

LEGISLATIVE BILL 350

Approved by the Governor May 20, 1971

Introduced by Robert L. Clark, 47th District; Thomas C. Kennedy, 21st District; C. W. Holmquist, 16th District

AN ACT to amend sections 71-1,142, 71-1,143, 71-1,145, 71-1,146, 71-1,147, 71-1,147.01, 71-1,147.03, 71-1,147.07, 71-1,147.08, 71-1,147.09, and 71-1,147.10, Reissue Revised Statutes of Nebraska, 1943, relating to public health and welfare and the practice of pharmacy; to provide for definitions and regulations for pharmacy and pharmacists; to provide penalties; and to repeal the original sections and also section 71-1,144, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-1,142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,142. For the purpose of As used in this act, unless the context otherwise requires:

(1) Practice of pharmacy shall mean (a) the preparing, compounding, and dispensing of drugs and medicinal substances, upon the written or oral order of a medical practitioner; (b) the proper and safe storage and distribution of drugs and medicinal substances to the ultimate user; (c) maintenance of proper records; and (d) the relating of pharmaceutical information concerning such drugs and medicinal substances and their therapeutic values, as a consultant, upon request, and within the limits of professional judgment;

(2) Pharmacist shall mean any person who (a) is engaged in the business of selling, offering or exposing for sale, drugs and medicinal substances at retail; (b) compounds or dispenses drugs and medicines, or fills the prescriptions of medical practitioners; or (c) advertises the following persons shall be deemed to be engaged in the practice of pharmacy,--(1)--Persons who are engaged in the business of selling, or offering or exposing for sale, drugs and medicines at retail;--(2) persons who compound or dispense drugs and medicines; or fill the prescriptions of licensed physicians, surgeons;

dentists;--veterinarians-or-other--medical--practitioners licensed--to--write--prescriptions--intended---for---the treatment-or-prevention-of-disease-in-man-or-animal;-and (3)-any-person-advertising Drugs, Drug Store, Pharmacy, Apothecary, Hospital Pharmacy, Dispensary, or any combination of such titles, or any title or description of like import.;

(3) Pharmacy shall mean (a) any establishment, place or location, which is advertised as a Pharmacy, Drug Store, Apothecary, or any establishment where the practice of pharmacy is carried on except as exempted in section 71-1,143; and (b) any establishment, place or location which is used as a pick-up point, or drop point, including kiosks, for prescriptions to be filled or where prescription medication is made ready for delivery to the patient:

(4) Drugs, medicines, and medicinal substances, shall mean all poisonous, dangerous or deleterious substances and preparations for external or internal use, and (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in man; (c) articles, except food, intended to affect the structure or any function of the body of man; and (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts or accessories, and except patent and proprietary medicines:

(5) Medical practitioner shall mean any licensed physician, surgeon, podiatrist, dentist, or other person licensed to write prescriptions intended for treatment or prevention of disease or body function in man; and

(6) Pharmacy intern shall mean a student currently enrolled in, or person licensed to write prescriptions intended for treatment or prevention of disease on body funcntern may compound and dispense drugs and medicines and fill prescriptions only in the presence of and under the immediate personal supervision of a registered pharmacist who must either be the person to whom the pharmacy permit is issued or in the actual employ of the permittee.

Sec. 2. That section 71-1,143, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,143. Sections 71-1,142 and 71-1,147 shall not be construed to include ~~the following classes:---(4) Persons persons~~ who:

(1) ~~sell~~ Sell, offer or expose for sale, completely denatured alcohol or concentrated lye, insecticides and fungicides in original packages; ~~(2) persons---who---are---licensed---to---practice---medicine; dentistry; veterinary medicine; or other~~

(2) Are medical practitioners who dispense drugs and medicines as an incident to the practice of their profession but shall not exempt such a practitioner other than a licensed veterinarian who regularly engages in dispensing such drugs or medicinal substances to his patients for which such patients are charged either separately or together with charges for other professional services, from record-keeping, dispensing, labeling, and all other requirements of the practice of pharmacy as set forth in this act or by federal and state laws as they pertain to the regulation of the practice of pharmacy; such regular and routine dispensing shall not be considered to be incident to practice, nor may such a practitioner delegate such dispensing to any other person;

(3) ~~persons-who-sell~~ Sell, offer or expose for sale, patent or proprietary medicines, the sale of which is not in itself a violation of the law relating to intoxicating liquors; and

(4) Are licensed doctors-of-medicine physicians in any town or village of--three--hundred--and--fifty inhabitants--or--less; where there is no registered pharmacist; 7--and--which--is--located--ten--miles--or--more from--any--town--or--village--having--a--licensed--or--registered pharmacist

(5) Persons known as medical representatives, detail men, or by some name of like import, but only to the extent of permitting the relating of pharmaceutical information as set forth in section 71-1,142, subsection (1), subdivision (d); and

(6) Are licensed veterinarians.

Sec. 3. That section 71-1,145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,145. Every applicant for examination and registration as a pharmacist shall be not less than

twenty-one years of age, of good moral character and temperate habits, a citizen of the United States, a graduate of an accredited school or college of pharmacy, or an accredited department of pharmacy of a university, recognized by the Board of Examiners in Pharmacy, and shall file proof of sufficient internship service--and experience in a retail community retail or hospital pharmacy, or-in-a-hospital, under the supervision of a registered or licensed pharmacist, to--make--a--total, together-with-actual-time-of-college-attendance,--of--at least-four-years-of-pharmaceutical-training as may be required by the Board of Examiners in Pharmacy, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy, shall have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited school or college of pharmacy, or in an accredited department of pharmacy of a university; and shall pass an examination satisfactory to the Board of Examiners in Pharmacy. Proof of the qualifications for registration prescribed in this section must shall be made to the satisfaction of the Board of Examiners in Pharmacy, substantiated by proper affidavits; Provided, that in all cases the actual time of attendance at an accredited school or college of pharmacy, or an accredited department of pharmacy of a university, to-be-credited-on-the-required-four-years-of pharmaceutical-training, shall-not-exceed--three--years-is certified by the appropriate college or university authority by the issuance of the degree granted to a graduate of such school, college or department of pharmacy. Service and experience in a retail pharmacy or in-a hospital pharmacy under the supervision of a registered or licensed pharmacist, as required in this section, shall be predominantly related to the selling of--drugs,--compounding--physicians--prescriptions, preparing--pharmaceutical--preparations practice of pharmacy, and shall include the keeping of records and the making of reports required under the state and federal statutes. ;--Provided,--the-requisite--period--of--time--of--said--service--and--experience--and--the--requisite period--of--time--necessary--for--such--an--applicant--to--spend in-a-recognized-school-or-college-of-pharmacy-to--become a-graduate-thereof--shall-not--run--concurrently. The Department of Health, upon the recommendation of the Board of Examiners in Pharmacy, shall promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure.

Sec. 4. That section 71-1,146, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,146. An accredited school or college of pharmacy, or an accredited department of pharmacy of a university, shall be one approved by the Board of Examiners in Pharmacy upon the recommendation of the accrediting committee of the American Council on Pharmaceutical Education. It shall be a school or college of pharmacy, or a department of pharmacy of a university, which maintains at least a four-year three-year course in pharmacy, consisting of not less than thirty-two weeks of instruction each school year. After March 1, 1945, it shall have a vacation of not less than two months intervening between each school year. The required course shall include a minimum of thirty-two hundred hours of lectures, instruction and recitation, including not less than thirteen hundred hours of laboratory instruction, and conform to such other regulations as may be prescribed by the Board of Examiners in Pharmacy. Such school or college of pharmacy or department of pharmacy of a university shall require as a condition of enrollment therein two full years of college or university credit. The combined course shall consist of five years of college or university credit each year of which shall consist of not less than thirty-two weeks of instruction.

Sec. 5. That section 71-1,147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147. (1) Except as provided in subsection (4) of this section, no No person other than a licensed registered pharmacist, registered in the State of Nebraska, or a pharmacy intern, shall, as described in this act, compound and dispense drugs and medicines and fill the prescription of a physician, surgeon, dentist, veterinarian, or other medical practitioner, licensed to write prescriptions intended for the treatment or prevention of disease in man or animal.

(2) It shall be unlawful for any person to permit or direct a person, not a pharmacy intern, or registered pharmacist, to compound and dispense drugs and medicines or fill the prescription of a licensed physician, surgeon, dentist, veterinarian, or other medical practitioner, licensed to write prescriptions intended for the treatment or prevention of disease in man or animal.

~~{3} For the purpose of this section, pharmacy intern shall mean a student currently enrolled in or a graduate of, an accredited college or school of pharmacy serving his internship. Such pharmacy intern may compound and dispense drugs and medicines and fill prescriptions only in the presence of and under the immediate personal supervision of a pharmacist registered in the State of Nebraska who must either be the person to whom the pharmacy permit is issued or in the actual employ of the permittee.~~

~~{4} (a) The provisions of subsections {1} and {2} of this section shall not apply to the compounding and dispensing of drugs and medicines by any person who has been the owner and operator of a pharmacy for fifteen years or more immediately preceding October 9, 1964 when such compounding and dispensing is done under the direct and immediate supervision of a registered pharmacist.~~

{b} {3} For the purpose of this section, nothing contained herein shall be construed to prohibit any registered nurse employed by a hospital from administering single doses of drugs from original drug containers, or properly labeled prepackaged drug containers, to any person registered as a patient or confined in a hospital, upon the order or prescription of a licensed medical practitioner; or to prohibit such registered nurse employed by a hospital from procuring the original drug container or properly labeled prepackaged drug container for the purpose of single dose drug administration to any person registered as a patient or confined in the hospital, upon the order or prescription of a licensed medical practitioner.

Sec. 6. That section 71-1,147.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147.01. No person shall engage in, conduct or carry on a pharmacy or engage in the practice of pharmacy as defined in section 71-1,142, in the State of Nebraska this state unless he has obtained a permit from the Department of Health has issued a permit to conduct such pharmacy, upon the recommendation of the Board of Examiners in Pharmacy to conduct such pharmacy. Each permit shall be issued to a specific person and for a specific location. Separate permits shall be issued for each of the premises of any business establishment having more than one location.

Nothing contained in this section shall be construed to require a public or private institution licensed as a hospital by the Department of Health which is engaged in the compounding and dispensing of drugs or ~~drugs and~~ medicines and the filling of prescriptions of ~~licensed~~ medical practitioners for persons registered as patients or confined in the hospital to obtain a permit as provided in this act, either in the name of the hospital, an employee thereof, or any other person. This exemption from the requirement to obtain a permit to conduct a pharmacy or to engage in the practice of pharmacy as provided in this act does not include any public or private institution licensed as a hospital by the department which is primarily engaged in the compounding and dispensing of drugs ~~or--drugs~~ and medicines and the filling of prescriptions of ~~licensed~~ medical practitioners for persons not registered as patients, or confined to the hospital; Provided, this exemption shall not allow such hospital exemption from any other laws of this state or of the United States pertaining to pharmacy and the dispensing of drugs and medicines.

Sec. 7. That section 71-1,147.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147.03. If a person applying for a permit to conduct a pharmacy is not a registered pharmacist ~~registered in the State--of--Nebraska~~ this state, the permit when issued shall also bear the name of the pharmacist registered in ~~the--State--of--Nebraska~~ this state, designated on the application as being responsible for the practice of pharmacy ~~as--defined--in section-71-1,142,~~ in the establishment for which the permit is sought. If such registered pharmacist subsequently severs his position in the pharmacy, the permit shall be automatically suspended until such time as the person holding the permit informs the Board of Examiners in Pharmacy of the name of the new registered pharmacist designated as being responsible for the practice of pharmacy ~~as-defined-in-section--71-1,142~~ in the establishment for which the permit is sought, when, upon the recommendation of the Board of Examiners in Pharmacy, an amended permit shall be issued by the Department of Health upon return of the original permit and payment of a fee of five dollars.

Sec. 8. That section 71-1,147.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147.07. Within ninety days after October 9, 1961, an application must be filed for a permit to conduct each pharmacy in this state. The fee for such initial permit shall be ~~twenty-five~~ fifty dollars, and the permit when issued shall be in force until July 1 of the year following its issuance unless previously suspended or revoked for cause. The permit shall be renewed annually on or before July 1 of each year and shall not be transferable. The fee for such annual renewal shall be ~~twenty-five~~ thirty dollars and shall accompany the application.

Applications for renewal of permits shall be mailed by the Department of Health to each permit holder not later than June 1. If an application to renew a permit is received from the permittee after July 1, the Board of Examiners in Pharmacy may impose a penalty equal to the renewal fee and the Department of Health shall refuse to issue the renewal permit until such penalty is paid in addition to the original renewal fee. Failure of any permit holder to receive an application blank shall not relieve him from the penalty hereby imposed.

Sec. 9. That section 71-1,147.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147.08. A person desiring to open a new pharmacy must file an application for a permit not less than thirty days prior to the contemplated opening date. Before a permit may be granted for the operation of a new pharmacy, an inspection ~~must~~ shall be made by a duly qualified representative of the Board of Examiners in Pharmacy to determine whether all of the requirements for such a permit have been fulfilled. If all of the requirements have been fulfilled, upon recommendation of the Board of Examiners in Pharmacy, the Department of Health shall issue a permit for the operation of the new pharmacy. The fee for such permit, to accompany the application, shall be ~~twenty-five~~ fifty dollars.

Sec. 10. That section 71-1,147.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147.09. The Department of Health, upon the recommendation of the Board of Examiners in Pharmacy, is hereby ~~granted authority~~ authorized to promulgate rules and regulations;

(1) For for the enforcement of this act; and setting-up

(2) To establish minimum requirements regarding adequate facilities for the safe storage of narcotic drugs and other drugs requiring refrigeration or other special storage;

(3) For equipment, facilities, and utilities for the prescription department; and

(4) To establish minimum standards governing sanitation, orderliness, and cleanliness, in---the pharmacy library requirements, ventilation, and prescription and other record-keeping.

Sec. 11. That section 71-1,147.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,147.10. The Department of Health shall, upon the recommendation and findings of the Board of Examiners in Pharmacy, deny an application for a permit to conduct a pharmacy, or revoke or suspend a currently existing permit or an application for renewal thereof, following proper hearing by the State--Board Department of Health, should the applicant or permittee be found guilty of any of the following acts or omissions:

(1) Conviction of any crime involving moral turpitude;

(2) Obtaining a pharmacy permit by false representation or fraud;

(3) Operating a pharmacy without a registered pharmacist responsible for the practice of pharmacy; as defined-in-section-71-1,142;

(4) The compounding and dispensing of drugs and medicines or the filling of a prescription by a person other than a registered pharmacist registered--in--the State-of-Nebraska; or by an intern in pharmacy, without the presence of and the immediate personal supervision of a registered pharmacist; registered-in-the--State--of Nebraska;

(5) A conviction of a violation of any of the provisions of this act or of a felony, or, if a natural person, the revocation or suspension of a license to practice pharmacy in the-State-of-Nebraska this state;

(6) Unprofessional conduct, which is hereby defined to include: (a) Misrepresentation or fraud in the conduct of a pharmacy; (b) aiding or abetting an unlicensed person to practice ~~the---profession---of~~ pharmacy; (c) the dispensing over the counter without a prescription of a drug which under state or federal law or regulation is prohibited from being dispensed without a prescription or the renewal of such a prescription without the authorization of the prescriber; or (d) the dispensing of a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission of the person ordering or prescribing the same; and

(7) Violation of the rules and regulations governing the practice of pharmacy as promulgated under authority of section 71-1,147.09 by the Department of Health;

(8) Suggesting, soliciting, ordering, assisting or abetting a pharmacist in the violation of any of the offenses set forth in sections 71-147 and 71-148; and

~~(7)~~ (9) Nothing contained in this section shall be construed to prohibit any hospital, licensed by the Department of Health, from establishing rules and regulations regarding the method by which medical staff members shall agree to order or prescribe drugs ~~or drugs~~ and medicines for patients of such hospitals. Hospitals ~~are shall~~ not be subject to the provisions of subdivision (d) of ~~subdivision subsection~~ (6) of this section, ~~by virtue of--advertising--and--maintaining--a pharmacy--or--dispensary--for--use--of--its--patients.~~

Sec. 12. It shall be unlawful to distribute, dispense or vend any drug by automatic or vending machine; Provided, that this prohibition shall not apply to institutions duly licensed under the provisions of sections 71-2017 to 71-2029.

Sec. 13. Violation of any of the provisions of sections 12 and 13 of this act shall be punishable according to the provisions of section 71-1,147.13. Reissue Revised Statutes of Nebraska, 1943.

Sec. 14. That original sections 71-1,142, 71-1,143, 71-1,145, 71-1,146, 71-1,147, 71-1,147.01, 71-1,147.03, 71-1,147.07, 71-1,147.08, 71-1,147.09, and 71-1,147.10, Reissue Revised Statutes of Nebraska, 1943, and also section 71-1,144, Reissue Revised Statutes of Nebraska, 1943, are repealed.