Senate Bill No. 544–Committee on Human Resources and Facilities

CHAPTER.....

AN ACT relating to the practice of pharmacy; requiring the state board of pharmacy to adopt requirements for the form, content and transmittal of prescriptions for controlled substances; clarifying the authority of the board to regulate pharmacies and wholesalers who offer services in this state via the Internet; revising the disciplinary action that may be taken by the board against the holder of a certificate, license or permit issued by the board; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 453.385 is hereby amended to read as follows:

453.385 1. Each prescription for a controlled substance ~~[listed in schedule II must be written on a separate prescription blank or as an order on the chart of a patient. The chart of a patient may be used to order multiple prescriptions for that patient.~~

~~2. A prescription for a controlled substance must contain:~~

~~(a) The name of the practitioner, his signature if the prescription was not transmitted orally and his address if not immediately available to the pharmacist;~~

~~(b) The classification of his license;~~

~~(c) His registration number from the Drug Enforcement Administration if it is not immediately available to the pharmacist;~~

~~(d) The name of the patient, and his address if not immediately available to the pharmacist;~~

~~(e) The name, strength and quantity of the drug or drugs prescribed;~~

~~(f) Directions for use; and~~

~~(g) The date of issue.~~

~~3. A prescription for a controlled substance listed in:~~

~~(a) Schedule III, IV or V must be signed by the practitioner pursuant to the regulations of the board and may be preprinted or written by an agent of the practitioner, or may be transmitted electronically or by a facsimile machine from the practitioner to a pharmacy pursuant to the regulations of the board.~~

~~(b) Schedule II must be written and signed entirely by hand by the practitioner who issued it, except that:~~

~~(1) The addresses of the patient and the practitioner may be added by the pharmacist.~~

~~(2) The name of the practitioner, his address and the classification of his license must be preprinted on the prescription form.~~

~~(3) The registration number of the practitioner assigned by the Drug Enforcement Administration may be preprinted on the prescription form.~~

~~(4) The prescription may be transmitted by the practitioner or an agent of the practitioner to a pharmacy by a facsimile machine if the original written prescription is presented to the pharmacist for review before the dispensing of the controlled substance, except that:~~

~~(I) If the controlled substance is to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular,~~

~~subcutaneous or intraspinal infusion, the transmission from the facsimile machine shall be deemed to be the original written prescription.~~

~~(II) If the controlled substance is prescribed for a resident of a facility for long-term care, the transmission from the facsimile machine shall be deemed to be the original written prescription and must be maintained in accordance with 21 C.F.R. § 1304.04(h).~~

~~(5) If authorized by federal law, a prescription transmitted electronically is not required to be written and signed entirely by hand by the practitioner who issued the prescription.~~

~~4. Directions for use must be specific in that they must indicate the portion of the body to which the medication is to be applied, or, if to be taken into the body by means other than orally, the orifice or canal of the body into which the medication is to be inserted or injected.]~~ ***must comply with the regulations of the board adopted pursuant to subsection 2.***

2. The board shall, by regulation, adopt requirements for:

(a) The form and content of a prescription for a controlled substance. The requirements may vary depending upon the schedule of the controlled substance.

(b) Transmitting a prescription for a controlled substance to a pharmacy. The requirements may vary depending upon the schedule of the controlled substance.

(c) The form and contents of an order for a controlled substance given for a patient in a medical facility and the requirements for keeping records of such orders.

3. Except as otherwise provided in this subsection, the regulations adopted pursuant to subsection 2 must ensure compliance with, but may be more stringent than required by, applicable federal law governing controlled substances and the rules, regulations and orders of any federal agency administering such law. The regulations adopted pursuant to paragraph (b) of subsection 2 for the electronic transmission or transmission by a facsimile machine of a prescription for a controlled substance must not be more stringent than federal law governing the electronic transmission or transmission by a facsimile machine of a prescription for a controlled substance or the rules, regulations or orders of any federal agency administering such law.

Sec. 2. Chapter 639 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. ***1. The board shall adopt such regulations as are necessary for the safe and efficient operation of pharmacies and wholesalers that offer their services to persons in this state via the Internet.***

2. For the purposes of this section, "pharmacy" includes any person who sells or offers to sell drugs to persons in this state via the Internet.

Sec. 4. ***For the purposes of NRS 639.2328 to 639.23286, inclusive, a "pharmacy located outside Nevada that provides mail order service to a resident of Nevada" includes any person who sells or offers to sell drugs to persons in this state via the Internet.***

Sec. 5. NRS 639.0125 is hereby amended to read as follows:

639.0125 "Practitioner" means:

1. A physician, dentist, veterinarian or podiatric physician who holds a valid license to practice his profession in this state;

2. A hospital, pharmacy or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state;

3. An advanced practitioner of nursing who has been authorized to prescribe poisons, dangerous drugs and devices; ~~[or]~~

4. A physician assistant who:

(a) Holds a license issued by the board of medical examiners; and

(b) Is authorized by the board to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of a physician as required by chapter 630 of NRS ***;*** ~~[.]~~

5. An osteopathic physician's assistant who:

(a) Holds a certificate issued by the state board of osteopathic medicine; and

(b) Is authorized by the board to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of an osteopathic physician as required by chapter 633 of NRS ~~[.]~~ ***; or***

6. An optometrist who is certified by the Nevada state board of optometry to prescribe and administer therapeutic pharmaceutical agents pursuant to NRS 636.288, when he prescribes or administers therapeutic pharmaceutical agents within the scope of his certification.

Sec. 6. NRS 639.230 is hereby amended to read as follows:

639.230 1. A pharmacy or a person operating as a pharmacy shall not use the word "drug" or "drugs," "prescription" or "pharmacy," or similar words or words of similar import, without first having secured a license from the board.

2. Each license must be issued to a specific person and for a specific location and is not transferable. The original license must ~~[show the name of the owner and the name of the managing pharmacist and]~~ be displayed on the licensed premises as provided in NRS 639.150. ~~[If the owner is a partnership or corporation, the names of the partners or officers must also be shown. Any change of partners or corporate officers must be immediately reported to the board.]~~ The original license and the fee required for reissuance of a license must be submitted to the board before the reissuance of the license.

3. ***If the owner of a pharmacy is a partnership or corporation, any change of partners or corporate officers must be reported to the board at such a time as is required by a regulation of the board.***

4. In addition to the requirements for renewal set forth in NRS 639.180, every person holding a license to operate a pharmacy must satisfy the board that the pharmacy is conducted according to law.

~~[4.]~~ ***5.*** Any violation of any of the provisions of this chapter by a managing pharmacist or by personnel of the pharmacy under the supervision of the managing pharmacist is cause for the suspension or revocation of the license of the pharmacy by the board.

Sec. 7. NRS 639.2328 is hereby amended to read as follows:

639.2328 1. Every pharmacy located outside Nevada that provides mail order service to or solicits or advertises for orders for drugs available

with a prescription from a resident of Nevada must be licensed by the board.

2. To be licensed or to renew a license, ***such*** a pharmacy ~~[located outside Nevada]~~ must:

(a) Be licensed ***as a pharmacy, or the equivalent,*** by the state ***or country*** in which its dispensing facilities are located.

(b) Comply with all applicable federal laws, regulations and standards.

(c) Submit an application in the form furnished by the board.

(d) Provide the following information to the board:

(1) The name and address of the owner;

(2) The location of the pharmacy;

(3) The name of the pharmacist who is the managing pharmacist; and

(4) Any other information the board deems necessary.

(e) Pay the fee required by regulation of the board.

(f) Submit evidence satisfactory to the board that the facility, records and operation of the pharmacy comply with the laws and regulations of the state ***or country*** in which the pharmacy is located.

(g) Submit certification satisfactory to the board that the pharmacy complies with all lawful requests and directions from the regulatory board or licensing authority of the state ***or country*** in which the pharmacy is located relating to the shipment, mailing or delivery of drugs.

3. In addition to the requirements of subsection 2, the board may require ~~[that the pharmacy located outside of Nevada]~~ ***such a pharmacy to*** be inspected by the board.

Sec. 8. NRS 639.23282 is hereby amended to read as follows:

639.23282 Before issuing a license to a pharmacy located outside ~~[of Nevada to provide]~~ ***Nevada that provides*** mail order service to ~~[residents]~~ ***a resident*** of Nevada, the board shall consider:

1. The qualifications and credentials of the applicant; and

2. Any suspension or revocation of a license or restriction on a license held by the applicant.

Sec. 9. NRS 639.23284 is hereby amended to read as follows:

639.23284 Every pharmacy ~~[that is]~~ located outside Nevada ~~[and]~~ ***that*** provides mail order service to a resident of Nevada:

1. Shall report to the board any change of information that appears on its license and pay the fee required by regulation of the board.

2. Shall make available for inspection all pertinent records, reports, documents or other material or information required by the board.

3. As required by the board, must be inspected by the board or:

(a) The regulatory board or licensing authority of the state ***or country*** in which the pharmacy is located; or

(b) The Drug Enforcement Administration.

4. As required by the board, shall provide the following information concerning each prescription for a drug that is shipped, mailed or delivered to a resident of Nevada:

(a) The name of the patient;

(b) The name of the prescriber;

(c) The number of the prescription;

(d) The date of the prescription;

(e) The name of the drug; and

(f) The strength and quantity of the dose.

Sec. 10. NRS 639.23286 is hereby amended to read as follows:

639.23286 A pharmacy ~~[that is]~~ located outside Nevada ~~[and]~~ ***that*** provides mail order service to a resident of Nevada:

1. May substitute a drug if the substitution is made in accordance with the provisions of the laws and regulations of the state ***or country*** in which the pharmacy is located.

2. Shall provide a toll-free telephone service for its customers to a pharmacist who has access to the records of the customers from Nevada. The telephone service must be available for not less than 5 days per week and for at least 40 hours per week. The telephone number must be disclosed on the label attached to each container of drugs dispensed to a resident of Nevada.

Sec. 11. NRS 639.2353 is hereby amended to read as follows:

639.2353 ***Except as otherwise provided in a regulation adopted pursuant to NRS 453.385:***

1. A prescription must be given:

(a) Directly from the practitioner to a pharmacist;

(b) Indirectly by means of an order signed by the practitioner;

(c) By an oral order transmitted by an agent of the practitioner; or

(d) Except as otherwise provided in subsection 5, by electronic transmission or transmission by a facsimile machine, including, without limitation, transmissions made from a facsimile machine to another facsimile machine, a computer equipped with a facsimile modem to a facsimile machine or a computer to another computer, pursuant to the regulations of the board.

2. A written prescription must contain:

(a) ~~[The]~~ ***Except as otherwise provided in this section, the*** name and signature of the practitioner, and his address if not immediately available to the pharmacist;

(b) The classification of his license;

(c) ~~[His registration number assigned by the Drug Enforcement Administration if the prescription is for a controlled substance;~~

~~(d)]~~ The name of the patient, and his address if not immediately available to the pharmacist;

~~[(e)]~~ ***(d)*** The name, strength and quantity of the drug or drugs prescribed;

~~[(f)]~~ ***(e)*** Directions for use; and

~~[(g)]~~ ***(f)*** The date of issue.

3. The directions for use must be specific in that they indicate the portion of the body to which the medication is to be applied or, if to be taken into the body by means other than orally, the orifice or canal of the body into which the medication is to be inserted or injected.

4. Each written prescription must be written in such a manner that any registered pharmacist would be able to dispense it. A prescription must be written in Latin or English and may include any character, figure, cipher or abbreviation which is generally used by pharmacists and practitioners in the writing of prescriptions.

5. A prescription for a controlled substance must not be given by electronic transmission or transmission by a facsimile machine unless authorized by federal law.

6. A prescription that is given by electronic transmission is not required to contain the signature of the practitioner if:

(a) It contains a facsimile signature, security code or other mark that uniquely identifies the practitioner; or

(b) A voice recognition system, biometric identification technique or other security system approved by the board is used to identify the practitioner.

Sec. 12. NRS 639.255 is hereby amended to read as follows:

639.255 1. The holder of any certificate, license or permit issued by the board, whose default has been entered or who has been heard by the board and found guilty of the violations alleged in the accusation, may be disciplined by the board by one or more of the following methods:

(a) Suspending judgment;

(b) Placing the certificate, license or permit holder on probation;

(c) Suspending the right of a certificate holder to practice, or the right to use any license or permit, for a period ~~[not to exceed 1 year;]~~ ***to be determined by the board;***

(d) Revoking the certificate, license or permit;

(e) Public reprimand;

(f) Imposition of a fine ~~[not to exceed $1,000]~~ for each count of the accusation ~~[;]~~ ***, in accordance with the schedule of fines established pursuant to subsection 3;*** or

(g) Requiring the certificate, license or permit holder to pay all costs ***and attorney's fees*** incurred by the board relating to the discipline of the person.

2. Such action by the board is final, except that the propriety of such action is subject to review upon questions of law by a court of competent jurisdiction.

3. The board shall by regulation establish a schedule of fines that may be imposed pursuant to paragraph (f) of subsection 1. Each fine must be commensurate with the severity of the applicable violation, but must not exceed $10,000 for each violation.

Sec. 13. Section 2 of Assembly Bill No. 415 of this session is hereby amended to read as follows:

Sec. 2. NRS 639.0745 is hereby amended to read as follows:

639.0745 1. The board may adopt regulations concerning ~~[:~~

~~(a) The]~~ ***the*** transfer of information between pharmacies relating to prescriptions.

~~[(b)]~~ ***2.*** The ***board shall adopt regulations concerning the*** electronic transmission and the transmission by a facsimile machine of a prescription from a practitioner to a pharmacist for the dispensing of a drug.

~~[2.]~~ ***The regulations must establish procedures to:***

(a) Ensure the security and confidentiality of the data that is transmitted between:

(1) The practitioner and the pharmacy;

(2) The practitioner and an insurer of the person for whom the prescription is issued; and

(3) The pharmacy and an insurer of the person for whom the prescription is issued.

(b) Protect the identity of the practitioner to prevent misuse of the identity of the practitioner or other fraudulent conduct related to the electronic transmission of a prescription.

(c) Verify the authenticity of a signature that is produced:

(1) By the computer or other electronic device; or

(2) Manually by the practitioner.

3. The board shall adopt regulations governing the exchange of information between pharmacists and practitioners relating to prescriptions filled by the pharmacists for persons who are suspected of:

(a) Misusing prescriptions to obtain excessive amounts of drugs.

(b) Failing to use a drug in conformity with the directions for its use or taking a drug in combination with other drugs in a manner that could result in injury to that person.

The pharmacists and practitioners shall maintain the confidentiality of the information exchanged pursuant to this subsection.

Sec. 14. Section 2 of Senate Bill No. 52 of this session is hereby amended to read as follows:

Sec. 2. NRS 639.0125 is hereby amended to read as follows:

639.0125 "Practitioner" means:

1. A physician, dentist, veterinarian or podiatric physician who holds a ~~[valid]~~ license to practice his profession in this state;

2. A hospital, pharmacy or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state;

3. An advanced practitioner of nursing who has been authorized to prescribe ***controlled substances,*** poisons, dangerous drugs and devices;

4. A physician assistant who:

(a) Holds a license issued by the board of medical examiners; and

(b) Is authorized by the board to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of a physician as required by chapter 630 of NRS;

5. An osteopathic physician's assistant who:

(a) Holds a certificate issued by the state board of osteopathic medicine; and

(b) Is authorized by the board to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of an osteopathic physician as required by chapter 633 of NRS; or

6. An optometrist who is certified by the Nevada state board of optometry to prescribe and administer therapeutic pharmaceutical agents pursuant to NRS 636.288, when he prescribes or administers therapeutic pharmaceutical agents within the scope of his certification.

Sec. 15. Section 81 of Senate Bill No. 91 of this session is hereby repealed.

Sec. 16. 1. This section and section 15 of this act become effective upon passage and approval.

2. Sections 1 and 12 of this act become effective upon passage and approval for the purpose of adopting regulations and at 12:01 a.m. on October 1, 2001, for all other purposes.

3. Sections 2, 3, 4 and 6 to 10, inclusive, of this act become effective on July 1, 2001.

4. Section 5 of this act becomes effective at 12:01 a.m. on July 1, 2001.

5. Section 14 of this act becomes effective at 12:02 a.m. on July 1, 2001.

6. Sections 11 and 13 of this act become effective at 12:01 a.m. on October 1, 2001.