

SENATE AMENDMENTS

2nd Printing

By: Sheffield, Price, Burns, Howard, Stucky

H.B. No. 3284

A BILL TO BE ENTITLED

AN ACT

relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

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

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

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

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

- (1) by a veterinarian;
- (2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule;
- (3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule;

1 (4) when the prescriber and dispenser are the same
2 entity;

3 (5) in circumstances in which necessary elements are
4 not supported by the most recent electronic prescription drug
5 software;

6 (6) for a drug for which the United States Food and
7 Drug Administration requires additional information in the
8 prescription that is not possible with electronic prescribing;

9 (7) for a non-patient-specific prescription pursuant
10 to a standing order, approved protocol for drug therapy,
11 collaborative drug management, or comprehensive medication
12 management, in response to a public health emergency or in other
13 circumstances in which the practitioner may issue a
14 non-patient-specific prescription;

15 (8) for a drug under a research protocol;

16 (9) by a prescriber who is employed by or is practicing
17 a health care profession at a health-related institution, as
18 defined by Section 62.161, Education Code, as added by Chapter 448
19 (H.B. 7), Acts of the 84th Legislature, 2015;

20 (10) by a practitioner who has received a waiver under
21 Subsection (c) from the requirement to use electronic prescribing;
22 or

23 (11) under circumstances in which the practitioner has
24 the present ability to submit an electronic prescription but
25 reasonably determines that it would be impractical for the patient
26 to obtain the drugs prescribed under the electronic prescription in
27 a timely manner and that a delay would adversely impact the

1 patient's medical condition.

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

7 (1) economic hardship;

8 (2) technological limitations not reasonably within
9 the control of the practitioner; or

10 (3) other exceptional circumstances demonstrated by
11 the practitioner.

12 (d) A written, oral, or telephonically communicated
13 prescription must comply with the applicable requirements
14 prescribed by Sections 481.074 and 481.075.

15 (e) A dispensing pharmacist who receives a controlled
16 substance prescription in a manner other than electronically is not
17 required to verify that the prescription is exempt from the
18 requirement that it be submitted electronically.

19 (f) The board shall enforce this section.

20 SECTION 2. Sections 481.076(a), (f), (g), and (h), Health
21 and Safety Code, are amended to read as follows:

22 (a) The board may not permit any person to have access to
23 information submitted to the board under Section 481.074(q) or
24 481.075 except:

25 (1) the board, the Texas Medical Board, the Texas
26 Department of Licensing and Regulation, with respect to the
27 regulation of podiatrists [~~State Board of Podiatric Medical~~

1 ~~Examiners~~], the State Board of Dental Examiners, the State Board of
2 Veterinary Medical Examiners, the Texas Board of Nursing, or the
3 Texas Optometry Board for the purpose of:

4 (A) investigating a specific license holder; or

5 (B) monitoring for potentially harmful
6 prescribing or dispensing patterns or practices under Section
7 481.0762;

8 (2) an ~~[authorized officer or member of the department~~
9 ~~or]~~ authorized employee of the board engaged in the administration,
10 investigation, or enforcement of this chapter or another law
11 governing illicit drugs in this state or another state;

12 (3) the department or other ~~[on behalf of a]~~ law
13 enforcement or prosecutorial official engaged in the
14 administration, investigation, or enforcement of this chapter or
15 another law governing illicit drugs in this state or another state,
16 if the board is provided a warrant, subpoena, or other court order
17 compelling the disclosure;

18 (4) a medical examiner conducting an investigation;

19 (5) provided that accessing the information is
20 authorized under the Health Insurance Portability and
21 Accountability Act of 1996 (Pub. L. No. 104-191) and regulations
22 adopted under that Act:

23 (A) a pharmacist or a pharmacy technician, as
24 defined by Section 551.003, Occupations Code, acting at the
25 direction of a pharmacist; or

26 (B) a practitioner who:

27 (i) is a physician, dentist, veterinarian,

1 podiatrist, optometrist, or advanced practice nurse or is a
2 physician assistant described by Section 481.002(39)(D) or an
3 employee or other agent of a practitioner acting at the direction of
4 a practitioner; and

5 (ii) is inquiring about a recent Schedule
6 II, III, IV, or V prescription history of a particular patient of
7 the practitioner;

8 (6) a pharmacist or practitioner who is inquiring
9 about the person's own dispensing or prescribing activity; ~~[or]~~

10 (7) one or more states or an association of states with
11 which the board has an interoperability agreement, as provided by
12 Subsection (j); or

13 (8) a health care facility certified by the federal
14 Centers for Medicare and Medicaid Services.

15 (f) If the board accesses ~~[director permits access to]~~
16 information under Subsection (a)(2) relating to a person licensed
17 or regulated by an agency listed in Subsection (a)(1), the board
18 ~~[director]~~ shall notify and cooperate with that agency regarding
19 the disposition of the matter before taking action against the
20 person, unless the board ~~[director]~~ determines that notification is
21 reasonably likely to interfere with an administrative or criminal
22 investigation or prosecution.

23 (g) If the board provides ~~[director permits]~~ access to
24 information under Subsection (a)(3) relating to a person licensed
25 or regulated by an agency listed in Subsection (a)(1), the board
26 ~~[director]~~ shall notify that agency of the disclosure of the
27 information not later than the 10th working day after the date the

1 information is disclosed.

2 (h) If the board [~~director~~] withholds notification to an
3 agency under Subsection (f), the board [~~director~~] shall notify the
4 agency of the disclosure of the information and the reason for
5 withholding notification when the board [~~director~~] determines that
6 notification is no longer likely to interfere with an
7 administrative or criminal investigation or prosecution.

8 SECTION 3. Section 481.0766, Health and Safety Code, is
9 amended by adding Subsection (c) to read as follows:

10 (c) The board shall make the information reported under
11 Subsection (a) available to the State Board of Veterinary Medical
12 Examiners for the purpose of routine inspections and
13 investigations.

14 SECTION 4. Subchapter C, Chapter 481, Health and Safety
15 Code, is amended by adding Sections 481.0767 and 481.0768 to read as
16 follows:

17 Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall
18 establish an advisory committee to make recommendations regarding
19 information submitted to the board and access to that information
20 under Sections 481.074, 481.075, 481.076, and 481.0761, including
21 recommendations for:

22 (1) operational improvements to the electronic system
23 that stores the information, including implementing best practices
24 and improvements that address system weaknesses and workflow
25 challenges;

26 (2) resolutions to identified data concerns;

27 (3) methods to improve data accuracy, integrity, and

1 security and to reduce technical difficulties; and

2 (4) the addition of any new data set or service to the
3 information submitted to the board or the access to that
4 information.

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

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

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

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

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

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

17 (6) an oral and maxillofacial surgeon;

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

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

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

23 (10) an academic pharmacist; and

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

1 (c) Members of the advisory committee serve three-year
2 terms. Each member shall serve until the member's replacement has
3 been appointed.

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

6 (e) The advisory committee shall meet at least two times a
7 year and at the call of the presiding officer or the board.

8 (f) A member of the advisory committee serves without
9 compensation but may be reimbursed by the board for actual expenses
10 incurred in performing the duties of the advisory committee.

11 Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE
12 OF INFORMATION. (a) A person authorized to receive information
13 under Section 481.076(a) may not disclose or use the information in
14 a manner not authorized by this subchapter or other law.

15 (b) A regulatory agency that issues a license,
16 certification, or registration to a prescriber or dispenser shall
17 periodically update the administrative penalties, or any
18 applicable disciplinary guidelines concerning the penalties,
19 assessed by that agency for conduct that violates Subsection (a).

20 (c) The agency shall set the penalties in an amount
21 sufficient to deter the conduct.

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

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

SECTION 6. 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, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, ~~[and]~~ 481.0766, 481.0767, and 481.0768. The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, ~~[and]~~ 481.0766, 481.0767, and 481.0768.

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

(a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly:

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

(2) manufactures a controlled substance not authorized by the person's Federal Drug Enforcement Administration registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

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

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

(5) delivers or possesses a counterfeit official

1 prescription form;

2 (6) refuses an entry into a premise for an inspection
3 authorized by this chapter;

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

6 (8) refuses or fails to make, keep, or furnish a
7 record, report, notification, order form, statement, invoice, or
8 information required by a rule adopted by the director or the board;
9 or

10 (9) refuses or fails to maintain security required by
11 this chapter or a rule adopted under this chapter.

12 SECTION 8. Section 481.129(a), Health and Safety Code, is
13 amended to read as follows:

14 (a) A person commits an offense if the person knowingly:

15 (1) distributes as a registrant or dispenser a
16 controlled substance listed in Schedule I or II, unless the person
17 distributes the controlled substance as authorized under the
18 federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

19 (2) uses in the course of manufacturing, prescribing,
20 or distributing a controlled substance a Federal Drug Enforcement
21 Administration registration number that is fictitious, revoked,
22 suspended, or issued to another person;

23 (3) issues a prescription bearing a forged or
24 fictitious signature;

25 (4) uses a prescription issued to another person to
26 prescribe a Schedule II controlled substance;

27 (5) possesses, obtains, or attempts to possess or

1 obtain a controlled substance or an increased quantity of a
2 controlled substance:

3 (A) by misrepresentation, fraud, forgery,
4 deception, or subterfuge;

5 (B) through use of a fraudulent prescription
6 form; ~~or~~

7 (C) through use of a fraudulent oral or
8 telephonically communicated prescription; or

9 (D) through the use of a fraudulent electronic
10 prescription; or

11 (6) furnishes false or fraudulent material
12 information in or omits material information from an application,
13 report, record, or other document required to be kept or filed under
14 this chapter.

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

17 (a-1) The board may adopt rules to administer Sections
18 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762,
19 481.0763, 481.0764, 481.0765, ~~and~~ 481.0766, 481.0767, and
20 481.0768, Health and Safety Code.

21 SECTION 10. Section 565.003, Occupations Code, is amended
22 to read as follows:

23 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING
24 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless
25 compliance would violate the pharmacy or drug statutes or rules in
26 the state in which the pharmacy is located, the board may discipline
27 an applicant for or the holder of a nonresident pharmacy license if

the board finds that the applicant or license holder has failed to comply with:

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

(2) Texas substitution requirements regarding:

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

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

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

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

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

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

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

SECTION 13. Section 481.0755, Health and Safety Code, as added by this Act, applies only to a prescription issued on or after the effective date of this Act.

SECTION 14. Section 481.0768(a), Health and Safety Code, as

1 added by this Act, applies only to conduct that occurs on or after
2 the effective date of this Act.

3 SECTION 15. Section 801.307(a-1), Occupations Code, as
4 added by this Act, applies only to the renewal of a license to
5 practice veterinary medicine on or after September 1, 2020. The
6 renewal of a license before that date is governed by the law in
7 effect immediately before the effective date of this Act, and the
8 former law is continued in effect for that purpose.

9 SECTION 16. This Act takes effect September 1, 2019.

ADOPTED

MAY 22 2019

Atty. Gen.
Secretary of the Senate

By: Sheffield / Nelson

____.B. No. ____

Substitute the following for ____B. No. ____:

By: Charles Perry

C.S. H.B. No. 3284

A BILL TO BE ENTITLED

1 AN ACT

2 relating to prescribing and dispensing controlled substances and
3 monitoring the prescribing and dispensing of controlled substances
4 under the Texas Controlled Substances Act; authorizing a fee;
5 providing for administrative penalties; creating criminal
6 offenses.

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

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

10 Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY
11 COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections
12 481.073, 481.074, and 481.075, a person prescribing or dispensing a
13 controlled substance must use the electronic prescription record
14 and may not use a written, oral, or telephonically communicated
15 prescription.

16 (b) A prescriber may issue a written, oral, or
17 telephonically communicated prescription for a controlled
18 substance as authorized under this subchapter only if the
19 prescription is issued:

- 20 (1) by a veterinarian;
21 (2) in circumstances in which electronic prescribing
22 is not available due to temporary technological or electronic
23 failure, as prescribed by board rule;
24 (3) by a practitioner to be dispensed by a pharmacy

1 located outside this state, as prescribed by board rule;

2 (4) when the prescriber and dispenser are the same
3 entity;

4 (5) in circumstances in which necessary elements are
5 not supported by the most recent electronic prescription drug
6 software;

7 (6) for a drug for which the United States Food and
8 Drug Administration requires additional information in the
9 prescription that is not possible with electronic prescribing;

10 (7) for a non-patient-specific prescription pursuant
11 to a standing order, approved protocol for drug therapy,
12 collaborative drug management, or comprehensive medication
13 management, in response to a public health emergency or in other
14 circumstances in which the practitioner may issue a
15 non-patient-specific prescription;

16 (8) for a drug under a research protocol;

17 (9) by a prescriber who is employed by or is practicing
18 a health care profession at a health-related institution, as
19 defined by Section 62.161, Education Code, as added by Chapter 448
20 (H.B. 7), Acts of the 84th Legislature, 2015;

21 (10) by a practitioner who has received a waiver under
22 Subsection (c) from the requirement to use electronic prescribing;
23 or

24 (11) under circumstances in which the practitioner has
25 the present ability to submit an electronic prescription but
26 reasonably determines that it would be impractical for the patient
27 to obtain the drugs prescribed under the electronic prescription in

1 a timely manner and that a delay would adversely impact the
2 patient's medical condition.

3 (c) The board shall adopt rules establishing a process by
4 which a practitioner may request and receive a waiver under
5 Subsection (b)(10), not to exceed one year, from the requirement to
6 use electronic prescribing. The board shall adopt rules
7 establishing the eligibility for a waiver, including:

8 (1) economic hardship;

9 (2) technological limitations not reasonably within
10 the control of the practitioner; or

11 (3) other exceptional circumstances demonstrated by
12 the practitioner.

13 (d) A written, oral, or telephonically communicated
14 prescription must comply with the applicable requirements
15 prescribed by Sections 481.074 and 481.075.

16 (e) A dispensing pharmacist who receives a controlled
17 substance prescription in a manner other than electronically is not
18 required to verify that the prescription is exempt from the
19 requirement that it be submitted electronically.

20 (f) The board shall enforce this section.

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

24 (a) The board may not permit any person to have access to
25 information submitted to the board under Section 481.074(q) or
26 481.075 except:

27 (1) the board, the Texas Medical Board, the Texas

1 Department of Licensing and Regulation, with respect to the
2 regulation of podiatrists [~~State Board of Podiatric Medical~~
3 ~~Examiners~~], the State Board of Dental Examiners, the State Board of
4 Veterinary Medical Examiners, the Texas Board of Nursing, or the
5 Texas Optometry Board for the purpose of:

6 (A) investigating a specific license holder; or
7 (B) monitoring for potentially harmful
8 prescribing or dispensing patterns or practices under Section
9 481.0762;

10 (2) an [~~authorized officer or member of the department~~
11 ~~or~~] authorized employee of the board engaged in the administration,
12 investigation, or enforcement of this chapter or another law
13 governing illicit drugs in this state or another state;

14 (3) the department or other [~~on behalf of a~~] law
15 enforcement or prosecutorial official engaged in the
16 administration, investigation, or enforcement of this chapter or
17 another law governing illicit drugs in this state or another state,
18 if the board is provided a warrant, subpoena, or other court order
19 compelling the disclosure;

20 (4) a medical examiner conducting an investigation;

21 (5) provided that accessing the information is
22 authorized under the Health Insurance Portability and
23 Accountability Act of 1996 (Pub. L. No. 104-191) and regulations
24 adopted under that Act:

25 (A) a pharmacist or a pharmacy technician, as
26 defined by Section 551.003, Occupations Code, acting at the
27 direction of a pharmacist; or

1 (B) a practitioner who:

2 (i) is a physician, dentist, veterinarian,
3 podiatrist, optometrist, or advanced practice nurse or is a
4 physician assistant described by Section 481.002(39)(D) or an
5 employee or other agent of a practitioner acting at the direction of
6 a practitioner; and

7 (ii) is inquiring about a recent Schedule
8 II, III, IV, or V prescription history of a particular patient of
9 the practitioner;

10 (6) a pharmacist or practitioner who is inquiring
11 about the person's own dispensing or prescribing activity; ~~[or]~~

12 (7) one or more states or an association of states with
13 which the board has an interoperability agreement, as provided by
14 Subsection (j);

15 (8) a health care facility certified by the federal
16 Centers for Medicare and Medicaid Services; or

17 (9) the patient, the patient's parent or legal
18 guardian, if the patient is a minor, or the patient's legal
19 guardian, if the patient is an incapacitated person, as defined by
20 Section 1002.017(2), Estates Code, inquiring about the patient's
21 prescription record, including persons who have accessed that
22 record.

23 (a-6) A patient, the patient's parent or legal guardian, if
24 the patient is a minor, or the patient's legal guardian, if the
25 patient is an incapacitated person, as defined by Section
26 1002.017(2), Estates Code, is entitled to a copy of the patient's
27 prescription record as provided by Subsection (a)(9), including a

1 list of persons who have accessed that record, if a completed
2 patient data request form and any supporting documentation required
3 by the board is submitted to the board. The board may charge a
4 reasonable fee for providing the copy. The board shall adopt rules
5 to implement this subsection, including rules prescribing the
6 patient data request form, listing the documentation required for
7 receiving a copy of the prescription record, and setting the fee.

8 (f) If the board accesses [~~director permits access to~~]
9 information under Subsection (a)(2) relating to a person licensed
10 or regulated by an agency listed in Subsection (a)(1), the board
11 [~~director~~] shall notify and cooperate with that agency regarding
12 the disposition of the matter before taking action against the
13 person, unless the board [~~director~~] determines that notification is
14 reasonably likely to interfere with an administrative or criminal
15 investigation or prosecution.

16 (g) If the board provides [~~director permits~~] access to
17 information under Subsection (a)(3) relating to a person licensed
18 or regulated by an agency listed in Subsection (a)(1), the board
19 [~~director~~] shall notify that agency of the disclosure of the
20 information not later than the 10th working day after the date the
21 information is disclosed.

22 (h) If the board [~~director~~] withholds notification to an
23 agency under Subsection (f), the board [~~director~~] shall notify the
24 agency of the disclosure of the information and the reason for
25 withholding notification when the board [~~director~~] determines that
26 notification is no longer likely to interfere with an
27 administrative or criminal investigation or prosecution.

1 SECTION 3. Section 481.0766, Health and Safety Code, is
2 amended by adding Subsection (c) to read as follows:

3 (c) The board shall make the information reported under
4 Subsection (a) available to the State Board of Veterinary Medical
5 Examiners for the purpose of routine inspections and
6 investigations.

7 SECTION 4. Subchapter C, Chapter 481, Health and Safety
8 Code, is amended by adding Sections 481.0767, 481.0768, and
9 481.0769 to read as follows:

10 Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall
11 establish an advisory committee to make recommendations regarding
12 information submitted to the board and access to that information
13 under Sections 481.074, 481.075, 481.076, and 481.0761, including
14 recommendations for:

15 (1) operational improvements to the electronic system
16 that stores the information, including implementing best practices
17 and improvements that address system weaknesses and workflow
18 challenges;

19 (2) resolutions to identified data concerns;

20 (3) methods to improve data accuracy, integrity, and
21 security and to reduce technical difficulties; and

22 (4) the addition of any new data set or service to the
23 information submitted to the board or the access to that
24 information.

25 (b) The board shall appoint the following members to the
26 advisory committee:

27 (1) a physician licensed in this state who practices

1 in pain management;
2 (2) a physician licensed in this state who practices
3 in family medicine;
4 (3) a physician licensed in this state who performs
5 surgery;
6 (4) a physician licensed in this state who practices
7 in emergency medicine at a hospital;
8 (5) a physician licensed in this state who practices
9 in psychiatry;
10 (6) an oral and maxillofacial surgeon;
11 (7) a physician assistant or advanced practice
12 registered nurse to whom a physician has delegated the authority to
13 prescribe or order a drug;
14 (8) a pharmacist working at a chain pharmacy;
15 (9) a pharmacist working at an independent pharmacy;
16 (10) an academic pharmacist; and
17 (11) two representatives of the health information
18 technology industry, at least one of whom is a representative of a
19 company whose primary line of business is electronic medical
20 records.
21 (c) Members of the advisory committee serve three-year
22 terms. Each member shall serve until the member's replacement has
23 been appointed.
24 (d) The advisory committee shall annually elect a presiding
25 officer from its members.
26 (e) The advisory committee shall meet at least two times a
27 year and at the call of the presiding officer or the board.

1 (f) A member of the advisory committee serves without
2 compensation but may be reimbursed by the board for actual expenses
3 incurred in performing the duties of the advisory committee.

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

8 (b) A regulatory agency that issues a license,
9 certification, or registration to a prescriber or dispenser shall
10 periodically update the administrative penalties, or any
11 applicable disciplinary guidelines concerning the penalties,
12 assessed by that agency for conduct that violates Subsection (a).

13 (c) The agency shall set the penalties in an amount
14 sufficient to deter the conduct.

15 Sec. 481.0769. CRIMINAL OFFENSES RELATED TO PRESCRIPTION
16 INFORMATION. (a) A person authorized to receive information under
17 Section 481.076(a) commits an offense if the person discloses or
18 uses the information in a manner not authorized by this subchapter
19 or other law.

20 (b) A person requesting information under Section
21 481.076(a-6) commits an offense if the person makes a material
22 misrepresentation or fails to disclose a material fact in the
23 request for information under that subsection.

24 (c) An offense under Subsection (a) is a Class A
25 misdemeanor.

26 (d) An offense under Subsection (b) is a Class C
27 misdemeanor.

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

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

7 SECTION 6. Section 481.003(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) The director may adopt rules to administer and enforce
10 this chapter, other than Sections 481.073, 481.074, 481.075,
11 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764,
12 481.0765, [and] 481.0766, 481.0767, 481.0768, and 481.0769. The
13 board may adopt rules to administer Sections 481.073, 481.074,
14 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763,
15 481.0764, 481.0765, [and] 481.0766, 481.0767, 481.0768, and
16 481.0769.

17 SECTION 7. Section 481.128(a), Health and Safety Code, is
18 amended to read as follows:

19 (a) A registrant or dispenser commits an offense if the
20 registrant or dispenser knowingly:

21 (1) distributes, delivers, administers, or dispenses
22 a controlled substance in violation of Subchapter C [~~Sections~~
23 ~~481.070-481.075~~];

24 (2) manufactures a controlled substance not
25 authorized by the person's Federal Drug Enforcement Administration
26 registration or distributes or dispenses a controlled substance not
27 authorized by the person's registration to another registrant or

1 other person;

2 (3) refuses or fails to make, keep, or furnish a
3 record, report, notification, order form, statement, invoice, or
4 information required by this chapter;

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

7 (5) delivers or possesses a counterfeit official
8 prescription form;

9 (6) refuses an entry into a premise for an inspection
10 authorized by this chapter;

11 (7) refuses or fails to return an official
12 prescription form as required by Section 481.075(k);

13 (8) refuses or fails to make, keep, or furnish a
14 record, report, notification, order form, statement, invoice, or
15 information required by a rule adopted by the director or the board;
16 or

17 (9) refuses or fails to maintain security required by
18 this chapter or a rule adopted under this chapter.

19 SECTION 8. Section 481.129(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) A person commits an offense if the person knowingly:

22 (1) distributes as a registrant or dispenser a
23 controlled substance listed in Schedule I or II, unless the person
24 distributes the controlled substance as authorized under the
25 federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

26 (2) uses in the course of manufacturing, prescribing,
27 or distributing a controlled substance a Federal Drug Enforcement

1 Administration registration number that is fictitious, revoked,
2 suspended, or issued to another person;

3 (3) issues a prescription bearing a forged or
4 fictitious signature;

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

7 (5) possesses, obtains, or attempts to possess or
8 obtain a controlled substance or an increased quantity of a
9 controlled substance:

10 (A) by misrepresentation, fraud, forgery,
11 deception, or subterfuge;

12 (B) through use of a fraudulent prescription
13 form; ~~or~~

14 (C) through use of a fraudulent oral or
15 telephonically communicated prescription; or

16 (D) through the use of a fraudulent electronic
17 prescription; or

18 (6) furnishes false or fraudulent material
19 information in or omits material information from an application,
20 report, record, or other document required to be kept or filed under
21 this chapter.

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

24 (a-1) The board may adopt rules to administer Sections
25 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762,
26 481.0763, 481.0764, 481.0765, ~~and~~ 481.0766, 481.0767, 481.0768,
27 and 481.0769, Health and Safety Code.

1 SECTION 10. Section 565.003, Occupations Code, is amended
2 to read as follows:

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

10 (1) Subchapter C, Chapter 481 [~~Section 481.074 or~~
11 ~~481.075~~], Health and Safety Code;

12 (2) Texas substitution requirements regarding:

13 (A) the practitioner's directions concerning
14 generic substitution;

15 (B) the patient's right to refuse generic
16 substitution; or

17 (C) notification to the patient of the patient's
18 right to refuse substitution;

19 (3) any board rule relating to providing drug
20 information to the patient or the patient's agent in written form or
21 by telephone; or

22 (4) any board rule adopted under Section 554.051(a)
23 and determined by the board to be applicable under Section
24 554.051(b).

25 SECTION 11. Sections 481.076(a-3), (a-4), and (a-5), Health
26 and Safety Code, are repealed.

27 SECTION 12. To the extent of any conflict, this Act prevails

1 over another Act of the 86th Legislature, Regular Session, 2019,
2 relating to nonsubstantive additions to and corrections in enacted
3 codes.

4 SECTION 13. Notwithstanding Section 24, Chapter 485 (H.B.
5 2561), Acts of the 85th Legislature, Regular Session, 2017, Section
6 481.0764(a), Health and Safety Code, as added by that Act, applies
7 only to:

8 (1) a prescriber, other than a veterinarian, who
9 issues a prescription for a controlled substance on or after March
10 1, 2020; or

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

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

17 SECTION 15. Section 481.0768(a), Health and Safety Code, as
18 added by this Act, applies only to conduct that occurs on or after
19 the effective date of this Act.

20 SECTION 16. Section 801.307(a-1), Occupations Code, as
21 added by this Act, applies only to the renewal of a license to
22 practice veterinary medicine on or after September 1, 2020. The
23 renewal of a license before that date is governed by the law in
24 effect immediately before the effective date of this Act, and the
25 former law is continued in effect for that purpose.

26 SECTION 17. This Act takes effect September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 23, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3284** by Sheffield (Relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; authorizing a fee; providing for administrative penalties; creating criminal offenses.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3284, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$484,716)	\$484,716	6.0
2021	(\$456,056)	\$456,056	6.0
2022	(\$456,056)	\$456,056	6.0
2023	(\$456,056)	\$456,056	6.0
2024	(\$456,056)	\$456,056	6.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP).

The bill would authorize a patient or patient's legal guardian to request and receive a copy of the patient's prescription record and list of persons who have accessed the patient's prescription record. Under the provisions of the bill, the Board of Pharmacy would be authorized to charge a fee for providing a copy of a patient's prescription record.

The bill would create a criminal offense for a person authorized to access patient prescription information if the person discloses or uses the information in an unauthorized way or if in the request for information, the person misrepresents or fails to disclose a material fact.

The provisions of the bill would add reporting requirements for veterinarians who dispense controlled substances. The bill would require electronic prescriptions for controlled substances except in certain circumstances.

Under the provisions of the bill, TSBP may not permit the Department of Public Safety (DPS) and other law enforcement or prosecutorial staff access to information in the Prescription Monitoring Program (PMP) database unless TSBP is provided a warrant, subpoena, or other court order, at which point DPS, other law enforcement, or prosecutorial staff may submit a request for information to TSBP. The bill requires that TSBP notify relevant regulatory agencies of the disclosure of information in certain circumstances.

The bill would authorize access to information in the PMP for health care facilities certified by the federal Centers for Medicare and Medicaid Services.

The bill would add restrictions to a prescriber's authority to prescribe controlled substances for acute pain.

The bill would take effect September 1, 2019.

Methodology

The bill would authorize patients and a patient's legal guardian to request and receive a copy of the patient's prescription record and list of persons who have accessed the patient's prescription record. TSBP estimates it would require \$150,048 in General Revenue in fiscal year 2020 and each fiscal year thereafter and two additional full-time-equivalent (FTE) positions to process these requests and provide copies of patient records.

Under the provisions of the bill, DPS, other law enforcement, or prosecutorial staff that obtain a warrant, subpoena, or other court order may submit a request for information in the PMP to TSBP. TSBP indicates that it would require two additional FTEs and \$178,051 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process information requests for the PMP.

The bill would require prescribers to issue electronic prescriptions for controlled substances

except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP). The agency indicates it would require two additional FTEs and \$114,701 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process waiver requests from prescribers.

According to the Board of Pharmacy's analysis, the agency would require an additional \$41,916 in other operating and equipment costs in fiscal year 2020 and \$13,256 in each subsequent fiscal year.

The estimated total to comply with the provisions of the bill would be \$484,716 in fiscal year 2020 and \$456,056 in each subsequent fiscal year.

Each agency that participates in the Prescription Monitoring Program (the Texas Medical Board, Optometry Board, Board of Dental Examiners, Board of Nursing, Board of Veterinary Medical Examiners, and Department of Licensing and Regulation) will increase fees or use available revenue to fund the cost of implementing the provisions of the bill.

DPS, the Department of Licensing and Regulation, the Texas Medical Board, the Board of Dental Examiners, and the Board of Veterinary Medical Examiners indicate the provisions of the bill could be implemented using existing resources.

Local Government Impact

A Class C misdemeanor is punishable by a fine of not more than \$500. In addition to the fine, punishment can include up to 180 days of deferred disposition. A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 515 Board of Pharmacy, 578 Board of Veterinary Medical Examiners, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners

LBB Staff: WP, SD, ESt, AKi, SGr, DFR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 20, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3284** by Sheffield (Relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; authorizing a fee; providing for administrative penalties; creating criminal offenses.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3284, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2019
2020	(\$484,716)	\$484,716	6.0
2021	(\$456,056)	\$456,056	6.0
2022	(\$456,056)	\$456,056	6.0
2023	(\$456,056)	\$456,056	6.0
2024	(\$456,056)	\$456,056	6.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP).

The bill would authorize a patient or patient's legal guardian to request and receive a copy of the patient's prescription record and list of persons who have accessed the patient's prescription record. Under the provisions of the bill, the Board of Pharmacy would be authorized to charge a fee for providing a copy of a patient's prescription record.

The bill would create a criminal offense for a person authorized to access patient prescription information if the person discloses or uses the information in an unauthorized way or if in the request for information, the person misrepresents or fails to disclose a material fact.

The provisions of the bill would add reporting requirements for veterinarians who dispense controlled substances. The bill would require electronic prescriptions for controlled substances except in certain circumstances.

Under the provisions of the bill, TSBP may not permit the Department of Public Safety (DPS) and other law enforcement or prosecutorial staff access to information in the Prescription Monitoring Program (PMP) database unless TSBP is provided a warrant, subpoena, or other court order, at which point DPS, other law enforcement, or prosecutorial staff may submit a request for information to TSBP. The bill requires that TSBP notify relevant regulatory agencies of the disclosure of information in certain circumstances.

The bill would authorize access to information in the PMP for health care facilities certified by the federal Centers for Medicare and Medicaid Services.

The bill would add restrictions to a prescriber's authority to prescribe controlled substances for acute pain.

The bill would take effect September 1, 2019.

Methodology

The bill would authorize patients and a patient's legal guardian to request and receive a copy of the patient's prescription record and list of persons who have accessed the patient's prescription record. TSBP estimates it would require \$150,048 in General Revenue in fiscal year 2020 and each fiscal year thereafter and two additional full-time-equivalent (FTE) positions to process these requests and provide copies of patient records.

Under the provisions of the bill, DPS, other law enforcement, or prosecutorial staff that obtain a warrant, subpoena, or other court order may submit a request for information in the PMP to TSBP. TSBP indicates that it would require two additional FTEs and \$178,051 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process information requests for the PMP.

The bill would require prescribers to issue electronic prescriptions for controlled substances

except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP). The agency indicates it would require two additional FTEs and \$114,701 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process waiver requests from prescribers.

According to the Board of Pharmacy's analysis, the agency would require an additional \$41,916 in other operating and equipment costs in fiscal year 2020 and \$13,256 in each subsequent fiscal year.

The estimated total to comply with the provisions of the bill would be \$484,716 in fiscal year 2020 and \$456,056 in each subsequent fiscal year.

Each agency that participates in the Prescription Monitoring Program (the Texas Medical Board, Optometry Board, Board of Dental Examiners, Board of Nursing, Board of Veterinary Medical Examiners, and Department of Licensing and Regulation) will increase fees or use available revenue to fund the cost of implementing the provisions of the bill.

DPS, the Department of Licensing and Regulation, the Texas Medical Board, the Board of Dental Examiners, and the Board of Veterinary Medical Examiners indicate the provisions of the bill could be implemented using existing resources.

Local Government Impact

A Class C misdemeanor is punishable by a fine of not more than \$500. In addition to the fine, punishment can include up to 180 days of deferred disposition. A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 515 Board of Pharmacy, 578 Board of Veterinary Medical Examiners, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners

LBB Staff: WP, ESt, AKi, SGr, DFR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 15, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3284** by Sheffield (Relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3284, As Engrossed: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2019
2020	(\$311,188)	\$311,188	4.0
2021	(\$294,408)	\$294,408	4.0
2022	(\$294,408)	\$294,408	4.0
2023	(\$294,408)	\$294,408	4.0
2024	(\$294,408)	\$294,408	4.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP).

The provisions of the bill would add reporting requirements for veterinarians who dispense controlled substances. The bill would require electronic prescriptions for controlled substances except in certain circumstances.

Under the provisions of the bill, TSBP may not permit the Department of Public Safety (DPS) and other law enforcement or prosecutorial staff access to information in the Prescription Monitoring Program (PMP) database unless TSBP is provided a warrant, subpoena, or other court order, at which point DPS, other law enforcement, or prosecutorial staff may submit a request for information to TSBP. The bill requires that TSBP notify relevant regulatory agencies of the disclosure of information in certain circumstances.

The bill would authorize access to information in the PMP for health care facilities certified by the federal Centers for Medicare and Medicaid Services.

The bill would add restrictions to a prescriber's authority to prescribe controlled substances for acute pain.

The bill would take effect September 1, 2019.

Methodology

Under the provisions of the bill, DPS, other law enforcement, or prosecutorial staff that obtain a warrant, subpoena, or other court order may submit a request for information in the PMP to TSBP. TSBP indicates that it would require two additional full-time-equivalent (FTE) positions and \$170,643 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process information requests for the PMP.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP). The agency indicates it would require two additional FTEs and \$114,701 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process waiver requests from prescribers.

According to the Board of Pharmacy's analysis, the agency would require an additional \$25,844 in other operating and equipment costs in fiscal year 2020 and \$9,064 in each subsequent fiscal year.

The estimated total to comply with the provisions of the bill would be \$311,188 in fiscal year 2020 and \$294,408 in each subsequent fiscal year. This analysis assumes that any increased cost to TSBP for the PMP, which is supported by seven agencies who are statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

DPS, the Department of Licensing and Regulation, the Texas Medical Board, the Board of Dental Examiners, and the Board of Veterinary Medical Examiners indicate the provisions of the bill could be implemented using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 515 Board of Pharmacy, 578 Board of Veterinary Medical Examiners, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners

LBB Staff: WP, AKi, SGr, ESt, DFR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 29, 2019

TO: Honorable Senfronia Thompson, Chair, House Committee on Public Health

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3284** by Sheffield (Relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3284, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$311,188)	\$311,188	4.0
2021	(\$294,408)	\$294,408	4.0
2022	(\$294,408)	\$294,408	4.0
2023	(\$294,408)	\$294,408	4.0
2024	(\$294,408)	\$294,408	4.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP).

The provisions of the bill would add reporting requirements for veterinarians who dispense controlled substances. The bill would require electronic prescriptions for controlled substances except in certain circumstances.

Under the provisions of the bill, TSBP may not permit the Department of Public Safety (DPS) and other law enforcement or prosecutorial staff access to information in the Prescription Monitoring Program (PMP) database unless TSBP is provided a warrant, subpoena, or other court order, at which point DPS, other law enforcement, or prosecutorial staff may submit a request for information to TSBP. The bill requires that TSBP notify relevant regulatory agencies of the disclosure of information in certain circumstances.

The bill would authorize access to information in the PMP for health care facilities certified by the federal Centers for Medicare and Medicaid Services.

The bill would add restrictions to a prescriber's authority to prescribe controlled substances for acute pain.

The bill would take effect September 1, 2019.

Methodology

Under the provisions of the bill, DPS, other law enforcement, or prosecutorial staff that obtain a warrant, subpoena, or other court order may submit a request for information in the PMP to TSBP. TSBP indicates that it would require two additional full-time-equivalent (FTE) positions and \$170,643 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process information requests for the PMP.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP). The agency indicates it would require two additional FTEs and \$114,701 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process waiver requests from prescribers.

According to the Board of Pharmacy's analysis, the agency would require an additional \$25,844 in other operating and equipment costs in fiscal year 2020 and \$9,064 in each subsequent fiscal year.

The estimated total to comply with the provisions of the bill would be \$311,188 in fiscal year 2020 and \$294,408 in each subsequent fiscal year. This analysis assumes that any increased cost to TSBP for the PMP, which is supported by seven agencies who are statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

DPS, the Department of Licensing and Regulation, the Texas Medical Board, the Board of Dental Examiners, and the Board of Veterinary Medical Examiners indicate the provisions of the bill could be implemented using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 515 Board of Pharmacy, 578 Board of Veterinary Medical Examiners, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners

LBB Staff: WP, AKi, SGr, ESt, DFR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 9, 2019

TO: Honorable Senfronia Thompson, Chair, House Committee on Public Health

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3284** by Sheffield (Relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3284, As Introduced: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$184,015)	\$184,015	2.0
2021	(\$175,175)	\$175,175	2.0
2022	(\$175,175)	\$175,175	2.0
2023	(\$175,175)	\$175,175	2.0
2024	(\$175,175)	\$175,175	2.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

The provisions of the bill would add reporting requirements for veterinarians who dispense controlled substances. The bill would require electronic prescriptions for controlled substances except in certain circumstances.

Under the provisions of the bill, the Texas State Board of Pharmacy (TSBP) may not permit the Department of Public Safety (DPS) and other law enforcement or prosecutorial staff access to information in the Prescription Monitoring Program (PMP) database unless TSBP is provided a warrant, subpoena, or other court order, at which point DPS, other law enforcement, or prosecutorial staff may submit a request for information to TSBP. The bill requires that TSBP notify relevant regulatory agencies of the disclosure of information in certain circumstances.

The bill would authorize access to information in the PMP for health care facilities certified by the federal Centers for Medicare and Medicaid Services.

The bill would add restrictions to a prescriber's authority to prescribe controlled substances for acute pain.

The bill would take effect September 1, 2019.

Methodology

Under the provisions of the bill, DPS, other law enforcement, or prosecutorial staff that obtain a warrant, subpoena, or other court order may submit a request for information in the PMP to TSBP.

To implement the provisions of the bill, TSBP indicates that it would require two additional full-time-equivalent (FTE) positions. The cost for two FTEs would be \$170,643 in fiscal year 2020 and each fiscal year thereafter, and an additional \$13,372 in other operating and equipment costs would be needed in fiscal year 2020 and \$4,532 in each subsequent fiscal year.

The estimated total to comply with the provisions of the bill would be \$184,015 in fiscal year 2020 and \$175,175 in each subsequent fiscal year.

This analysis assumes that any increased cost to TSBP for the PMP, which is supported by seven agencies who are statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

DPS, the Department of Licensing and Regulation, the Texas Medical Board, the Board of Dental Examiners, and the Board of Veterinary Medical Examiners indicate the provisions of the bill could be implemented using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety, 452 Department of Licensing and Regulation, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 515 Board of Pharmacy, 578 Board of Veterinary Medical Examiners

LBB Staff: WP, AKi, SGr, ESt, DFR