or canceling, suspending, probating, or revoking a registration and the forfeiture of controlled substances.

(i) The board shall give written notice to the applicant or registrant of the acceptance of a voluntary surrender of a registration, or of the cancellation, suspension, probation, revocation, or denial of a registration. The notice shall be sent by certified mail, return receipt requested, to the most current address of the applicant or registrant contained in board files.

(j) After a voluntary surrender, cancellation, suspension, probation, revocation, or denial of a registration, on petition of the applicant or former registrant, the board may issue or reinstate the registration for good cause shown by the petitioner.

Sec. 570.062. RECORDS. (a) A person who is registered to manufacture, distribute, analyze, or dispense a controlled substance shall keep records and maintain inventories in compliance with recordkeeping and inventory requirements of federal law and with additional rules adopted by the board.

(b) The pharmacist-in-charge of a pharmacy shall maintain the records and inventories required by this section.

(c) A record required by this section must be made at the time of the transaction that is the basis of the record. A record or inventory required by this section must be kept or maintained for at least two years after the date the record or inventory is made.

Sec. 570.063. CONFIDENTIALITY. (a) The board may authorize a person engaged in research on the use and effects of a controlled substance to withhold the names and other identifying characteristics of individuals who are the subjects of the research. A person who obtains the authorization may not be compelled in a civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of the research for which the authorization is obtained.

(b) Except as provided by Section 570.069, a practitioner engaged in authorized medical practice or research may not be required to furnish the name or identity of a patient or research subject to the board, the Department of State Health Services, Division of Mental Health and Substance Abuse Services, or any other agency, public official, or law enforcement officer. A practitioner may not be compelled in a state or local civil, criminal, administrative, legislative, or other proceeding to

furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(c) The board may not provide to a federal, state, or local law enforcement agency the name or identity of a patient or research subject whose identity could not be obtained under Subsection (b).

Sec. 570.064. ORDER FORMS. A registrant may not distribute or order a controlled substance listed in Schedule I or II under Subchapter B, Chapter 481, Health and Safety Code, to or from another registrant except under an order form. A registrant complying with the federal law concerning order forms is in compliance with this section.

Sec. 570.065. ADMINISTERING OR DISPENSING SCHEDULE I CONTROLLED SUBSTANCE. Except as permitted by this chapter, a person may not administer or dispense a controlled substance listed in Schedule I under Subchapter B, Chapter 481, Health and Safety Code.

Sec. 570.066. MEDICAL PURPOSE REQUIRED BEFORE PRESCRIBING, DISPENSING, DELIVERING, OR ADMINISTERING CONTROLLED SUBSTANCE. (a) A practitioner defined by Section 481.002(39)(A), Health and Safety Code, may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice.

(b) An anabolic steroid or human growth hormone listed in Schedule III of Subchapter B, Chapter 481, Health and Safety Code, may only be:

(1) dispensed, prescribed, delivered, or administered by a practitioner, as defined by Section 481.002(39)(A), Health and Safety Code, for a valid medical purpose and in the course of professional practice; or

(2) dispensed or delivered by a pharmacist according to a prescription issued by a practitioner, as defined by Section 481.002(39)(A) or (C), Health and Safety Code, for a valid medical purpose and in the course of professional practice.

(c) For the purposes of Subsection (b), bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone listed in Schedule III of Subchapter B, Chapter 481, Health and Safety Code, by a person who is in good health is not a valid medical purpose.

Sec. 570.067. MEDICAL PURPOSE REQUIRED BEFORE DISTRIBUTING OR DISPENSING SCHEDULE V CONTROLLED SUBSTANCE. A person may not distribute or dispense a controlled substance listed in Schedule V under Subchapter B, Chapter 481, Health and Safety Code, except for a valid medical purpose.

Sec. 570.068. COMMUNICATION OF PRESCRIPTIONS BY AGENT. (a) Only a practitioner defined by Section 481.002(39)(A), Health and Safety Code, and an agent designated in writing by the practitioner in accordance with rules adopted by the board may communicate a prescription by telephone. A pharmacy that receives a telephonically communicated prescription shall promptly write the prescription and file and retain the prescription in the manner required by this subchapter. A practitioner who designates an agent to communicate prescriptions shall maintain the written

designation of the agent in the practitioner's usual place of business and shall make the designation available for inspection by investigators for the Texas Medical Board, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, and the board. A practitioner who designates a different agent shall designate that agent in writing and maintain the designation in the same manner in which the practitioner initially designated an agent under this section.

(b) On the request of a pharmacist, a practitioner shall furnish a copy of the written designation authorized under Subsection (a).

(c) This section does not relieve a practitioner or the practitioner's designated agent from the requirements of Subchapter A, Chapter 562. A practitioner is personally responsible for the actions of the designated agent in communicating a prescription to a pharmacist.

Sec. 570.069. PRESCRIPTIONS. (a) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice;

(2) dispense a controlled substance if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship;

(3) fill a prescription that is not prepared or issued as prescribed by this chapter;

(4) permit or allow a person who is not a licensed

pharmacist or pharmacist intern to dispense, distribute, or in any other manner deliver a controlled substance even if under the supervision of a pharmacist, except that after the pharmacist or pharmacist intern has fulfilled his professional and legal responsibilities, a nonpharmacist may complete the actual cash or credit transaction and delivery; or

(5) permit the delivery of a controlled substance to any person not known to the pharmacist, the pharmacist intern, or the person authorized by the pharmacist to deliver the controlled substance without first requiring identification of the person taking possession of the controlled substance, except as provided by Subsection (o).

(b) Except in an emergency as defined by rule of the board or as provided by Subsection (p), a person may not dispense or administer a controlled substance listed in Schedule II under Subchapter B, Chapter 481, Health and Safety Code, without the written prescription of a practitioner. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, and federal Drug Enforcement

Administration number of the prescribing practitioner.

(c) Not later than the seventh day after the date a prescribing practitioner authorizes an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written prescription to be delivered in person or mailed to the dispensing pharmacist at the pharmacy where the prescription was dispensed. The envelope of a prescription delivered by mail must be postmarked not later than the seventh day after the date the prescription was authorized.

(d) Except as specified in Subsections (f) and (g), the board, by rule and in consultation with the Texas Medical Board, shall establish the period after the date on which the prescription is issued that a person may fill a prescription for a controlled substance listed in Schedule II under Subchapter B, Chapter 481, Health and Safety Code. A person may not refill a prescription for a substance listed in Schedule II.

(e) Notwithstanding Subsection (d), a prescribing practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a controlled substance listed in Schedule II under Subchapter B, Chapter 481, Health and Safety Code, if:

(1) each separate prescription is issued for a legitimate medical purpose by a prescribing practitioner acting in the usual course of professional practice;

(2) the prescribing practitioner provides written instructions on each prescription to be filled at a later date indicating the earliest date on which a pharmacy may fill each

prescription;

(3) the prescribing practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the issuance of multiple prescriptions complies with other applicable state and federal laws.

(f) The partial filling of a prescription for a controlled substance listed in Schedule II under Subchapter B, Chapter 481, Health and Safety Code, is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription or written record of the emergency oral prescription. The remaining portion of the prescription may be filled within 72 hours of the first partial filling, except that if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

(g) A prescription for a Schedule II controlled substance under Subchapter B, Chapter 481, Health and Safety Code, that is written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question about whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner before partially filling the prescription. Both the pharmacist and the practitioner have a corresponding

responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" is considered to have been filled in violation of this chapter. For each partial filling, the dispensing pharmacist shall record on the back of the prescription the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Before any subsequent partial filling, the pharmacist must determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings may not exceed the total quantity prescribed. Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness are valid for a period not to exceed 60 days following the issue date unless sooner terminated by discontinuance of the medication.

(h) A person may not dispense a controlled substance in Schedule III or IV under Subchapter B, Chapter 481, Health and Safety Code, that is a prescription drug under the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without a written, oral, or telephonically or electronically communicated prescription of a practitioner defined by Section 551.003(34)(A), (C), or (D), and only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A prescription for a controlled

substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner. A prescription under this subsection must comply with other applicable state and federal laws.

(i) A person may not dispense a controlled substance listed in Schedule V under Subchapter B, Chapter 481, Health and Safety Code, and containing 200 milligrams or less of codeine, or any of its salts, per 100 milliliters or per 100 grams, or containing 100 milligrams or less of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams, without the prescription of a practitioner defined by Section 481.002(39)(A), Health and Safety Code, except that a practitioner may dispense the substance directly to an ultimate user. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(j) A practitioner or institutional practitioner may not allow a patient, on the patient's release from the hospital, to possess a controlled substance prescribed by the practitioner unless:

(1) the substance was dispensed under a medication order while the patient was admitted to the hospital;

(2) the substance is in a properly labeled container; and

(3) the patient possesses not more than a seven-day supply of the substance.

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

(1) the quantity of the substance prescribed:

(A) numerically, followed by the number written as a word, if the prescription is written; or

(B) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(2) the date of issue;

(3) the name, address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance;

(6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

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

(8) if the prescription is handwritten, the signature of the prescribing practitioner.

(l) A pharmacist may exercise the pharmacist's professional

judgment in refilling a prescription for a controlled substance in Schedule III, IV, or V under Subchapter B, Chapter 481, Health and Safety Code, without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without that authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(m) Notwithstanding Subsection (l), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a prescription drug, other than a controlled substance listed in Schedule II under Subchapter B, Chapter 481, Health and Safety Code, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the board, through its executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a prescription drug.

(n) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug under Subsection (m).

(o) A pharmacist may permit the delivery of a controlled substance by an authorized delivery person, by a person known to the pharmacist, a pharmacist intern, or the authorized delivery person, or by mail to the person or address of the person authorized by the prescription to receive the controlled substance. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years:

(1) the name of the authorized delivery person, if delivery is made by that person;

(2) the name of the person known to the pharmacist, a pharmacist intern, or the authorized delivery person if delivery is made by that person; or

(3) the mailing address to which delivery is made, if

delivery is made by mail.

(p) A pharmacist may permit the delivery of a controlled substance to a person not known to the pharmacist, a pharmacist intern, or the authorized delivery person without first requiring the identification of the person to whom the controlled substance is delivered if the pharmacist determines that an emergency exists and that the controlled substance is needed for the immediate well-being of the patient for whom the controlled substance is prescribed. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years all information relevant to the delivery known to the pharmacist, including the name, address, and date of birth or age of the person to whom the controlled substance is delivered.

(q) A pharmacist may dispense a Schedule II controlled substance listed in Subchapter B, Chapter 481, Health and Safety Code, under a facsimile copy of a prescription completed in the manner required by board rule and transmitted by the practitioner or the practitioner's agent to the pharmacy if:

(1) the prescription is written for:

(A) a Schedule II narcotic or nonnarcotic substance for a patient in a long-term care facility (LTCF), and the practitioner notes on the prescription "LTCF patient";

(B) a Schedule II narcotic product to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion; or

(C) a Schedule II narcotic substance for a patient with a medical diagnosis documenting a terminal illness or a patient enrolled in a hospice care program certified or paid for by Medicare under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.), by Medicaid, or by a hospice program that is licensed under Chapter 142, Health and Safety Code, and the practitioner or the practitioner's agent notes on the prescription "terminally ill" or "hospice patient"; and

(2) after transmitting the prescription, the prescribing practitioner or the practitioner's agent:

(A) writes across the face of the prescription "VOID--sent by fax to (name and telephone number of receiving pharmacy)"; and

(B) files the prescription in the patient's medical records instead of delivering it to the patient.

(r) On receipt of the prescription, the dispensing pharmacy shall file the facsimile copy of the prescription and shall send information relating to the prescription to the board as required by board rule.

(s) A pharmacy in this state may fill a prescription for a controlled substance listed in Schedule II under Subchapter B, Chapter 481, Health and Safety Code, issued by a practitioner in another state if:

(1) a share of the pharmacy's business involves the dispensing and delivery or mailing of controlled substances;

(2) the prescription is issued by a prescribing practitioner in the other state in the ordinary course of practice;

and

(3) the prescription is filled in compliance with a written plan providing the manner in which the pharmacy may fill a Schedule II prescription issued by a practitioner in another state that:

(A) is submitted by the pharmacy to the board; and

(B) is approved by the board.

(t) A prescription for a controlled substance must be on a tamper-evident prescription form or an electronic prescription that meets the requirements specified by the board by rule.

[Sections 570.070-570.100 reserved for expansion]

SUBCHAPTER C. CONTROLLED SUBSTANCE PRESCRIPTION DRUG ORDER MONITORING SYSTEM

Sec. 570.101. ESTABLISHMENT OF SYSTEM. (a) The board shall establish an electronic system for:

(1) tracking prescription drug orders for Schedule II-V controlled substances as listed in Subchapter B, Chapter 481, Health and Safety Code;

(2) monitoring Schedule II-V controlled substances that are dispensed in this state by a pharmacy or dispensed to an address in this state by a pharmacy licensed in this state;

(3) allowing a practitioner to have real-time Internet access to data in the system for prescribing purposes and for patient safety;

(4) allowing licensing agencies of practitioners authorized to prescribe Schedule II-V controlled substances to

access the data; and

(5) alerting the board, licensing agencies of practitioners authorized to prescribe Schedule II-V controlled substances, or law enforcement agencies when episodes of inappropriate activity are identified by the system.

(b) The board by rule shall design and implement a system for submission of information to the board by electronic or other means and for retrieval of information submitted to the board under this subchapter. The board shall use automated information security techniques and devices to preclude improper access to the information.

Sec. 570.102. DATA SUBMITTED TO BOARD. (a) Each pharmacy licensed in this state that is authorized to dispense a controlled substance shall report to the board the data required by this section in a timely manner as prescribed by board rule, except that reporting may not be required for:

(1) a drug administered directly to a patient; or

(2) a drug dispensed by a practitioner at a health care facility licensed in this state, provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of 48 hours.

(b) Data to be reported by a pharmacy for each controlled substance prescription drug order that is dispensed shall include the following:

(1) a name and date of birth or age of the patient, or if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(2) the name and strength of the drug dispensed;

(3) the date of dispensing;

(4) the quantity dispensed;

(5) the practitioner's name, address, and federal Drug Enforcement Administration number;

(6) the name and address of the dispensing pharmacy; and

(7) any other information required by board rule.

(c) A pharmacy or pharmacist shall provide the data required under Subsection (b) to the board in the electronic format specified by board rule unless a waiver has been granted by the board to an individual pharmacy.

(d) The board shall establish acceptable error tolerance rates for data submitted under this section. A pharmacy or pharmacist who submits the data shall ensure that reports fall within the acceptable tolerances.

(e) A pharmacy or pharmacist who submits incomplete or inaccurate data shall correct the data on notification by the board if the pharmacy or pharmacist exceeds the acceptable error tolerance rates established by the board.

Sec. 570.103. DISCLOSURE OF DATA. (a) The board may not permit any person to have access to information submitted to the board under this subchapter except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, the board, or an agency in

this state that licenses a practitioner who is authorized by state law to prescribe or dispense controlled substances; or

(2) if the board finds that proper need has been shown to the board:

(A) an officer of the Department of Public Safety, a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter, Chapter 481, Health and Safety Code, or another law governing illicit drugs in this state or another state;

(B) a pharmacist or practitioner who is a physician, dentist, veterinarian, podiatrist, or advanced practice nurse or physician assistant or other health care professional authorized to dispense or prescribe controlled substances in this state and is inquiring about a recent Schedule II-V prescription drug order history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(b) This section does not prohibit the board from creating, using, or disclosing statistical data about information received by the board under this section if the board removes any information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information.

(c) Information submitted to the board under this section may be used only for:

(1) the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(2) investigatory or evidentiary purposes in connection with the functions of an agency listed in Subsection (a)(1); or

(3) dissemination by the board to the public in the form of a statistical tabulation or report if all information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information has been removed.

(d) Except as otherwise provided by this subsection, the board shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the board not later than the end of the 12th calendar month after the month in which the identity is entered into the system. The board may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

(e) If the board permits access to information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the board determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(f) If the board permits access to information under Subsection (a)(2)(A) relating to a person licensed or regulated by

an agency listed in Subsection (a)(1), the board shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(g) Information submitted to the board under this subchapter is confidential and remains confidential regardless of whether the board permits access to the information under this section.

[Sections 570.104-570.150 reserved for expansion]

SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 570.151. OFFENSE: FAILURE TO TRANSMIT DATA. (a) A person commits an offense if the person:

(1) is a pharmacist or owner of a pharmacy required to submit data under Section 570.102; and

(2) intentionally fails to transmit to the board the data required by Section 570.102.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class A misdemeanor.

(c) An offense under Subsection (a) is a state jail felony if it is shown on the trial of the offense that the person has been previously convicted of an offense under this section.

Sec. 570.152. OFFENSE: DISCLOSURE OF DATA. (a) A person commits an offense if the person discloses information in violation of Section 570.103.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a state jail felony.

(c) An offense under Subsection (a) is a felony of the third degree if it is shown on the trial of the offense that the person has

been previously convicted of an offense under this section.

SECTION 2. Section 481.002(45), Health and Safety Code, is amended to read as follows:

(45) "Registrant" means a person who is registered under Subchapter B, Chapter 570, Occupations Code [~~Section 481.063~~].

SECTION 3. Section 481.003(a), Health and Safety Code, is amended to read as follows:

(a) The director may adopt rules to administer and enforce this chapter, except that the Texas State Board of Pharmacy may adopt rules relating to the registration to manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state and issuance of prescriptions and information submitted in connection with those prescriptions. The department and the board by rule shall adopt a memorandum of understanding outlining the responsibilities of each agency in regulating controlled substances under this chapter.

SECTION 4. Section 481.061, Health and Safety Code, is amended to read as follows:

Sec. 481.061. REGISTRATION REQUIRED. A [~~(a) Except as otherwise provided by this chapter, a~~] person who is not registered with the Texas State Board of Pharmacy under Chapter 570, Occupations Code, [~~a registrant~~] may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state.

[~~(b) A person who is registered by the director to manufacture, distribute, analyze, dispense, or conduct research~~

~~with a controlled substance may possess, manufacture, distribute, analyze, dispense, or conduct research with that substance to the extent authorized by the person's registration and in conformity with this chapter.~~

[~~(c) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, analyzes, dispenses, or possesses a controlled substance. However, the director may not require separate registration for a practitioner engaged in research with a nonnarcotic controlled substance listed in Schedules II through V if the registrant is already registered under this subchapter in another capacity.~~]

SECTION 5. Section 481.077(c), Health and Safety Code, is amended to read as follows:

(c) This section and Section 481.078 do not apply to a person to whom a registration has been issued under Subchapter B, Chapter 570, Occupations Code [~~Section 481.063~~].

SECTION 6. Section 481.080(d), Health and Safety Code, is amended to read as follows:

(d) This section and Section 481.081 do not apply to a person to whom a registration has been issued under Subchapter B, Chapter 570, Occupations Code [~~Section 481.063~~].

SECTION 7. Section 481.124(b), Health and Safety Code, is amended to read as follows:

(b) For purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports:

(1) anhydrous ammonia in a container or receptacle that is not designed and manufactured to lawfully hold or transport anhydrous ammonia;

(2) lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration; or

(3) in one container, vehicle, or building, phenylacetic acid, or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or pseudoephedrine, and:

(A) anhydrous ammonia;

(B) at least three of the following categories of substances commonly used in the manufacture of methamphetamine:

(i) lithium or sodium metal or red phosphorus, iodine, or iodine crystals;

(ii) lye, sulfuric acid, hydrochloric acid, or muriatic acid;

(iii) an organic solvent, including ethyl ether, alcohol, or acetone;

(iv) a petroleum distillate, including naphtha, paint thinner, or charcoal lighter fluid; or

(v) aquarium, rock, or table salt; or

(C) at least three of the following items:

(i) an item of equipment subject to regulation under Section 481.080, if the person is not registered under Subchapter B, Chapter 570, Occupations Code [~~Section 481.063~~]; or

(ii) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

SECTION 8. Section 481.127(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the director under Section 570.069, Occupations Code [~~481.075~~].

SECTION 9. Section 481.128(a), Health and Safety Code, is amended to read as follows:

(a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Sections 570.065-570.069, Occupations Code [~~481.070-481.075~~];

(2) manufactures a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4) prints, manufactures, possesses, or produces an official prescription form without the approval of the director;

(5) delivers or possesses a counterfeit official

prescription form;

(6) refuses an entry into a premise for an inspection authorized by this chapter;

(7) [~~refuses or fails to return an official prescription form as required by Section 481.075(k);~~

[~~(8)~~] refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted by the director; or

(8) [~~(9)~~] refuses or fails to maintain security required by this chapter or a rule adopted under this chapter.

SECTION 10. Section 481.129(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly:

(1) distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance under an order form as required by Section 570.064, Occupations Code [~~481.069~~];

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(3) issues a prescription bearing a forged or fictitious signature;

(4) uses a prescription issued to another person to prescribe a Schedule II controlled substance;

(5) possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance:

(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form; or

(C) through use of a fraudulent oral or telephonically communicated prescription; or

(6) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

SECTION 11. Section 481.159(a), Health and Safety Code, is amended to read as follows:

(a) If a district court orders the forfeiture of a controlled substance property or plant under Chapter 59, Code of Criminal Procedure, or under this code, the court shall also order a law enforcement agency to:

(1) retain the property or plant for its official purposes, including use in the investigation of offenses under this code;

(2) deliver the property or plant to a government agency for official purposes;

(3) deliver the property or plant to a person authorized by the court to receive it;

(4) deliver the property or plant to a person authorized by the director to receive it for a purpose described by Section 570.060(a), Occupations Code [~~481.065(a)~~]; or

(5) destroy the property or plant that is not

otherwise disposed of in the manner prescribed by this subchapter.

SECTION 12. Section 481.186(a), Health and Safety Code, is amended to read as follows:

(a) The director shall cooperate with federal and state agencies in discharging the director's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. The director may:

(1) arrange for the exchange of information among government officials concerning the use and abuse of controlled substances;

(2) cooperate in and coordinate training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the Federal Drug Enforcement Administration and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders in this state and, except as provided by Section 570.063, Occupations Code [~~481.068~~], make the information available for federal, state, and local law enforcement purposes; and

(4) conduct programs of eradication aimed at destroying wild or illegal growth of plant species from which controlled substances may be extracted.

SECTION 13. Section 565.003(b), Occupations Code, is amended to read as follows:

(b) Unless compliance would violate the pharmacy or drug

statutes or rules in the state in which the pharmacy is located the board may discipline an applicant for or the holder of a Class E pharmacy license if the board finds that the applicant or license holder has failed to comply with:

(1) Section 570.069 [~~481.074 or 481.075, Health and Safety Code~~];

(2) Texas substitution requirements regarding:

(A) the practitioner's directions concerning generic substitution;

(B) the patient's right to refuse generic substitution; or

(C) notification to the patient of the patient's right to refuse substitution;

(3) any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or

(4) any board rule adopted under Section 554.051(a) and determined by the board to be applicable under Section 554.051(b).

SECTION 14. The following provisions are repealed:

(1) Sections 481.002(10), (20), (28), (35), (42), (46), (47), and (48), Health and Safety Code;

(2) Sections 481.062, 481.0621, 481.063, 481.064, 481.065, 481.066, 481.067, 481.068, 481.069, 481.070, 481.071, 481.072, 481.073, 481.074, 481.075, 481.076, and 481.0761, Health and Safety Code;

(3) Subchapter H, Chapter 481, Health and Safety Code;

(4) Section 157.059(c), Occupations Code; and

(5) Section 552.118, Government Code.

SECTION 15. Section 8, Chapter 1391 (S.B. 1879), Acts of the 80th Legislature, Regular Session, 2007, is repealed.

SECTION 16. (a) An advisory committee is created to advise the Texas State Board of Pharmacy on the implementation of Chapter 570, Occupations Code, as added by this Act.

(b) The advisory committee is composed of:

(1) the executive board of the Texas State Board of Pharmacy or the executive board's designee;

(2) a physician appointed by the governor;

(3) a pharmacist appointed by the governor;

(4) a physician appointed by the lieutenant governor;

(5) a pharmacist appointed by the lieutenant governor;

(6) a physician appointed by the governor from a list of names submitted by the speaker of the house of representatives;

(7) a pharmacist appointed by the governor from a list of names submitted by the speaker of the house of representatives; and

(8) one member from each of the following boards:

(A) Texas Medical Board;

(B) Texas State Board of Pharmacy;

(C) State Board of Dental Examiners; and

(D) Texas Board of Nursing.

(c) The executive board of the Texas State Board of Pharmacy or the executive board's designee is the presiding officer of the advisory committee. The committee shall meet at the call of the

presiding officer or at the request of any three members other than the presiding officer.

(d) The advisory committee shall:

(1) develop recommendations regarding the implementation of the electronic system for monitoring controlled substances established under Chapter 570, Occupations Code;

(2) develop recommendations on the data that should be provided to the Texas State Board of Pharmacy to support the electronic system for monitoring controlled substances, including provider identification information;

(3) monitor and develop recommendations regarding the implementation and enforcement of the electronic system for monitoring controlled substances;

(4) develop recommended procedures necessary for real-time point-of-service access for a practitioner authorized to prescribe or dispense controlled substances listed in Schedules II through V under Subchapter B, Chapter 481, Health and Safety Code, so that the practitioner may obtain:

(A) the prescription drug order history for a particular patient; or

(B) the practitioner's own dispensing or prescribing activity; and

(5) develop recommended procedures that should be followed by the Texas State Board of Pharmacy and the applicable licensing authority of this state, another state, or the United States when:

(A) the board shares information related to

diversion of controlled substances with a licensing authority for the purpose of licensing enforcement; or

(B) a licensing authority shares information related to diversion of controlled substances with the board for the purpose of criminal enforcement.

(e) The executive board of the Texas State Board of Pharmacy shall report the recommendations developed under Subsection (d) of this section to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the senate and the house of representatives not later than July 1, 2012.

(f) This section expires and the advisory committee is abolished September 1, 2013.

SECTION 17. The executive board of the Texas State Board of Pharmacy or the executive board's designee shall adopt any rules necessary to administer and enforce Chapter 570, Occupations Code, as added by this Act, not later than June 1, 2012.

SECTION 18. (a) The Department of Public Safety, Texas Medical Board, Texas State Board of Pharmacy, State Board of Dental Examiners, and Texas Board of Nursing shall submit to the presiding officers of the Senate Committee on Health and Human Services and the House Committee on Public Health a report that details the number and type of actions relating to the prosecution of violations of Chapter 481, Health and Safety Code, as amended by this Act, or Chapter 570, Occupations Code, as added by this Act.

(b) Each agency shall submit its initial report under Subsection (a) of this section not later than November 1, 2011. Each agency shall submit an update of its initial report not later

than May 1 and November 1 of each year.

(c) This section expires November 1, 2015.

SECTION 19. (a) The Texas State Board of Pharmacy and the public safety director of the Department of Public Safety shall enter into the memorandum of understanding required by Section 481.003, Health and Safety Code, as amended by this Act, not later than January 1, 2012.

(b) The Texas State Board of Pharmacy shall adopt any rules required by Chapter 481, Health and Safety Code, as amended by this Act, not later than September 1, 2012.

(c) Not later than September 1, 2012, the Department of Public Safety shall transfer the records received under Sections 481.074, 481.076, and 481.0761, Health and Safety Code, before the sections are repealed by this Act, to the Texas State Board of Pharmacy.

(d) A rule, form, policy, procedure, or decision adopted under Chapter 481, Health and Safety Code, as it existed before amendment by this Act, continues in effect as a rule, form, policy, procedure, or decision and remains in effect until amended or replaced.

(e) A reference in law or an administrative rule to the public safety director of the Department of Public Safety relating to rulemaking authority given and duties transferred to the Texas State Board of Pharmacy by this Act is a reference to the Texas State Board of Pharmacy.

SECTION 20. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 21. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2011.

(b) Subchapter C, Chapter 570, Occupations Code, as added by this Act, takes effect September 1, 2012.

(c) Sections 2 through 14 of this Act take effect September 1, 2012.