

1-1 By: Schwertner S.B. No. 460  
 1-2 (In the Senate - Filed February 5, 2015; February 9, 2015,  
 1-3 read first time and referred to Committee on Health and Human  
 1-4 Services; March 23, 2015, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-6 March 23, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 460 By: Schwertner

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the licensing and regulation of pharmacists and  
 1-22 pharmacies.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 483.047, Health and Safety Code, is  
 1-25 amended by amending Subsection (a) and adding Subsections (b-1) and  
 1-26 (b-2) to read as follows:

1-27 (a) Except as authorized by Subsections [~~Subsection~~] (b)  
 1-28 and (b-1), a pharmacist commits an offense if the pharmacist  
 1-29 refills a prescription unless:

1-30 (1) the prescription contains an authorization by the  
 1-31 practitioner for the refilling of the prescription, and the  
 1-32 pharmacist refills the prescription in the manner provided by the  
 1-33 authorization; or

1-34 (2) at the time of refilling the prescription, the  
 1-35 pharmacist is authorized to do so by the practitioner who issued the  
 1-36 prescription.

1-37 (b-1) Notwithstanding Subsection (b), in the event of a  
 1-38 natural or manmade disaster, a pharmacist may dispense not more  
 1-39 than a 30-day supply of a dangerous drug without the authorization  
 1-40 of the prescribing practitioner if:

1-41 (1) failure to refill the prescription might result in  
 1-42 an interruption of a therapeutic regimen or create patient  
 1-43 suffering;

1-44 (2) the natural or manmade disaster prohibits the  
 1-45 pharmacist from being able to contact the practitioner;

1-46 (3) the governor has declared a state of disaster  
 1-47 under Chapter 418, Government Code; and

1-48 (4) the board, through the executive director, has  
 1-49 notified pharmacies in this state that pharmacists may dispense up  
 1-50 to a 30-day supply of a dangerous drug.

1-51 (b-2) The prescribing practitioner is not liable for an act  
 1-52 or omission by a pharmacist in dispensing a dangerous drug under  
 1-53 Subsection (b-1).

1-54 SECTION 2. Section 555.002(a), Occupations Code, is amended  
 1-55 to read as follows:

1-56 (a) The board by rule shall establish methods by which  
 1-57 consumers and service recipients are notified of the name, mailing  
 1-58 address, and telephone number of the board for the purpose of  
 1-59 directing complaints to the board. The board may provide for that  
 1-60 notice:

2-1 (1) on each registration form, application, or written  
2-2 contract for services of a person regulated by the board;

2-3 (2) on a sign prominently displayed in the place of  
2-4 business of each person regulated by the board; ~~[or]~~

2-5 (3) on an electronic messaging system in a font  
2-6 specified by board rule prominently displayed in the place of  
2-7 business of each person regulated by the board; or

2-8 (4) in a bill for service provided by a person  
2-9 regulated by the board.

2-10 SECTION 3. Section 556.051, Occupations Code, is amended to  
2-11 read as follows:

2-12 Sec. 556.051. AUTHORIZATION TO ENTER AND INSPECT. (a) The  
2-13 board or a representative of the board may enter and inspect a  
2-14 facility relative to the following:

2-15 (1) drug storage and security;

2-16 (2) equipment;

2-17 (3) components used in compounding, finished and  
2-18 unfinished products, containers, and labeling of any item;

2-19 (4) sanitary conditions; ~~[or]~~

2-20 (5) records, reports, or other documents required to  
2-21 be kept or made under this subtitle, Chapter 481 or 483, Health and  
2-22 Safety Code, or the Comprehensive Drug Abuse Prevention and Control  
2-23 Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under  
2-24 one of those laws; or

2-25 (6) subject to Subsection (b), financial records  
2-26 relating to the operation of the facility.

2-27 (b) The board or a representative of the board may inspect  
2-28 financial records under Subsection (a) only in the course of the  
2-29 investigation of a specific complaint. The board or representative  
2-30 may inspect only records related to the specific complaint. The  
2-31 inspection is subject to Section 565.055.

2-32 SECTION 4. Section 556.054, Occupations Code, is amended to  
2-33 read as follows:

2-34 Sec. 556.054. CONFIDENTIALITY OF CERTAIN INFORMATION  
2-35 [LIMITATION ON INSPECTION]. The following information obtained by  
2-36 the board during an inspection of a facility is confidential and not  
2-37 subject to disclosure under Chapter 552, Government Code [Unless  
2-38 the owner, pharmacist, or agent in charge of a facility consents in  
2-39 writing, an inspection of the facility authorized by this chapter  
2-40 may not extend to]:

2-41 (1) financial data;

2-42 (2) sales data, other than shipment data; and ~~[or]~~

2-43 (3) pricing data.

2-44 SECTION 5. Subchapter B, Chapter 556, Occupations Code, is  
2-45 amended by adding Section 556.057 to read as follows:

2-46 Sec. 556.057. INSPECTION OF PHARMACIST RECORDS. A  
2-47 pharmacist shall provide to the board, on request, records of the  
2-48 pharmacist's practice that occurs outside of a pharmacy. The  
2-49 pharmacist shall provide the records at a time specified by board  
2-50 rule.

2-51 SECTION 6. Sections 558.055(a) and (b), Occupations Code,  
2-52 are amended to read as follows:

2-53 (a) An applicant who on the applicant's first attempt fails  
2-54 the examination may take the examination four ~~[two]~~ additional  
2-55 times.

2-56 (b) Before an applicant who has failed the examination five  
2-57 ~~[three]~~ times is allowed to retake the examination, the applicant  
2-58 must provide documentation from a college of pharmacy that the  
2-59 applicant has successfully completed additional college course  
2-60 work in each examination subject area the applicant failed.

2-61 SECTION 7. Section 560.052(b), Occupations Code, is amended  
2-62 to read as follows:

2-63 (b) To qualify for a pharmacy license, an applicant must  
2-64 submit to the board:

2-65 (1) a license fee set by the board, except as provided  
2-66 by Subsection (d); and

2-67 (2) a completed application that:

2-68 (A) is on a form prescribed by the board;

2-69 (B) is given under oath;

3-1 (C) includes proof that:  
 3-2 (i) a pharmacy license held by the  
 3-3 applicant in this state or another state, if applicable, has not  
 3-4 been restricted, suspended, revoked, or surrendered for any reason;  
 3-5 and  
 3-6 (ii) no owner of the pharmacy for which the  
 3-7 application is made has held a pharmacist license in this state or  
 3-8 another state, if applicable, that has been restricted, suspended,  
 3-9 revoked, or surrendered for any reason; and

3-10 (D) includes a statement of:  
 3-11 (i) the ownership;  
 3-12 (ii) the location of the pharmacy;  
 3-13 (iii) the license number of each pharmacist  
 3-14 who is employed by the pharmacy, if the pharmacy is located in this  
 3-15 state, or who is licensed to practice pharmacy in this state, if the  
 3-16 pharmacy is located in another state;  
 3-17 (iv) the pharmacist license number of the  
 3-18 pharmacist-in-charge; and  
 3-19 (v) any other information the board  
 3-20 determines necessary.

3-21 SECTION 8. Section 561.003(e), Occupations Code, is amended  
 3-22 to read as follows:

3-23 (e) If a pharmacy's license has been expired for 91 days  
 3-24 [~~one year~~] or more, the pharmacy may not renew the license. The  
 3-25 pharmacy may obtain a new license by complying with the  
 3-26 requirements and procedures for obtaining an original license.

3-27 SECTION 9. Sections 562.056(a) and (a-1), Occupations Code,  
 3-28 are amended to read as follows:

3-29 (a) Before dispensing a prescription, a pharmacist shall  
 3-30 determine, in the exercise of sound professional judgment, that the  
 3-31 prescription is a valid prescription. A pharmacist may not  
 3-32 dispense a prescription drug if the pharmacist knows or should know  
 3-33 that the prescription was issued [~~on the basis of an Internet-based~~  
 3-34 ~~or telephonic consultation~~] without a valid practitioner-patient  
 3-35 relationship.

3-36 (a-1) To be a valid prescription, a prescription [~~for a~~  
 3-37 ~~controlled substance~~] must be issued for a legitimate medical  
 3-38 purpose by a practitioner acting in the usual course of the  
 3-39 practitioner's professional practice. The responsibility for the  
 3-40 proper prescribing and dispensing of prescription drugs  
 3-41 [~~controlled substances~~] is on the prescribing practitioner, but a  
 3-42 corresponding responsibility rests with the pharmacist who fills  
 3-43 the prescription.

3-44 SECTION 10. Section 562.106, Occupations Code, is amended  
 3-45 by amending Subsection (a) and adding Subsection (a-1) to read as  
 3-46 follows:

3-47 (a) A pharmacy shall report in writing to the board not  
 3-48 later than the 10th day after the date of:

- 3-49 (1) a permanent closing of the pharmacy;
- 3-50 (2) a change of ownership of the pharmacy;
- 3-51 (3) [~~a change of location of the pharmacy,~~
- 3-52 ~~(4)~~] a change of the person designated as the
- 3-53 pharmacist-in-charge of the pharmacy;
- 3-54 (4) [~~(5)~~] a sale or transfer of any controlled
- 3-55 substance or dangerous drug as a result of the permanent closing or
- 3-56 change of ownership of the pharmacy;
- 3-57 (5) [~~(6)~~] any matter or occurrence that the board
- 3-58 requires by rule to be reported;
- 3-59 (6) [~~(7)~~] as determined by the board, an out-of-state
- 3-60 purchase of any controlled substance;
- 3-61 (7) [~~(8)~~] a final order against the pharmacy license
- 3-62 holder by the regulatory or licensing agency of the state in which
- 3-63 the pharmacy is located if the pharmacy is located in another state;
- 3-64 or
- 3-65 (8) [~~(9)~~] a final order against a pharmacist who is
- 3-66 designated as the pharmacist-in-charge of the pharmacy by the
- 3-67 regulatory or licensing agency of the state in which the pharmacy is
- 3-68 located if the pharmacy is located in another state.

3-69 (a-1) A pharmacy shall report in writing to the board not

4-1 later than the 30th day before the date of a change of location of  
4-2 the pharmacy.

4-3 SECTION 11. Section 565.002(a), Occupations Code, is  
4-4 amended to read as follows:

4-5 (a) The board may discipline an applicant for or the holder  
4-6 of a pharmacy license, including a Class E pharmacy license subject  
4-7 to Section 565.003 [~~565.003(b)~~], if the board finds that the  
4-8 applicant or license holder has:

4-9 (1) been convicted of or placed on deferred  
4-10 adjudication community supervision or deferred disposition or the  
4-11 applicable federal equivalent for:

4-12 (A) a misdemeanor:  
4-13 (i) involving moral turpitude; or  
4-14 (ii) under Chapter 481 or 483, Health and  
4-15 Safety Code, or the Comprehensive Drug Abuse Prevention and Control  
4-16 Act of 1970 (21 U.S.C. Section 801 et seq.); or

4-17 (B) a felony;  
4-18 (2) advertised a prescription drug or device in a  
4-19 deceitful, misleading, or fraudulent manner;

4-20 (3) violated any provision of this subtitle or any  
4-21 rule adopted under this subtitle or that an owner or employee of a  
4-22 pharmacy has violated any provision of this subtitle or any rule  
4-23 adopted under this subtitle;

4-24 (4) sold without legal authorization a prescription  
4-25 drug or device to a person other than:

4-26 (A) a pharmacy licensed by the board;

4-27 (B) a practitioner;

4-28 (C) a person who procures a prescription drug or  
4-29 device for lawful research, teaching, or testing, and not for  
4-30 resale;

4-31 (D) a manufacturer or wholesaler licensed by the  
4-32 commissioner of public health as required by Chapter 431, Health  
4-33 and Safety Code; or

4-34 (E) a carrier or warehouseman;

4-35 (5) allowed an employee who is not a pharmacist to  
4-36 practice pharmacy;

4-37 (6) sold an adulterated or misbranded prescription or  
4-38 nonprescription drug;

4-39 (7) failed to engage in or ceased to engage in the  
4-40 business described in the application for a license;

4-41 (8) failed to maintain records as required by this  
4-42 subtitle, Chapter 481 or 483, Health and Safety Code, the  
4-43 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21  
4-44 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle  
4-45 or Chapter 483, Health and Safety Code;

4-46 (9) failed to establish and maintain effective  
4-47 controls against diversion of prescription drugs into other than a  
4-48 legitimate medical, scientific, or industrial channel as provided  
4-49 by this subtitle, another state statute or rule, or a federal  
4-50 statute or rule;

4-51 (10) engaged in fraud, deceit, or misrepresentation as  
4-52 defined by board rule in operating a pharmacy or in applying for a  
4-53 license to operate a pharmacy;

4-54 (11) violated a disciplinary order;

4-55 (12) been responsible for a drug audit shortage; [~~or~~]

4-56 (13) been disciplined by the regulatory board of  
4-57 another state for conduct substantially equivalent to conduct  
4-58 described under this subsection; or

4-59 (14) waived, discounted, or reduced, or offered to  
4-60 waive, discount, or reduce, a patient copayment or deductible for a  
4-61 compounded drug in the absence of:

4-62 (A) a legitimate, documented financial hardship  
4-63 of the patient; or

4-64 (B) evidence of a good faith effort to collect  
4-65 the copayment or deductible from the patient.

4-66 SECTION 12. Section 565.060(d), Occupations Code, is  
4-67 amended to read as follows:

4-68 (d) If a license holder complies with and successfully  
4-69 completes the terms of a remedial plan, the board shall remove all

5-1 records of the remedial plan from the board's records at the end of  
5-2 the state fiscal year in which ~~[on]~~ the fifth anniversary of the  
5-3 date the board issued the terms of the remedial plan occurs.

5-4 SECTION 13. Section 565.061(a), Occupations Code, is  
5-5 amended to read as follows:

5-6 (a) Except as provided by Chapter 564, a disciplinary action  
5-7 taken by the board ~~[under Section 565.060 or]~~ on the basis of a  
5-8 ground for discipline under Subchapter A is governed by Chapter  
5-9 2001, Government Code, and the rules of practice and procedure  
5-10 before the board.

5-11 SECTION 14. The following provisions of the Occupations  
5-12 Code are repealed:

- 5-13 (1) Section 561.003(d);
- 5-14 (2) Section 562.009(a-1); and
- 5-15 (3) Section 562.051.

5-16 SECTION 15. The change in law made by this Act to Section  
5-17 483.047, Health and Safety Code, applies only to an offense  
5-18 committed on or after the effective date of this Act. An offense  
5-19 committed before the effective date of this Act is governed by the  
5-20 law in effect on the date the offense was committed, and the former  
5-21 law is continued in effect for that purpose. For purposes of this  
5-22 section, an offense was committed before the effective date of this  
5-23 Act if any element of the offense occurred before that date.

5-24 SECTION 16. Section 560.052(b), Occupations Code, as  
5-25 amended by this Act, applies only to an application for a pharmacy  
5-26 license submitted on or after the effective date of this Act. An  
5-27 application submitted before the effective date of this Act is  
5-28 governed by the law in effect on the date the application was  
5-29 submitted, and the former law is continued in effect for that  
5-30 purpose.

5-31 SECTION 17. Section 561.003(e), Occupations Code, as  
5-32 amended by this Act, and the repeal by this Act of Section  
5-33 561.003(d), Occupations Code, apply only to a pharmacy license that  
5-34 expires on or after the effective date of this Act. A pharmacy  
5-35 license that expired before the effective date of this Act is  
5-36 governed by the law in effect on the date the license expired, and  
5-37 the former law is continued in effect for that purpose.

5-38 SECTION 18. Section 562.106(a), Occupations Code, as  
5-39 amended by this Act, and Section 562.106(a-1), Occupations Code, as  
5-40 added by this Act, apply only to a pharmacy that changes location on  
5-41 or after October 1, 2015. A pharmacy that changes location before  
5-42 that date is governed by the law in effect immediately before the  
5-43 effective date of this Act, and the former law is continued in  
5-44 effect for that purpose.

5-45 SECTION 19. The change in law made by this Act to Section  
5-46 565.002(a), Occupations Code, applies only to conduct that occurs  
5-47 on or after the effective date of this Act. Conduct that occurs  
5-48 before that date is governed by the law in effect on the date the  
5-49 conduct occurred, and the former law is continued in effect for that  
5-50 purpose.

5-51 SECTION 20. The change in law made by this Act to Section  
5-52 565.061(a), Occupations Code, is a clarification of existing law  
5-53 and does not imply that existing law may be construed as  
5-54 inconsistent with the law as amended by this Act.

5-55 SECTION 21. This Act takes effect September 1, 2015.

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