

SENATE BILL NO. 408—COMMITTEE ON FINANCE

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

APRIL 6, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to the State Board of Pharmacy. (BDR 54-1098)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to pharmacy; revising certain requirements relating to the officers and employees of the State Board of Pharmacy; requiring certain meetings of the Board to be open and public; authorizing the Board to enter into certain agreements; authorizing the Board to require certain persons to undergo a criminal background check; requiring an applicant for registration as a pharmacist or pharmaceutical technician to undergo a criminal background check; increasing certain fees; revising provisions relating to the imposition of disciplinary action against a person who is regulated by the Board; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law prohibits a professional licensing board from employing an
2 executive director or executive secretary who is a direct relative of a licensee of the
3 professional licensing board. (NRS 622.220) Existing law also places certain
4 limitations on the salary of persons employed by the State or any agency of the
5 State and excludes from such limitations on salary dentists and physicians
6 employed full-time by the State and officers and employees of the Nevada System
7 of Higher Education. (NRS 281.123) **Sections 1 and 12** of this bill exempt the
8 Executive Secretary of the State Board of Pharmacy from these provisions, thereby



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authorizing: (1) an immediate relative of a person who holds a certificate, license or permit issued by the Board to serve as the Executive Secretary; and (2) the Executive Secretary of the Board to earn a salary higher than the maximum salary currently authorized by law. **Section 3** of this bill additionally exempts employees of the Board from such salary limitations.

Section 3 of this bill authorizes the Board to: (1) enter into written agreements for improving the enforcement of and compliance with the provisions of law governing the practice of pharmacy, controlled substances and dangerous drugs; (2) contract with a private entity for the administration of the database of the computerized program that tracks each prescription for certain controlled substances; and (3) require the holder of a certificate, license or permit issued by the Board or a person with significant influence over the holder of a certificate, license or permit to undergo a criminal background check. **Sections 5 and 6** of this bill require an applicant for registration as a pharmacist or a pharmaceutical technician to undergo a criminal background check. **Section 11** of this bill requires the Board to implement and maintain reasonable security measures to protect information obtained for the purpose of conducting such a background check.

Existing law requires, in general, the meetings of a public body to be open and public. (NRS 241.016) However, existing law provides that meetings of the Board which are held to deliberate on a decision in an administrative action are closed to the public. (NRS 639.050) **Section 2** of this bill removes this provision, thereby requiring, in general, a meeting of the Board for that purpose to be open and public. The Board would still be authorized to close a meeting for certain purposes, including, consideration of the character, alleged misconduct, professional competence or physical or mental health of a person, unless the person waives such closure. (NRS 241.030)

Section 13 of this bill repeals a requirement that the Board furnish to applicants and registrants free copies of law and regulations governing the practice of pharmacy, controlled substances, dangerous drugs and foods, drugs and cosmetics. (NRS 639.095)

Section 4 of this bill revises the credentials that authorize a person to manufacture, engage in wholesale distribution, compound, sell or dispense any drug, poison, medicine or chemical. **Section 7** of this bill increases the fees for the investigation or issuance or renewal of a license as a manufacturer or wholesaler.

Existing law authorizes the Board to take disciplinary action against a holder of any certificate, license or permit issued by the Board for certain violations. (NRS 639.255) **Section 8** of this bill increases the amount of time for a person to request a hearing before the Board to answer to violations alleged by the Board and submit evidence. **Section 9** of this bill adds to the list of disciplinary actions that the Board may impose against the holder of a certificate, license or permit the imposition of such restrictions on the certificate, license or permit holder as the Board deems necessary.

Existing law makes it a misdemeanor to: (1) secure or attempt to secure registration as a pharmacist, pharmacy technician or a practitioner through false representation; or (2) fraudulently represent oneself to be a registered pharmacist or practitioner. Existing law provides for the automatic cancellation of any certificate issued by the Board based on false or fraudulent information. (NRS 639.281) **Section 10** of this bill expands these provisions to apply to any certificate, license or permit issued by the Board.



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

1 **Section 1.** NRS 639.040 is hereby amended to read as follows:
2 639.040 1. The Board shall elect a President and a Treasurer
3 from among its members.

4 2. The Board shall employ an Executive Secretary, who is not
5 a member of the Board. The Executive Secretary must have
6 experience as a licensed pharmacist in this State or in another state
7 with comparable licensing requirements. The Executive Secretary
8 shall keep a complete record of all proceedings of the Board and of
9 all certificates issued, and shall perform such other duties as the
10 Board may require, for which services the Executive Secretary is
11 entitled to receive a salary to be determined by the Board.

12 3. *The Executive Secretary is not subject to the requirements*
13 *of paragraph (b) of subsection 4 of NRS 622.220.*

14 4. *The salary of the Executive Secretary is exempt from the*
15 *limitations set forth in NRS 281.123.*

16 **Sec. 2.** NRS 639.050 is hereby amended to read as follows:

17 639.050 1. The Board shall hold a meeting at least once in
18 every 6 months.

19 2. Four members of the Board constitute a quorum.

20 3. Meetings of the Board which are held ~~to deliberate on the~~
21 ~~decision in an administrative action or~~ to prepare, grade or
22 administer examinations are closed to the public.

23 4. Each member of the Board is entitled to receive:

24 (a) A salary of not more than \$150 per day, as fixed by the
25 Board, while engaged in the business of the Board; and

26 (b) A per diem allowance and travel expenses at a rate fixed by
27 the Board, while engaged in the business of the Board. The rate
28 must not exceed the rate provided for state officers and employees
29 generally.

30 5. While engaged in the business of the Board, each employee
31 of the Board is entitled to receive a per diem allowance and travel
32 expenses at a rate fixed by the Board. The rate must not exceed the
33 rate provided for state officers and employees generally.

34 **Sec. 3.** NRS 639.070 is hereby amended to read as follows:

35 639.070 1. The Board may:

36 (a) Adopt such regulations, not inconsistent with the laws of this
37 State, as are necessary for the protection of the public, appertaining
38 to the practice of pharmacy and the lawful performance of its duties.

39 (b) Adopt regulations requiring that prices charged by retail
40 pharmacies for drugs and medicines which are obtained by
41 prescription be posted in the pharmacies and be given on the
42 telephone to persons requesting such information.



(c) Adopt regulations, not inconsistent with the laws of this State, authorizing the Executive Secretary of the Board to issue certificates, licenses and permits required by this chapter and chapters 453 and 454 of NRS.

(d) Adopt regulations governing the dispensing of poisons, drugs, chemicals and medicines.

(e) Regulate the practice of pharmacy.

(f) Regulate the sale and dispensing of poisons, drugs, chemicals and medicines.

(g) Regulate the means of recordkeeping and storage, handling, sanitation and security of drugs, poisons, medicines, chemicals and devices, including, but not limited to, requirements relating to:

(1) Pharmacies, institutional pharmacies and pharmacies in correctional institutions;

(2) Drugs stored in hospitals; and

(3) Drugs stored for the purpose of wholesale distribution.

(h) Examine and register, upon application, pharmacists and other persons who dispense or distribute medications whom it deems qualified.

(i) Charge and collect necessary and reasonable fees for the expedited processing of a request or for any other incidental service the Board provides, other than those specifically set forth in this chapter.

(j) Maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter.

(k) Employ attorneys, inspectors, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties. *The salaries of these employees are exempt from the limitations set forth in NRS 281.123.*

(l) Enforce the provisions of NRS 453.011 to 453.552, inclusive, and enforce the provisions of this chapter and chapter 454 of NRS.

(m) Adopt regulations concerning the information required to be submitted in connection with an application for any license, certificate or permit required by this chapter or chapter 453 or 454 of NRS.

(n) Adopt regulations concerning the education, experience and background of a person who is employed by the holder of a license or permit issued pursuant to this chapter and who has access to drugs and devices.

(o) Adopt regulations concerning the use of computerized mechanical equipment for the filling of prescriptions.

(p) Participate in and expend money for programs that enhance the practice of pharmacy.

(q) Enter into written agreements with local, state and federal agencies for the purpose of improving the enforcement of and



compliance with the provisions of this chapter and chapters 453 and 454 of NRS.

(r) Contract with a private entity to administer the database of the program established pursuant to NRS 453.162.

2. The Board shall, to the extent feasible, communicate or cooperate with or provide any documents or other information to any other licensing board or any other agency that is investigating a person, including, without limitation, a law enforcement agency.

3. This section does not authorize the Board to prohibit open-market competition in the advertising and sale of prescription drugs and pharmaceutical services.

Sec. 4. NRS 639.100 is hereby amended to read as follows:

639.100 1. Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, engage in wholesale distribution, compound, sell or dispense, or permit to be manufactured, distributed at wholesale, compounded, sold or dispensed, any drug, poison, medicine or chemical, or to dispense or compound, or permit to be dispensed or compounded, any prescription of a practitioner, unless the person:

(a) ~~Is a prescribing practitioner, a person licensed to engage in wholesale distribution, a person licensed pursuant to chapter 653 of NRS under the supervision of the prescribing practitioner, a registered pharmacist, or a registered nurse certified in oncology under the supervision of the prescribing practitioner;~~ *Holds the appropriate certificate, license or permit required by this chapter or chapter 453 or 454 of NRS, as applicable, that authorizes the person to take such action;* and

(b) Complies with the regulations adopted by the Board.

2. A person who violates any provision of subsection 1:

(a) If no substantial bodily harm results, is guilty of a category D felony; or

(b) If substantial bodily harm results, is guilty of a category C felony,

➤ and shall be punished as provided in NRS 193.130.

3. Sales representatives, manufacturers or wholesalers selling only in wholesale lots and not to the general public and compounders or sellers of medical gases need not be registered pharmacists. A person shall not act as a manufacturer or wholesaler unless the person has obtained a license from the Board.

4. Any nonprofit cooperative organization or any manufacturer or wholesaler who furnishes, sells, offers to sell or delivers a controlled substance which is intended, designed and labeled "For Veterinary Use Only" is subject to the provisions of this chapter, and shall not furnish, sell or offer to sell such a substance until the



organization, manufacturer or wholesaler has obtained a license from the Board.

5. Each application for such a license must be made on a form furnished by the Board and an application must not be considered by the Board until all the information required thereon has been completed. Upon approval of the application by the Board and the payment of the required fee, the Board shall issue a license to the applicant. Each license must be issued to a specific person for a specific location.

6. The Board shall not condition, limit, restrict or otherwise deny to a prescribing practitioner the issuance of a certificate, license, registration, permit or authorization to prescribe controlled substances or dangerous drugs because the practitioner is located outside this State.

Sec. 5. NRS 639.127 is hereby amended to read as follows:

639.127 1. An applicant for registration as a pharmacist in this State must submit an application to the Executive Secretary of the Board on a form furnished by the Board and must pay the fee fixed by the Board. The fee must be paid at the time the application is submitted and is compensation to the Board for the investigation and the examination of the applicant. Under no circumstances may the fee be refunded.

2. *In addition to the requirements of subsection 1, each applicant for registration as a pharmacist shall submit with the application a complete set of fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The Board may issue a provisional registration to an applicant pending receipt of the report from the Federal Bureau of Investigation if the Board determines that the applicant is otherwise qualified for registration.*

3. Proof of the qualifications of any applicant must be made to the satisfaction of the Board and must be substantiated by affidavits, records or such other evidence as the Board may require.

~~[3.]~~ 4. An application is only valid for 1 year after the date it is received by the Board unless the Board extends its period of validity.

~~[4.]~~ 5. A certificate of registration as a pharmacist must be issued to each person who the Board determines is qualified pursuant to the provisions of NRS 639.120, 639.134, 639.136 or 639.1365. The certificate entitles the person to whom it is issued to practice pharmacy in this State.



Sec. 6. NRS 639.1371 is hereby amended to read as follows:

639.1371 1. The ratio of pharmaceutical technicians to pharmacists must not allow more than one pharmaceutical technician to each pharmacist unless the Board by regulation expands the ratio.

2. The Board shall adopt regulations concerning pharmaceutical technicians, including requirements for:

(a) The qualifications, registration and supervision of pharmaceutical technicians; and

(b) The services which may be performed by pharmaceutical technicians,

↳ to ensure the protection and safety of the public in the provision of pharmaceutical care.

3. The regulations adopted by the Board pursuant to this section which prescribe:

(a) The qualifications for pharmaceutical technicians must include:

(1) The successful completion of a program for pharmaceutical technicians which is approved by the Board;

(2) The completion of at least 1,500 hours of experience in carrying out the duties of a pharmaceutical technician; or

(3) Any other experience or education deemed equivalent by the Board.

(b) An expanded ratio of pharmaceutical technicians to pharmacists must be appropriate and necessary for a particular category of pharmacy at any time.

(c) The services which may be performed by pharmaceutical technicians must include, without limitation, the:

(1) Removal of drugs from stock;

(2) Counting, pouring or mixing of drugs;

(3) Placing of drugs in containers;

(4) Affixing of labels to containers; and

(5) Packaging and repackaging of drugs.

4. *In addition to the requirements for registration as a pharmaceutical technician adopted by the Board pursuant to subsection 2, each applicant for such registration shall submit with his or her application a complete set of fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The Board may issue a provisional registration to an applicant pending receipt of the report from the Federal Bureau of Investigation if the Board determines that the applicant is otherwise qualified for registration.*



5. For the purposes of this chapter, and chapters 453 and 454 of NRS, pharmaceutical technicians may perform acts required to be performed by pharmacists, but only to the extent provided in regulations.

Sec. 7. NRS 639.170 is hereby amended to read as follows:

639.170 1. The Board shall charge and collect not more than the following fees for the following services:

For the examination of an applicant for registration as a pharmacist	Actual cost of the examination
For the investigation or registration of an applicant as a registered pharmacist, including a certificate by endorsement.....	\$200
For the investigation, examination or registration of an applicant as a registered pharmacist by reciprocity	300
For the investigation or issuance of an original license to conduct a retail pharmacy, including a license by endorsement	600
For the biennial renewal of a license to conduct a retail pharmacy	500
For the investigation or issuance of an original license to conduct an institutional pharmacy, including a license by endorsement	600
For the biennial renewal of a license to conduct an institutional pharmacy	500
For the investigation of or issuance of an original license to a facility pursuant to NRS 639.2177	600
For the biennial renewal of a license issued to a facility pursuant to NRS 639.2177	500
For the issuance of an original or duplicate certificate of registration as a registered pharmacist, including a certificate by endorsement	50
For the biennial renewal of registration as a registered pharmacist	200
For the reinstatement of a lapsed registration (in addition to the fees for renewal for the period of lapse).....	100
For the initial registration of a pharmaceutical technician or pharmaceutical technician in training	50



For the biennial renewal of registration of a pharmaceutical technician or pharmaceutical technician in training	\$50
For the investigation or registration of an intern pharmacist	50
For the biennial renewal of registration as an intern pharmacist	40
For investigation or issuance of an original license to a manufacturer or wholesaler	[500] 1,000
For the biennial renewal of a license for a manufacturer or wholesaler	[500] 1,000
For the reissuance of a license issued to a pharmacy, when no change of ownership is involved, but the license must be reissued because of a change in the information required thereon	100
For authorization of a practitioner to dispense controlled substances or dangerous drugs, or both	300
For the biennial renewal of authorization of a practitioner to dispense controlled substances or dangerous drugs, or both	300

2. If an applicant submits an application for a certificate or license by endorsement pursuant to NRS 639.136 or 639.2315, as applicable, the Board shall charge and collect not more than the fee specified in subsection 1, respectively, for:

(a) The initial registration and issuance of an original certificate of registration as a registered pharmacist.

(b) The issuance of an original license to conduct a retail or an institutional pharmacy.

3. If an applicant submits an application for a certificate or license by endorsement pursuant to NRS 639.1365 or 639.2316, as applicable, the Board shall collect not more than one-half of the fee set forth in subsection 1, respectively, for:

(a) The initial registration and issuance of an original certificate of registration as a registered pharmacist.

(b) The issuance of an original license to conduct a retail or an institutional pharmacy.

4. If a person requests a special service from the Board or requests the Board to convene a special meeting, the person must pay the actual costs to the Board as a condition precedent to the rendition of the special service or the convening of the special meeting.

5. All fees are payable in advance and are not refundable.



6. The Board may, by regulation, set the penalty for failure to pay the fee for renewal for any license, permit, authorization or certificate within the statutory period, at an amount not to exceed 100 percent of the fee for renewal for each year of delinquency in addition to the fees for renewal for each year of delinquency.

Sec. 8. NRS 639.243 is hereby amended to read as follows:

639.243 The statement, entitled Statement to the Respondent, shall be worded so as to inform the respondent:

1. That an accusation has been filed.

2. Of the right to a hearing before the Board to answer to the alleged violations and to submit evidence in his or her own behalf if requested by the filing of two copies of the Notice of Defense within ~~15~~ 20 days after receipt of the accusation.

Sec. 9. 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 to be determined by the Board;

(d) Revoking the certificate, license or permit;

(e) Public reprimand; ~~or~~

(f) Imposition of a fine for each count of the accusation, in accordance with the schedule of fines established pursuant to subsection 3 ~~1~~; or

(g) Placing any other restrictions on the certificate, license or permit holder as the Board deems necessary for the protection of the public.

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.

4. The Board shall not issue a private reprimand.

5. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Sec. 10. NRS 639.281 is hereby amended to read as follows:

639.281 1. Any person who secures or attempts to secure ~~[registration]~~ *any certificate, license or permit issued by the Board*



1 for himself or herself or any other person by making, or causing to
2 be made, any false representation or who fraudulently represents
3 himself or herself to be ~~[a registered pharmacist or practitioner]~~ *the*
4 *holder of any certificate, license or permit issued by the Board* is
5 guilty of a misdemeanor.

6 2. Any certificate , *license or permit* issued by the Board on
7 information later found to be false or fraudulent must be
8 automatically cancelled by the Board.

9 **Sec. 11.** NRS 639.510 is hereby amended to read as follows:

10 639.510 The Board shall implement and maintain reasonable
11 security measures to protect the information obtained by the Board
12 pursuant to *paragraph (s) of subsection 1 of NRS 639.070 or NRS*
13 *639.127, 639.1371 or 639.500* ~~[and all other information related to~~
14 ~~an application for a license to engage in wholesale distribution]~~ to
15 protect the information from unauthorized access, acquisition,
16 destruction, use, modification or disclosure. The provisions of this
17 section do not prohibit the Board from disclosing and providing
18 such information to other state and federal agencies involved in the
19 regulation of prescription drugs to the extent deemed necessary by
20 the Board.

21 **Sec. 12.** NRS 622.220 is hereby amended to read as follows:

22 622.220 If a regulatory body employs a person as an executive
23 director or executive secretary or in a position with powers and
24 duties similar to those of an executive director or executive
25 secretary, the person:

26 1. Must possess a level of education or experience, or a
27 combination of both, to qualify the person to perform the
28 administrative and managerial tasks required of the position;

29 2. Must be a resident of this State;

30 3. Must not be employed by another regulatory body as an
31 executive director or executive secretary or in a position with
32 powers and duties similar to those of an executive director or
33 executive secretary; and

34 4. Must not be the immediate relative of:

35 (a) A member or employee of the regulatory body; or

36 (b) ~~[A]~~ *Except as otherwise provided in NRS 639.040, a*
37 *licensee of the regulatory body.*

38 **Sec. 13.** NRS 639.095 is hereby repealed.

39 **Sec. 14.** Notwithstanding the provisions of NRS 218D.430 and
40 218D.435, a committee, other than the Assembly Standing
41 Committee on Ways and Means and the Senate Standing Committee
42 on Finance, may vote on this act before the expiration of the period
43 prescribed for the return of a fiscal note in NRS 218D.475. This
44 section applies retroactively from and after March 22, 2021.



- 1 **Sec. 15.** 1. This section and section 14 of this act become
2 effective upon passage and approval.
3 2. Sections 1 to 13, inclusive, of this act become effective:
4 (a) Upon passage and approval for the purpose of adopting any
5 regulations and performing any other preparatory administrative
6 tasks necessary to carry out the provisions of this act; and
7 (b) On July 1, 2021, for all other purposes.

TEXT OF REPEALED SECTION

639.095 Board to furnish free copies of law and regulations to applicants and registrants. The Board shall furnish each applicant for registration and each resident registered pharmacist with a free copy of chapters 453, 454, 585 and 639 of NRS and the regulations of the Board. Free copies must be provided nonresident pharmacists registered in Nevada upon request.

