

By: Hinojosa

S.B. No. 2316

A BILL TO BE ENTITLED

AN ACT

relating to controlled substance prescriptions under the Texas Controlled Substances Act; creating a criminal offense.

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

SECTION 1. 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, other than Sections 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655, ~~and~~ 481.0766, 481.0767, and 481.0768. The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655, ~~and~~ 481.0766, 481.0767, and 481.0768.

SECTION 2. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.07655, 481.0767, and 481.0768 to read as follows:

Sec. 481.07655. LIMITATION OF LIABILITY. (a) A prescriber or dispenser is not liable in a civil action for damages arising from the failure to access prescription drug information as required or authorized by Section 481.0764 or failure to submit the information to the board as required under Section 481.074(q) or 481.075(i), unless the failure constitutes gross negligence or wilful misconduct and the prescriber or dispenser would be liable to the claimant under other law.

1        (b) This section does not establish a standard of care.

2        Sec. 481.0767. CRIMINAL OFFENSE: DISCLOSURE OR USE OF  
3 INFORMATION. (a) A person authorized to receive information under  
4 Section 481.076(a) commits an offense if the person discloses or  
5 uses the information in a manner not authorized by this subchapter  
6 or other law.

7        (b) An offense under this section is a Class A misdemeanor.

8        Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE  
9 OF INFORMATION. (a) A regulatory agency that issues a license,  
10 certification, or registration to a prescriber or dispenser shall  
11 periodically update the administrative penalties, or any  
12 applicable disciplinary guidelines concerning the penalties,  
13 assessed by that agency for conduct constituting an offense under  
14 Section 481.0767.

15        (b) The agency shall set the penalties in an amount  
16 sufficient to deter the conduct.

17        SECTION 3. Section 554.051(a-1), Occupations Code, is  
18 amended to read as follows:

19        (a-1) The board may adopt rules to administer Sections  
20 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763,  
21 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, 481.0767, and  
22 481.0768, Health and Safety Code.

23        SECTION 4. Section 565.003, Occupations Code, is amended to  
24 read as follows:

25        Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING  
26 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless  
27 compliance would violate the pharmacy or drug statutes or rules in

1 the state in which the pharmacy is located, the board may discipline  
2 an applicant for or the holder of a nonresident pharmacy license if  
3 the board finds that the applicant or license holder has failed to  
4 comply with:

5 (1) Section 481.073, 481.074, [ex] 481.075, 481.076,  
6 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655,  
7 481.0766, 481.0767, or 481.0768, Health and Safety Code;

8 (2) Texas substitution requirements regarding:

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

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

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

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

18 (4) any board rule adopted under Section 554.051(a)  
19 and determined by the board to be applicable under Section  
20 554.051(b).

21 SECTION 5. The Texas State Board of Pharmacy shall  
22 implement Section 481.076(c-1), Health and Safety Code, as added by  
23 this Act, as soon as practicable after the effective date of this  
24 Act.

25 SECTION 6. Not later than September 1, 2020, each  
26 regulatory agency that issues a license, certification, or  
27 registration to a prescriber or dispenser shall evaluate and update

1 any administrative penalties and guidelines as provided by Section  
2 481.0769, Health and Safety Code, as added by this Act.

3 SECTION 7. Notwithstanding Section 24, Chapter 485 (H.B.  
4 2561), Acts of the 85th Legislature, Regular Session, 2017, Section  
5 481.0764(a), Health and Safety Code, as added by that Act, applies  
6 only to:

7 (1) a prescriber, other than a veterinarian, who issues a  
8 prescription for a controlled substance on or after March 1, 2020;  
9 or

10 (2) a person authorized by law to dispense a controlled  
11 substance, other than a veterinarian, who dispenses a controlled  
12 substance on or after March 1, 2020.

13 SECTION 8. This Act takes effect September 1, 2019.