

1-1 By: Hinojosa S.B. No. 2316
1-2 (In the Senate - Filed March 8, 2019; March 21, 2019, read
1-3 first time and referred to Committee on Health & Human Services;
1-4 April 23, 2019, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 23, 2019,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Kolkhorst	X		
1-10	Perry	X		
1-11	Buckingham	X		
1-12	Campbell	X		
1-13	Flores	X		
1-14	Johnson	X		
1-15	Miles	X		
1-16	Powell	X		
1-17	Seliger	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 2316 By: Perry

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

1-21 relating to controlled substance prescriptions under the Texas
1-22 Controlled Substances Act; creating a criminal offense.

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

1-24 SECTION 1. Section 481.003(a), Health and Safety Code, is
1-25 amended to read as follows:

1-26 (a) The director may adopt rules to administer and enforce
1-27 this chapter, other than Sections 481.073, 481.074, 481.075,
1-28 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765,
1-29 481.07655, ~~and~~ 481.0766, 481.0767, 481.0768, and 481.0769. The
1-30 board may adopt rules to administer Sections 481.073, 481.074,
1-31 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764,
1-32 481.0765, 481.07655, ~~and~~ 481.0766, 481.0767, 481.0768, and
1-33 481.0769.

1-34 SECTION 2. Subchapter C, Chapter 481, Health and Safety
1-35 Code, is amended by adding Sections 481.07655, 481.0767, 481.0768,
1-36 and 481.0769 to read as follows:

1-37 Sec. 481.07655. LIMITATION OF LIABILITY. (a) A prescriber
1-38 or dispenser is not liable in a civil action for damages arising
1-39 from the failure to access prescription drug information as
1-40 required or authorized by Section 481.0764 or failure to submit the
1-41 information to the board as required under Section 481.074(q) or
1-42 481.075, unless the failure constitutes gross negligence or wilful
1-43 misconduct and the prescriber or dispenser would be liable to the
1-44 claimant under other law.

1-45 (b) This section does not establish a standard of care.

1-46 Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall
1-47 establish an advisory committee to make recommendations regarding
1-48 information submitted to the board and access to that information
1-49 under Sections 481.074, 481.075, 481.076, and 481.0761.

1-50 (b) The board shall appoint the following members to the
1-51 advisory committee:

1-52 (1) a physician licensed in this state who practices
1-53 in pain management;

1-54 (2) a physician licensed in this state who practices
1-55 in family medicine;

1-56 (3) a physician licensed in this state who performs
1-57 surgery;

1-58 (4) a physician licensed in this state who practices
1-59 in emergency medicine;

1-60 (5) a dentist licensed in this state who performs oral

2-1 surgery;
 2-2 (6) a podiatrist licensed in this state;
 2-3 (7) a physician assistant to whom a physician has
 2-4 delegated the authority to prescribe or order a drug;
 2-5 (8) an advanced practice registered nurse to whom a
 2-6 physician has delegated the authority to prescribe or order a drug;
 2-7 (9) a pharmacist working at a chain pharmacy;
 2-8 (10) a pharmacist working at an independent pharmacy;
 2-9 (11) a veterinarian; and
 2-10 (12) an electronic records consultant.
 2-11 (c) Members of the advisory committee serve three-year
 2-12 terms. Each member shall serve until the member's replacement has
 2-13 been appointed.
 2-14 (d) The advisory committee shall annually elect a presiding
 2-15 officer from its members.
 2-16 (e) The advisory committee shall meet at least two times a
 2-17 year and at the call of the presiding officer or the board.
 2-18 (f) A member of the advisory committee serves without
 2-19 compensation but may be reimbursed by the board for actual expenses
 2-20 incurred in performing the duties of the advisory committee.
 2-21 (g) The advisory committee is abolished and this section
 2-22 expires on September 1, 2023.
 2-23 Sec. 481.0768. CRIMINAL OFFENSE: DISCLOSURE OR USE OF
 2-24 INFORMATION. (a) A person authorized to receive information under
 2-25 Section 481.076(a) commits an offense if the person discloses or
 2-26 uses the information in a manner not authorized by this subchapter
 2-27 or other law.
 2-28 (b) An offense under this section is a Class A misdemeanor.
 2-29 Sec. 481.0769. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE
 2-30 OF INFORMATION. (a) A regulatory agency that issues a license,
 2-31 certification, or registration to a prescriber or dispenser shall
 2-32 periodically update the administrative penalties, or any
 2-33 applicable disciplinary guidelines concerning the penalties,
 2-34 assessed by that agency for conduct constituting an offense under
 2-35 Section 481.0768(a).
 2-36 (b) The agency shall set the penalties in an amount
 2-37 sufficient to deter the conduct.
 2-38 SECTION 3. Section 554.051, Occupations Code, is amended by
 2-39 amending Subsection (a-1) and adding Subsection (a-2) to read as
 2-40 follows:
 2-41 (a-1) The board may adopt rules to administer Sections
 2-42 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763,
 2-43 481.0764, 481.0765, 481.07655, [and] 481.0766, 481.0768, and
 2-44 481.0769, Health and Safety Code.
 2-45 (a-2) The board may adopt rules to administer Section
 2-46 481.0767, Health and Safety Code. This subsection expires
 2-47 September 1, 2023.
 2-48 SECTION 4. Section 565.003, Occupations Code, is amended to
 2-49 read as follows:
 2-50 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING
 2-51 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless
 2-52 compliance would violate the pharmacy or drug statutes or rules in
 2-53 the state in which the pharmacy is located, the board may discipline
 2-54 an applicant for or the holder of a nonresident pharmacy license if
 2-55 the board finds that the applicant or license holder has failed to
 2-56 comply with:
 2-57 (1) Section 481.073, 481.074, [~~or~~] 481.075, 481.076,
 2-58 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655,
 2-59 481.0766, 481.0768, or 481.0769, Health and Safety Code;
 2-60 (2) Texas substitution requirements regarding:
 2-61 (A) the practitioner's directions concerning
 2-62 generic substitution;
 2-63 (B) the patient's right to refuse generic
 2-64 substitution; or
 2-65 (C) notification to the patient of the patient's
 2-66 right to refuse substitution;
 2-67 (3) any board rule relating to providing drug
 2-68 information to the patient or the patient's agent in written form or
 2-69 by telephone; or

3-1 (4) any board rule adopted under Section 554.051(a)
3-2 and determined by the board to be applicable under Section
3-3 554.051(b).

3-4 SECTION 5. Not later than September 1, 2020, each
3-5 regulatory agency that issues a license, certification, or
3-6 registration to a prescriber or dispenser shall evaluate and update
3-7 any administrative penalties and guidelines as provided by Section
3-8 481.0769, Health and Safety Code, as added by this Act.

3-9 SECTION 6. Notwithstanding Section 24, Chapter 485 (H.B.
3-10 2561), Acts of the 85th Legislature, Regular Session, 2017, Section
3-11 481.0764(a), Health and Safety Code, as added by that Act, applies
3-12 only to:

3-13 (1) a prescriber, other than a veterinarian, who
3-14 issues a prescription for a controlled substance on or after March
3-15 1, 2020; or

3-16 (2) a person authorized by law to dispense a
3-17 controlled substance, other than a veterinarian, who dispenses a
3-18 controlled substance on or after March 1, 2020.

3-19 SECTION 7. This Act takes effect September 1, 2019.

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