By: Thompson of Harris H.B. No. 2561

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas State Board of Pharmacy; authorizing a reduction in fees.

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

SECTION 1. Section 481.074(q), Health and Safety Code, is amended to read as follows:

(q) Each dispensing pharmacist shall send all required information, including any information required to complete the Schedule III through V prescription forms, to the board by electronic transfer or another form approved by the board not later than the next business [~~seventh~~] day after the date the prescription is completely filled.

SECTION 2. Section 481.075(i), Health and Safety Code, is amended to read as follows:

(i) Each dispensing pharmacist shall:

(1) fill in on the official prescription form or note in the electronic prescription record each item of information given orally to the dispensing pharmacy under Subsection (h) and the date the prescription is filled, and:

(A) for a written prescription, fill in the dispensing pharmacist's signature; or

(B) for an electronic prescription, appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least two years:

(A) the official prescription form or the electronic prescription record, as applicable; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all required information, including any information required to complete an official prescription form or electronic prescription record, to the board by electronic transfer or another form approved by the board not later than the next business [~~seventh~~] day after the date the prescription is completely filled.

SECTION 3. Section 481.0761, Health and Safety Code, is amended by adding Subsections (h), (i), and (j) to read as follows:

(h) The board, in consultation with the department and the regulatory agencies listed in Section 481.076(a)(1), shall identify prescribing practices that may be potentially harmful and patient prescription patterns that may suggest drug diversion or drug abuse. The board shall determine the conduct that constitutes a potentially harmful prescribing pattern or practice and develop indicators for levels of prescriber or patient activity that suggest a potentially harmful prescribing pattern or practice may be occurring or drug diversion or drug abuse may be occurring.

(i) The board, based on the indicators developed under Subsection (h), may send an electronic notification to a dispenser or prescriber if the information submitted under Section 481.074(q) or 481.075 indicates a potentially harmful prescribing pattern or

practice may be occurring or drug diversion or drug abuse may be occurring.

(j) The board by rule may develop guidelines identifying behavior suggesting a patient is obtaining controlled substances that indicate drug diversion or drug abuse is occurring. A pharmacist who observes behavior described by this subsection by a person who is to receive a controlled substance shall access the information under Section 481.076(a)(5) regarding the patient for whom the substance is to be dispensed.

SECTION 4. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.0763 and 481.0764 to read as follows:

Sec. 481.0763. DUTY OF PHARMACISTS. A pharmacist must access information under Section 481.076(a)(5) with respect to a patient before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol for the patient.

Sec. 481.0764. REPORTS OF WHOLESALE DISTRIBUTORS. (a) A wholesale distributor shall report to the board the information that the distributor is required to report to the Automation of Reports and Consolidated Orders System (ARCOS) of the Federal Drug Enforcement Administration for the distribution of a controlled substance by the distributor to a person in this state. The distributor shall report the information to the board in the same format and with the same frequency as the information is reported to ARCOS.

(b) Information reported to the board under Subsection (a) is confidential and not subject to disclosure under Chapter 552,

Government Code.

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

Sec. 551.005. APPLICATION OF SUNSET ACT. The Texas State Board of Pharmacy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2029 [~~2017~~].

SECTION 6. Chapter 551, Occupations Code, is amended by adding Section 551.008 to read as follows:

Sec. 551.008. CLAIM OR DEFENSE FOR PROHIBITED RULE OR POLICY. (a) A person may assert as an affirmative defense in an administrative hearing or as a claim or defense in a judicial proceeding under Chapter 37, Civil Practice and Remedies Code, that a board rule, regulation, or policy, or a penalty imposed by the board:

(1) limits the ability of an applicant for a license or for registration under this subtitle to be licensed or registered based on a sincerely held religious belief of the applicant; or

(2) burdens a license holder's or registrant's:

(A) free exercise of religion, regardless of whether the burden is the result of a rule generally applicable to all license holders or registrants, as applicable;

(B) freedom of speech regarding a sincerely held religious belief; or

(C) membership in any religious organization.

(b) Subsection (a) does not apply to a rule, regulation, or

policy adopted or a penalty imposed by the board that results in a limitation or burden described by Subsection (a) if the rule, regulation, policy, or penalty is:

(1) essential to enforcing a compelling governmental purpose; and

(2) narrowly tailored to accomplish that purpose.

(c) A person may bring an action for injunctive relief against a violation of this section.

SECTION 7. Section 552.006, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

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

(1) the law governing the board's operations;

(2) [~~this subtitle and~~] the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) [~~(2)~~] the results of the most recent formal audit of the board;

(5) [~~(3)~~] the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(6) [~~(4)~~] any applicable ethics policies adopted by

the board or the Texas Ethics Commission.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual. The board shall publish a copy of each signed statement on the board's Internet website.

SECTION 8. Section 553.003(b), Occupations Code, is amended to read as follows:

(b) The executive director is a full-time employee of the board and shall:

(1) serve as secretary to the board; [~~and~~]

(2) perform the regular administrative functions of the board and any other duty as the board directs; and

(3) under the direction of the board, perform the duties required by this subtitle or designated by the board.

SECTION 9. Subchapter A, Chapter 554, Occupations Code, is amended by adding Section 554.0011 to read as follows:

Sec. 554.0011. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the

resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

SECTION 10. Section 558.051(a), Occupations Code, is amended to read as follows:

(a) To qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the board:

(1) a license fee set by the board; and

(2) a completed application on a form prescribed by the board with satisfactory sworn evidence that the applicant:

(A) is at least 18 years of age;

(B) [~~is of good moral character;~~

[~~(C)~~] has completed a minimum of a 1,000-hour internship or other program that has been approved by the board or has demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the board's minimum

internship requirements;

(C) [~~(D)~~] has graduated and received a professional practice degree, as defined by board rule, from an accredited pharmacy degree program approved by the board;

(D) [~~(E)~~] has passed the examination required by the board; and

(E) [~~(F)~~] has not had a pharmacist license granted by another state restricted, suspended, revoked, or surrendered, for any reason.

SECTION 11. Section 558.101(a), Occupations Code, is amended to read as follows:

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

(1) submit to the board:

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

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

(2) [~~be of good moral character;~~

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

(3) [~~(4)~~] have presented to the board:

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

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

(4) [~~(5)~~] pass the Texas Pharmacy Jurisprudence examination.

SECTION 12. Section 559.003, Occupations Code, is amended by adding Subsection (f) to read as follows:

(f) The board may refuse to renew a license to practice pharmacy for a license holder who is in violation of a board order.

SECTION 13. Section 568.002(c), Occupations Code, is amended to read as follows:

(c) An applicant for registration as a pharmacy technician or a pharmacy technician trainee must[~~:~~

[~~(1) be of good moral character; and~~

[~~(2)~~] submit an application on a form prescribed by the board.

SECTION 14. Section 568.004, Occupations Code, is amended to read as follows:

Sec. 568.004. RENEWAL OF REGISTRATION. (a) The board may adopt a system in which the registrations of pharmacy technicians and pharmacy technician trainees expire on various dates during the year.

(b) To renew a pharmacy technician registration, the registrant must, before the expiration date of the registration:

(1) pay a renewal fee as determined by the board under Section 568.005; and

(2) comply with the continuing education requirements prescribed by the board in accordance with Section 568.0045.

(c) A person whose pharmacy technician registration has been expired for 90 days or less may renew the expired registration

by paying to the board a renewal fee that is equal to one and one-half times the normally required renewal fee for the registration.

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

(e) A person whose pharmacy technician registration has been expired for one year or more may not renew the registration. The person may register by complying with the requirements and procedures for initially registering, including the examination requirement.

(f) The board may refuse to renew a pharmacy technician registration for a registrant who is in violation of a board order.

SECTION 15. Chapter 568, Occupations Code, is amended by adding Section 568.0045 to read as follows:

Sec. 568.0045. RULES RELATING TO CONTINUING EDUCATION. The board shall adopt rules relating to the continuing education required for pharmacy technicians. The rules must include requirements for:

(1) the number of hours of continuing education;

(2) the methods for meeting the continuing education requirements;

(3) the approval of continuing education programs;

(4) reporting completion of continuing education;

(5) records of completion of continuing education; and

(6) board audits to ensure compliance with the continuing education requirements.

SECTION 16. A pharmacist is not required to comply with a rule adopted under Section 481.0761(j), Health and Safety Code, as added by this Act, before January 1, 2018.

SECTION 17. Section 481.0763, Health and Safety Code, as added by this Act, applies only to a pharmacist who dispenses a controlled substance on or after January 1, 2018.

SECTION 18. (a) Except as provided by Subsection (b) of this section, Section 552.006, Occupations Code, as amended by this Act, applies to a member of the Texas State Board of Pharmacy appointed before, on, or after the effective date of this Act.

(b) A member of the Texas State Board of Pharmacy who, before the effective date of this Act, completed the training program required by Section 552.006, Occupations Code, as that law existed before the effective date of this Act, is required to complete additional training only on subjects added by this Act to the training program as required by Section 552.006, Occupations Code, as amended by this Act. A board member described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the member completes the additional training.

SECTION 19. Sections 558.051, 558.101, and 568.002, Occupations Code, as amended by this Act, apply only to an application for a license to practice pharmacy or for registration as a pharmacy technician or pharmacy technician trainee filed on or after the effective date of this Act. An application for a license

or registration filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 20. Section 559.003, Occupations Code, as amended by this Act, and Sections 568.004(b), (e), and (f), Occupations Code, as added by this Act, apply only to the renewal of a license to practice pharmacy or of a pharmacy technician registration on or after the effective date of this Act. The renewal of a license or registration before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 21. As soon as practicable after the effective date of this Act, the Texas State Board of Pharmacy shall adopt rules to reduce the amount of the fees imposed by the board for the renewal of an expired pharmacy technician registration to reflect the amounts provided for by Sections 568.004(c) and (d), Occupations Code, as added by this Act. A pharmacy technician who renews an expired registration certificate on or after the effective date of this Act shall pay the amount provided for by Section 568.004(c) or (d), Occupations Code, as added by this Act, instead of the amount provided for under board rules adopted before that date.

SECTION 22. This Act takes effect September 1, 2017.