

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 536

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO PRESCRIPTION DRUGS; REVISING FEES FOR CERTAIN
PHARMACEUTICAL BUSINESS LICENSES; AMENDING AND ENACTING
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 annual fee for the license and its renewal.

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underscored material = new
[bracketed material] = delete

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

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

underscoring material = new
[bracketed material] = delete

1 (15) drug research facilities; and

2 (16) drug warehouses.

3 C. Every application for the issuance or annual
4 renewal of:

5 (1) a license for a retail pharmacy,
6 ~~[wholesale drug distributor]~~ nonresident pharmacy, ~~[drug~~
7 ~~manufacturer]~~ hospital pharmacy or drug research facility ~~[or~~
8 ~~drug warehouse]~~ shall be accompanied by a fee set by the board
9 in an amount not to exceed three hundred dollars (\$300);

10 (2) a license for a wholesale drug
11 distributor, drug manufacturer or drug warehouse shall be
12 accompanied by an annual fee not to exceed five thousand
13 dollars (\$5,000); provided that the annual fee shall not exceed
14 one thousand dollars (\$1,000) upon the implementation of a
15 medicare prescription drug benefit program, pursuant to
16 Sections 1860D-1 through 1860D-24, except Section 1860D-4, of
17 Public Law 108-173, the Medicare Prescription Drug,
18 Improvement, and Modernization Act of 2003;

19 ~~[+2)]~~ (3) a license for a custodial care
20 facility or a returned drugs processor business shall be
21 accompanied by a fee set by the board in an amount not to
22 exceed two hundred dollars (\$200); and

23 ~~[+3)]~~ (4) a license for an industrial health
24 clinic; a community health clinic; a department of health
25 public health office; home care services; emergency medical

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1 services; animal control facilities; or wholesaler, retailer or
2 distributor of veterinary drugs shall be accompanied by a fee
3 set by the board in an amount not to exceed two hundred dollars
4 (\$200).

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

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

10 F. Any person making application to the board for a
11 license to operate a facility or business listed in Subsection
12 B of this section in this state shall submit to the board an
13 application for licensure indicating:

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

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

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

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

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

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

3 (7) other information the board may require.

4 G. After preliminary approval of the application
5 for a license for any facility or business listed in Paragraphs
6 (1) through (8) and (10) through (16) of Subsection B of this
7 section, a request for an inspection, together with an
8 inspection fee not to exceed two hundred dollars (\$200), shall
9 be submitted to the board for each business location, and an
10 inspection shall be made of each location by the board or its
11 agent.

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

17 I. Licenses, except temporary licenses provided
18 pursuant to Subsection H of this section, issued by the board
19 pursuant to this section are not transferable and shall expire
20 on December 31 of each year unless renewed. Any person failing
21 to renew his license on or before December 31 of each year
22 shall not have his license reinstated except upon reapplication
23 and payment of a reinstatement fee set by the board in an
24 amount not to exceed one hundred dollars (\$100) and all
25 delinquent renewal fees.

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

7 K. Pharmaceutical sales representatives who carry
8 dangerous drugs shall ~~[register with the board. The board may~~
9 ~~charge a registration fee not to exceed fifty dollars (\$50.00)~~
10 ~~and a renewal fee of no more than fifty dollars (\$50.00) per~~
11 ~~year.]~~ provide the board with a written statement from the
12 representative's employer that describes the employer's policy
13 relating to the safety and security of the handling of
14 dangerous drugs and to the employer's compliance with the
15 federal Prescription Drug Marketing Act of 1987.

16 Pharmaceutical sales representatives are not subject to the
17 licensing provisions of the Pharmacy Act."

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

20 "61-11-19. FUND ESTABLISHED--DISPOSITION--METHOD OF
21 PAYMENT.--

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

24 B. All funds received by the board and all money
25 collected under the Pharmacy Act or any other act administered

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1 by the board shall be deposited with the state treasurer for
2 credit to the pharmacy fund.

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

7 D. Amounts paid into the pharmacy fund pursuant to
8 Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978
9 shall be used for a prescription drug program for persons over
10 the age of sixty-five; provided that the board enters into an
11 arrangement with a state agency or a state-created entity for
12 the operation of the program.

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

21 [~~E.~~] F. All funds which may have accumulated to the
22 credit of the pharmacy fund shall be continued for use by the
23 board in administration of the Pharmacy Act."

24 Section 3. APPLICABILITY.--The provisions of Paragraph
25 (2) of Subsection C of Section 61-11-14 NMSA 1978 shall apply

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1 to the issuance of a license or annual renewal in calendar year
2 2004 and subsequent years; provided that the 2004 fee is
3 collectible immediately and that any fee already paid shall be
4 credited to the new fee amount.