

BILL ANALYSIS

Senate Research Center

H.B. 3496
By: Sheffield (Creighton)
Business & Commerce
5/15/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised about the impact of entities dubbed "pill mills" on the ongoing opioid crisis, as well the role played by the potential misuse of the Medicare and Medicaid reimbursement systems by some pharmacies and pharmacists. It has been suggested that closer scrutiny of pharmacies that do not operate as a publicly traded company is warranted. In order to decrease the number of bad actors in the opioid crisis and improve outcomes for Texans, H.B. 3496 seeks to impose certain financial disclosure and surety bond requirements on these pharmacies.

H.B. 3496 amends current law relating to the licensing and regulation of certain pharmacies and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTION 2 (Section 560.0521, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 560.052(b), Occupations Code, as follows:

(b) Redesignates existing Paragraph (b)(2)(C) as Paragraph (b)(2)(D) and Paragraph (b)(2)(D) as Paragraph (b)(2)(E). Requires an applicant, to qualify for a pharmacy license, to submit to the Texas State Board of Pharmacy (TSBP):

(1) makes a nonsubstantive change to this subdivision;

(2) a completed application that:

(A) makes no change to this paragraph;

(B) includes notice that a surety bond may be required under Section 565.0551;

(C) is given under oath;

(D) includes proof that:

(i)-(ii) makes no changes to these subparagraphs; and

(E) makes a nonsubstantive change to this paragraph; and

(3) a disclosure statement required under Section 560.0521, unless:

(A) the pharmacy for which the application is made is operated by a publicly traded company;

(B) the pharmacy for which the application is made is wholly owned by a retail grocery store chain; or

(C) the applicant is applying for a Class B or Class C pharmacy license.

SECTION 2. Amends Subchapter B, Chapter 560, Occupations Code, by adding Section 560.0521, as follows:

Sec. 560.0521. SWORN DISCLOSURE STATEMENT. (a) Requires a disclosure statement included with an application under Section 560.052(b)(3) to include:

(1) the name of the pharmacy;

(2) the name of each person who has a direct financial investment in the pharmacy;

(3) the name of each person who:

(A) is not an individual;

(B) has any financial investment in the pharmacy; and

(C) is not otherwise disclosed under Subdivision (2);

(4) the total amount or percentage of the financial investment made by each person described by Subdivision (2); and

(5) the name of each of the following persons, if applicable, connected to the pharmacy if the person is not otherwise disclosed under Subdivision (2) or (3):

(A) a partner;

(B) an officer;

(C) a director;

(D) a managing employee;

(E) an owner or person who controls the owner; and

(F) a person who acts as a controlling person of the pharmacy through the exercise of direct or indirect influence or control over the management of the pharmacy, the expenditure of money by the pharmacy, or a policy of the pharmacy, including:

(i) a management company, landlord, marketing company, or similar person who operates or contracts for the operation of a pharmacy and, if the pharmacy is a publicly traded corporation or is controlled by a publicly traded corporation, an officer or director of the corporation but not a shareholder or lender of the corporation;

(ii) an individual who has a personal, familial, or other relationship with an owner, manager, landlord, tenant, or provider of a pharmacy that allows the individual to exercise actual control of the pharmacy; and

(iii) any other person TSBP by rule requires to be included based on the person's exercise of direct or indirect influence or control.

(b) Requires an applicant to notify TSBP not later than the 60th day after the date any administrative sanction or criminal penalty is imposed against a person described by Subsection (a).

(c) Authorizes TSBP to adopt rules regarding the disclosure of the source of a financial investment under Subsection (a).

(d) Requires a disclosure statement under this section to be given under oath as prescribed by board rule.

(e) Provides that information contained in a disclosure statement under this section is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

SECTION 3. Amends Section 565.002(a), Occupations Code, as follows:

(a) Creates Subdivisions (10)(A) and (B) from existing text and makes nonsubstantive changes. Authorizes TSBP to discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license subject to Section 565.003 (Additional Grounds For Discipline Regarding Applicant For or Holder of Nonresident Pharmacy License), if TSBP finds that the applicant or license holder has:

(1)–(9) makes no changes to these subdivisions;

(10) engaged in fraud, deceit, or misrepresentation as defined by board rule in:

(A)–(B) makes no further changes to these paragraphs; or

(C) dispensing drugs for nontherapeutic purposes;

(11)–(14) makes no changes to these subdivisions.

SECTION 4. Amends Subchapter B, Chapter 565, Occupations Code, by adding Sections 565.0551 and 565.0591, as follows:

Sec. 565.0551. SURETY BOND. (a) Authorizes the executive director of TSBP to require a license holder to submit a surety bond to the board in an amount as prescribed by TSBP rule, not to exceed \$25,000.

(b) Authorizes TSBP to use a pharmacy's surety bond to secure the payment of a fine, fee, or penalty imposed on the pharmacy or costs incurred by TSBP in conducting an investigation of the pharmacy only under Section 565.002(a)(7) (relating to authorizing TSBP to discipline an applicant for or the holder of a certain pharmacy license if TSBP finds that the applicant or license holder has failed to engage in or ceased to engage in the business described in the application for a license) or (10) if the pharmacy fails to pay the fine, fee, penalty, or cost as prescribed by board rule.

Sec. 565.0591. REVOCATION OF PHARMACY LICENSE FOR FAILURE TO OPERATE. (a) Requires TSBP, on discovery by TSBP that a pharmacy licensed under Chapter 560 (Licensing of Pharmacies) has ceased to operate for a period of 30 days or longer, to notify the pharmacy that the license will be revoked.

(b) Requires the notice to:

(1) include a statement that the pharmacy license is being revoked for violation of Section 565.002(a)(7); and

(2) inform the license holder of the license holder's right to a hearing to contest the revocation.

(c) Authorizes the license holder, not later than the 20th day after the date the license holder receives the notice of revocation under this section, to submit a written request for a hearing to contest the revocation.

(d) Requires TSBP, if the license holder does not request a hearing within the period prescribed by Subsection (c), to:

(1) enter an order revoking the license; and

(2) notify the license holder of the order.

(e) Requires a panel of three board members appointed by the president of the board (panel), if the license holder requests a hearing within the period prescribed by Subsection (c), to conduct the hearing. Requires the panel at the hearing to determine whether the license holder has violated Section 565.002(a)(7).

(f) Requires TSBP, if the panel determines that the license holder committed the violation, to promptly:

(1) enter an order revoking the license; and

(2) notify the license holder of the order.

(g) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to a determination under Subsection (e).

SECTION 5. Amends Section 566.001, Occupations Code, as follows:

Sec. 566.001. IMPOSITION OF PENALTY. Authorizes TSBP to impose an administrative penalty on:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) an applicant who fails to submit a sworn disclosure statement with an application if required by Section 560.052(b)(3).

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: January 1, 2020.