

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; PROVIDING FOR BONDING AND BACKGROUND CHECKS; CHANGING LICENSING FEES; REVISING THE DISPOSITION OF THE PHARMACY FUND; AMENDING SECTIONS OF THE PHARMACY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-11-14 NMSA 1978 (being Laws 1969, Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--REVOCATION.--

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper license and shall meet the requirements of the board and pay the fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

- (1) retail pharmacy;
- (2) nonresident pharmacy;
- (3) wholesale drug distributor;
- (4) drug manufacturer;
- (5) hospital pharmacy;

- (6) industrial health clinic;
- (7) community health clinic;
- (8) department of health public health offices;
- (9) custodial care facility;
- (10) home care services;
- (11) emergency medical services;
- (12) animal control facilities;
- (13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;
- (14) returned drugs processors;
- (15) drug research facilities;
- (16) drug warehouses;
- (17) contact lens sellers;
- (18) medicinal gas repackagers; and
- (19) medicinal gas sellers.

C. Every application for the issuance or biennial renewal of:

- (1) a license for a retail pharmacy,

nonresident pharmacy, hospital pharmacy or drug research facility shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars (\$300) per year;

(2) a license for a wholesale drug distributor, drug manufacturer or drug warehouse shall be accompanied by a fee not to exceed one thousand dollars (\$1,000) per year;

(3) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200) per year; and

(4) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; or wholesaler, retailer or distributor of veterinary drugs shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200) per year.

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a facility or business listed in

Subsection B of this section in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

(7) other information the board may require, including a criminal background check and financial history, provided that manufacturers distributing their own products that have been licensed or approved by the food and drug administration shall be exempt from criminal background check and financial history requirements pursuant to this section.

G. After preliminary approval of the application for a license for any facility or business listed in

B of this section, a request for an inspection, together with an inspection fee not to exceed two hundred dollars (\$200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on the expiration date set by the board unless renewed. Any person failing to renew a license on or before the expiration date set by the board shall not have the license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars (\$100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall provide the board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act."

Section 2. Section 61-11-19 NMSA 1978 (being Laws 1969, Chapter 29, Section 18, as amended) is amended to read:

"61-11-19. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is established in the state treasury the "pharmacy fund".

B. All funds received by the board and all money collected under the Pharmacy Act or any other act administered by the board shall be deposited with the state treasurer for credit to the pharmacy fund.

C. Payments from the pharmacy fund shall be made upon warrants of the secretary of finance and administration on vouchers issued in accordance with the budget approved by the department of finance and administration.

D. Amounts paid into the pharmacy fund prior to October 1, 2005 pursuant to Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978 shall be used for a prescription

drug program for persons over the age of sixty-five; provided that the board enters into an arrangement with a state agency or a state-created entity for the operation of the program.

E. All amounts paid into the pharmacy fund shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Pharmacy Act and any other acts administered by the board, the duties imposed thereby and the promotion of pharmacy education and standards in this state. All money unused at the end of the fiscal year shall remain in the pharmacy fund for use in accordance with the provisions of the Pharmacy Act.

F. All funds that may have accumulated to the credit of the pharmacy fund shall be continued for use by the board in administration of the Pharmacy Act."

Section 3. A new section of the Pharmacy Act is enacted to read:

"CRIMINAL BACKGROUND CHECKS.--

A. The board may adopt rules that provide for criminal background checks for all new licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Pharmacy Act;

(2) requiring applicants for licensure to be fingerprinted;

(3) providing for an applicant who has been

denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks."

Section 4. A new section of the Pharmacy Act is enacted to read:

"SURETY BONDS.--

A. The board may require surety bonds or other equivalent means of security, as approved by the board, that are provided by a third party such as insurance, an irrevocable letter of credit or funds deposited in a trust account or financial institution, to secure payment for any

administrative or judicial penalties that may be imposed by the board or the state and for any penalties or costs required by board rule or disciplinary action.

B. Surety bonds or other equivalent means of security as approved by the board and required in this section shall apply to initial applicants or renewal applicants as a condition for obtaining or maintaining licensure as a nonresident pharmacy or wholesale drug distributor.

C. The board shall set by rule the amount and conditions of the surety bond or other equivalent means of security authorized in this section.

D. The board may waive the surety bond or other requirements of this section if it determines that it is in the best interest of the public to do so. Such waivers may be granted under conditions established by board rule.

E. Manufacturers distributing their own products that have been licensed or approved by the food and drug administration and pharmacy warehouses that are engaged only in intracompany transfers are exempt from this section.

F. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or groups when such separate locations or affiliated companies or groups are required to apply for or renew their wholesale distributor license with the board."
