

1-1 By: Sheffield, et al. (Senate Sponsor - Nelson) H.B. No. 3284  
1-2 (In the Senate - Received from the House May 13, 2019;  
1-3 May 14, 2019, read first time and referred to Committee on Health &  
1-4 Human Services; May 20, 2019, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 20, 2019, 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 H.B. No. 3284 By: Perry

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

1-21 relating to prescribing and dispensing controlled substances and  
1-22 monitoring the prescribing and dispensing of controlled substances  
1-23 under the Texas Controlled Substances Act; authorizing a fee;  
1-24 providing for administrative penalties; creating criminal  
1-25 offenses.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Subchapter C, Chapter 481, Health and Safety  
1-28 Code, is amended by adding Section 481.0755 to read as follows:

1-29 Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY  
1-30 COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections  
1-31 481.073, 481.074, and 481.075, a person prescribing or dispensing a  
1-32 controlled substance must use the electronic prescription record  
1-33 and may not use a written, oral, or telephonically communicated  
1-34 prescription.

1-35 (b) A prescriber may issue a written, oral, or  
1-36 telephonically communicated prescription for a controlled  
1-37 substance as authorized under this subchapter only if the  
1-38 prescription is issued:

1-39 (1) by a veterinarian;

1-40 (2) in circumstances in which electronic prescribing  
1-41 is not available due to temporary technological or electronic  
1-42 failure, as prescribed by board rule;

1-43 (3) by a practitioner to be dispensed by a pharmacy  
1-44 located outside this state, as prescribed by board rule;

1-45 (4) when the prescriber and dispenser are the same  
1-46 entity;

1-47 (5) in circumstances in which necessary elements are  
1-48 not supported by the most recent electronic prescription drug  
1-49 software;

1-50 (6) for a drug for which the United States Food and  
1-51 Drug Administration requires additional information in the  
1-52 prescription that is not possible with electronic prescribing;

1-53 (7) for a non-patient-specific prescription pursuant  
1-54 to a standing order, approved protocol for drug therapy,  
1-55 collaborative drug management, or comprehensive medication  
1-56 management, in response to a public health emergency or in other  
1-57 circumstances in which the practitioner may issue a  
1-58 non-patient-specific prescription;

1-59 (8) for a drug under a research protocol;

1-60 (9) by a prescriber who is employed by or is practicing

2-1 a health care profession at a health-related institution, as  
 2-2 defined by Section 62.161, Education Code, as added by Chapter 448  
 2-3 (H.B. 7), Acts of the 84th Legislature, 2015;

2-4 (10) by a practitioner who has received a waiver under  
 2-5 Subsection (c) from the requirement to use electronic prescribing;  
 2-6 or  
 2-7 (11) under circumstances in which the practitioner has  
 2-8 the present ability to submit an electronic prescription but  
 2-9 reasonably determines that it would be impractical for the patient  
 2-10 to obtain the drugs prescribed under the electronic prescription in  
 2-11 a timely manner and that a delay would adversely impact the  
 2-12 patient's medical condition.

2-13 (c) The board shall adopt rules establishing a process by  
 2-14 which a practitioner may request and receive a waiver under  
 2-15 Subsection (b)(10), not to exceed one year, from the requirement to  
 2-16 use electronic prescribing. The board shall adopt rules  
 2-17 establishing the eligibility for a waiver, including:

2-18 (1) economic hardship;  
 2-19 (2) technological limitations not reasonably within  
 2-20 the control of the practitioner; or  
 2-21 (3) other exceptional circumstances demonstrated by  
 2-22 the practitioner.

2-23 (d) A written, oral, or telephonically communicated  
 2-24 prescription must comply with the applicable requirements  
 2-25 prescribed by Sections 481.074 and 481.075.

2-26 (e) A dispensing pharmacist who receives a controlled  
 2-27 substance prescription in a manner other than electronically is not  
 2-28 required to verify that the prescription is exempt from the  
 2-29 requirement that it be submitted electronically.

2-30 (f) The board shall enforce this section.

2-31 SECTION 2. Section 481.076, Health and Safety Code, is  
 2-32 amended by amending Subsections (a), (f), (g), and (h) and adding  
 2-33 Subsection (a-6) to read as follows:

2-34 (a) The board may not permit any person to have access to  
 2-35 information submitted to the board under Section 481.074(q) or  
 2-36 481.075 except:

2-37 (1) the board, the Texas Medical Board, the Texas  
 2-38 Department of Licensing and Regulation, with respect to the  
 2-39 regulation of podiatrists [~~State Board of Podiatric Medical~~  
 2-40 ~~Examiners~~], the State Board of Dental Examiners, the State Board of  
 2-41 Veterinary Medical Examiners, the Texas Board of Nursing, or the  
 2-42 Texas Optometry Board for the purpose of:

2-43 (A) investigating a specific license holder; or  
 2-44 (B) monitoring for potentially harmful  
 2-45 prescribing or dispensing patterns or practices under Section  
 2-46 481.0762;

2-47 (2) an [~~authorized officer or member of the department~~  
 2-48 ~~or~~] authorized employee of the board engaged in the administration,  
 2-49 investigation, or enforcement of this chapter or another law  
 2-50 governing illicit drugs in this state or another state;

2-51 (3) the department or other [~~on behalf of a~~] law  
 2-52 enforcement or prosecutorial official engaged in the  
 2-53 administration, investigation, or enforcement of this chapter or  
 2-54 another law governing illicit drugs in this state or another state,  
 2-55 if the board is provided a warrant, subpoena, or other court order  
 2-56 compelling the disclosure;

2-57 (4) a medical examiner conducting an investigation;

2-58 (5) provided that accessing the information is  
 2-59 authorized under the Health Insurance Portability and  
 2-60 Accountability Act of 1996 (Pub. L. No. 104-191) and regulations  
 2-61 adopted under that Act:

2-62 (A) a pharmacist or a pharmacy technician, as  
 2-63 defined by Section 551.003, Occupations Code, acting at the  
 2-64 direction of a pharmacist; or  
 2-65 (B) a practitioner who:

2-66 (i) is a physician, dentist, veterinarian,  
 2-67 podiatrist, optometrist, or advanced practice nurse or is a  
 2-68 physician assistant described by Section 481.002(39)(D) or an  
 2-69 employee or other agent of a practitioner acting at the direction of

3-1 a practitioner; and  
 3-2 (ii) is inquiring about a recent Schedule  
 3-3 II, III, IV, or V prescription history of a particular patient of  
 3-4 the practitioner;  
 3-5 (6) a pharmacist or practitioner who is inquiring  
 3-6 about the person's own dispensing or prescribing activity; ~~or~~  
 3-7 (7) one or more states or an association of states with  
 3-8 which the board has an interoperability agreement, as provided by  
 3-9 Subsection (j);  
 3-10 (8) a health care facility certified by the federal  
 3-11 Centers for Medicare and Medicaid Services; or  
 3-12 (9) the patient, the patient's parent or legal  
 3-13 guardian, if the patient is a minor, or the patient's legal  
 3-14 guardian, if the patient is an incapacitated person, as defined by  
 3-15 Section 1002.017(2), Estates Code, inquiring about the patient's  
 3-16 prescription record, including persons who have accessed that  
 3-17 record.  
 3-18 (a-6) A patient, the patient's parent or legal guardian, if  
 3-19 the patient is a minor, or the patient's legal guardian, if the  
 3-20 patient is an incapacitated person, as defined by Section  
 3-21 1002.017(2), Estates Code, is entitled to a copy of the patient's  
 3-22 prescription record as provided by Subsection (a)(9), including a  
 3-23 list of persons who have accessed that record, if a completed  
 3-24 patient data request form and any supporting documentation required  
 3-25 by the board is submitted to the board. The board may charge a  
 3-26 reasonable fee for providing the copy. The board shall adopt rules  
 3-27 to implement this subsection, including rules prescribing the  
 3-28 patient data request form, listing the documentation required for  
 3-29 receiving a copy of the prescription record, and setting the fee.  
 3-30 (f) If the board accesses ~~director permits access to~~  
 3-31 information under Subsection (a)(2) relating to a person licensed  
 3-32 or regulated by an agency listed in Subsection (a)(1), the board  
 3-33 ~~director~~ shall notify and cooperate with that agency regarding  
 3-34 the disposition of the matter before taking action against the  
 3-35 person, unless the board ~~director~~ determines that notification is  
 3-36 reasonably likely to interfere with an administrative or criminal  
 3-37 investigation or prosecution.  
 3-38 (g) If the board provides ~~director permits~~ access to  
 3-39 information under Subsection (a)(3) relating to a person licensed  
 3-40 or regulated by an agency listed in Subsection (a)(1), the board  
 3-41 ~~director~~ shall notify that agency of the disclosure of the  
 3-42 information not later than the 10th working day after the date the  
 3-43 information is disclosed.  
 3-44 (h) If the board ~~director~~ withholds notification to an  
 3-45 agency under Subsection (f), the board ~~director~~ shall notify the  
 3-46 agency of the disclosure of the information and the reason for  
 3-47 withholding notification when the board ~~director~~ determines that  
 3-48 notification is no longer likely to interfere with an  
 3-49 administrative or criminal investigation or prosecution.  
 3-50 SECTION 3. Section 481.0766, Health and Safety Code, is  
 3-51 amended by adding Subsection (c) to read as follows:  
 3-52 (c) The board shall make the information reported under  
 3-53 Subsection (a) available to the State Board of Veterinary Medical  
 3-54 Examiners for the purpose of routine inspections and  
 3-55 investigations.  
 3-56 SECTION 4. Subchapter C, Chapter 481, Health and Safety  
 3-57 Code, is amended by adding Sections 481.0767, 481.0768, and  
 3-58 481.0769 to read as follows:  
 3-59 Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall  
 3-60 establish an advisory committee to make recommendations regarding  
 3-61 information submitted to the board and access to that information  
 3-62 under Sections 481.074, 481.075, 481.076, and 481.0761, including  
 3-63 recommendations for:  
 3-64 (1) operational improvements to the electronic system  
 3-65 that stores the information, including implementing best practices  
 3-66 and improvements that address system weaknesses and workflow  
 3-67 challenges;  
 3-68 (2) resolutions to identified data concerns;  
 3-69 (3) methods to improve data accuracy, integrity, and

4-1 security and to reduce technical difficulties; and  
4-2 (4) the addition of any new data set or service to the  
4-3 information submitted to the board or the access to that  
4-4 information.

4-5 (b) The board shall appoint the following members to the  
4-6 advisory committee:

4-7 (1) a physician licensed in this state who practices  
4-8 in pain management;

4-9 (2) a physician licensed in this state who practices  
4-10 in family medicine;

4-11 (3) a physician licensed in this state who performs  
4-12 surgery;

4-13 (4) a physician licensed in this state who practices  
4-14 in emergency medicine at a hospital;

4-15 (5) a physician licensed in this state who practices  
4-16 in psychiatry;

4-17 (6) an oral and maxillofacial surgeon;

4-18 (7) a physician assistant or advanced practice  
4-19 registered nurse to whom a physician has delegated the authority to  
4-20 prescribe or order a drug;

4-21 (8) a pharmacist working at a chain pharmacy;

4-22 (9) a pharmacist working at an independent pharmacy;

4-23 (10) an academic pharmacist; and

4-24 (11) two representatives of the health information  
4-25 technology industry, at least one of whom is a representative of a  
4-26 company whose primary line of business is electronic medical  
4-27 records.

4-28 (c) Members of the advisory committee serve three-year  
4-29 terms. Each member shall serve until the member's replacement has  
4-30 been appointed.

4-31 (d) The advisory committee shall annually elect a presiding  
4-32 officer from its members.

4-33 (e) The advisory committee shall meet at least two times a  
4-34 year and at the call of the presiding officer or the board.

4-35 (f) A member of the advisory committee serves without  
4-36 compensation but may be reimbursed by the board for actual expenses  
4-37 incurred in performing the duties of the advisory committee.

4-38 Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE  
4-39 OF INFORMATION. (a) A person authorized to receive information  
4-40 under Section 481.076(a) may not disclose or use the information in  
4-41 a manner not authorized by this subchapter or other law.

4-42 (b) A regulatory agency that issues a license,  
4-43 certification, or registration to a prescriber or dispenser shall  
4-44 periodically update the administrative penalties, or any  
4-45 applicable disciplinary guidelines concerning the penalties,  
4-46 assessed by that agency for conduct that violates Subsection (a).

4-47 (c) The agency shall set the penalties in an amount  
4-48 sufficient to deter the conduct.

4-49 Sec. 481.0769. CRIMINAL OFFENSES RELATED TO PRESCRIPTION  
4-50 INFORMATION. (a) A person authorized to receive information under  
4-51 Section 481.076(a) commits an offense if the person discloses or  
4-52 uses the information in a manner not authorized by this subchapter  
4-53 or other law.

4-54 (b) A person requesting information under Section  
4-55 481.076(a-6) commits an offense if the person makes a material  
4-56 misrepresentation or fails to disclose a material fact in the  
4-57 request for information under that subsection.

4-58 (c) An offense under Subsection (a) is a Class A  
4-59 misdemeanor.

4-60 (d) An offense under Subsection (b) is a Class C  
4-61 misdemeanor.

4-62 SECTION 5. Section 801.307, Occupations Code, is amended by  
4-63 adding Subsection (a-1) to read as follows:

4-64 (a-1) The board by rule shall require a veterinarian to  
4-65 complete two hours of continuing education related to opioid abuse  
4-66 and controlled substance diversion, inventory, and security every  
4-67 two years to renew a license to practice veterinary medicine.

4-68 SECTION 6. Section 481.003(a), Health and Safety Code, is  
4-69 amended to read as follows:

5-1 (a) The director may adopt rules to administer and enforce  
5-2 this chapter, other than Sections 481.073, 481.074, 481.075,  
5-3 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764,  
5-4 481.0765, [and] 481.0766, 481.0767, 481.0768, and 481.0769. The  
5-5 board may adopt rules to administer Sections 481.073, 481.074,  
5-6 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763,  
5-7 481.0764, 481.0765, [and] 481.0766, 481.0767, 481.0768, and  
5-8 481.0769.

5-9 SECTION 7. Section 481.128(a), Health and Safety Code, is  
5-10 amended to read as follows:

5-11 (a) A registrant or dispenser commits an offense if the  
5-12 registrant or dispenser knowingly:

5-13 (1) distributes, delivers, administers, or dispenses  
5-14 a controlled substance in violation of Subchapter C [~~Sections~~  
5-15 ~~481.070-481.075~~];

5-16 (2) manufactures a controlled substance not  
5-17 authorized by the person's Federal Drug Enforcement Administration  
5-18 registration or distributes or dispenses a controlled substance not  
5-19 authorized by the person's registration to another registrant or  
5-20 other person;

5-21 (3) refuses or fails to make, keep, or furnish a  
5-22 record, report, notification, order form, statement, invoice, or  
5-23 information required by this chapter;

5-24 (4) prints, manufactures, possesses, or produces an  
5-25 official prescription form without the approval of the board;

5-26 (5) delivers or possesses a counterfeit official  
5-27 prescription form;

5-28 (6) refuses an entry into a premise for an inspection  
5-29 authorized by this chapter;

5-30 (7) refuses or fails to return an official  
5-31 prescription form as required by Section 481.075(k);

5-32 (8) refuses or fails to make, keep, or furnish a  
5-33 record, report, notification, order form, statement, invoice, or  
5-34 information required by a rule adopted by the director or the board;  
5-35 or

5-36 (9) refuses or fails to maintain security required by  
5-37 this chapter or a rule adopted under this chapter.

5-38 SECTION 8. Section 481.129(a), Health and Safety Code, is  
5-39 amended to read as follows:

5-40 (a) A person commits an offense if the person knowingly:

5-41 (1) distributes as a registrant or dispenser a  
5-42 controlled substance listed in Schedule I or II, unless the person  
5-43 distributes the controlled substance as authorized under the  
5-44 federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

5-45 (2) uses in the course of manufacturing, prescribing,  
5-46 or distributing a controlled substance a Federal Drug Enforcement  
5-47 Administration registration number that is fictitious, revoked,  
5-48 suspended, or issued to another person;

5-49 (3) issues a prescription bearing a forged or  
5-50 fictitious signature;

5-51 (4) uses a prescription issued to another person to  
5-52 prescribe a Schedule II controlled substance;

5-53 (5) possesses, obtains, or attempts to possess or  
5-54 obtain a controlled substance or an increased quantity of a  
5-55 controlled substance:

5-56 (A) by misrepresentation, fraud, forgery,  
5-57 deception, or subterfuge;

5-58 (B) through use of a fraudulent prescription  
5-59 form; [~~or~~]

5-60 (C) through use of a fraudulent oral or  
5-61 telephonically communicated prescription; or

5-62 (D) through the use of a fraudulent electronic  
5-63 prescription; or

5-64 (6) furnishes false or fraudulent material  
5-65 information in or omits material information from an application,  
5-66 report, record, or other document required to be kept or filed under  
5-67 this chapter.

5-68 SECTION 9. Section 554.051(a-1), Occupations Code, is  
5-69 amended to read as follows:

6-1 (a-1) The board may adopt rules to administer Sections  
6-2 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762,  
6-3 481.0763, 481.0764, 481.0765, ~~and~~ 481.0766, 481.0767, 481.0768,  
6-4 and 481.0769, Health and Safety Code.

6-5 SECTION 10. Section 565.003, Occupations Code, is amended  
6-6 to read as follows:

6-7 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING  
6-8 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless  
6-9 compliance would violate the pharmacy or drug statutes or rules in  
6-10 the state in which the pharmacy is located, the board may discipline  
6-11 an applicant for or the holder of a nonresident pharmacy license if  
6-12 the board finds that the applicant or license holder has failed to  
6-13 comply with:

6-14 (1) Subchapter C, Chapter 481 [~~Section 481.074 or~~  
6-15 ~~481.075~~], Health and Safety Code;

6-16 (2) Texas substitution requirements regarding:

6-17 (A) the practitioner's directions concerning  
6-18 generic substitution;

6-19 (B) the patient's right to refuse generic  
6-20 substitution; or

6-21 (C) notification to the patient of the patient's  
6-22 right to refuse substitution;

6-23 (3) any board rule relating to providing drug  
6-24 information to the patient or the patient's agent in written form or  
6-25 by telephone; or

6-26 (4) any board rule adopted under Section 554.051(a)  
6-27 and determined by the board to be applicable under Section  
6-28 554.051(b).

6-29 SECTION 11. Sections 481.076(a-3), (a-4), and (a-5), Health  
6-30 and Safety Code, are repealed.

6-31 SECTION 12. To the extent of any conflict, this Act prevails  
6-32 over another Act of the 86th Legislature, Regular Session, 2019,  
6-33 relating to nonsubstantive additions to and corrections in enacted  
6-34 codes.

6-35 SECTION 13. Notwithstanding Section 24, Chapter 485 (H.B.  
6-36 2561), Acts of the 85th Legislature, Regular Session, 2017, Section  
6-37 481.0764(a), Health and Safety Code, as added by that Act, applies  
6-38 only to:

6-39 (1) a prescriber, other than a veterinarian, who  
6-40 issues a prescription for a controlled substance on or after March  
6-41 1, 2020; or

6-42 (2) a person authorized by law to dispense a  
6-43 controlled substance, other than a veterinarian, who dispenses a  
6-44 controlled substance on or after March 1, 2020.

6-45 SECTION 14. Section 481.0755, Health and Safety Code, as  
6-46 added by this Act, applies only to a prescription issued on or after  
6-47 the effective date of this Act.

6-48 SECTION 15. Section 481.0768(a), Health and Safety Code, as  
6-49 added by this Act, applies only to conduct that occurs on or after  
6-50 the effective date of this Act.

6-51 SECTION 16. Section 801.307(a-1), Occupations Code, as  
6-52 added by this Act, applies only to the renewal of a license to  
6-53 practice veterinary medicine on or after September 1, 2020. The  
6-54 renewal of a license before that date is governed by the law in  
6-55 effect immediately before the effective date of this Act, and the  
6-56 former law is continued in effect for that purpose.

6-57 SECTION 17. This Act takes effect September 1, 2019.

6-58 \* \* \* \* \*