



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2392

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

225 ILCS 85/15	from Ch. 111, par. 4135
225 ILCS 85/15.3 new	
225 ILCS 85/18	from Ch. 111, par. 4138

Amends the Pharmacy Practice Act. Requires that at least one registered pharmacy technician be on duty whenever the practice of pharmacy is conducted. Requires that pharmacies fill no more than 10 prescriptions per hour. Requires 10 pharmacy technician hours per 100 prescriptions filled. Prohibits pharmacies from requiring pharmacists to participate in advertising or soliciting activities that may jeopardize patient health, safety, or welfare and any activities or external factors that interfere with the pharmacist's ability to provide appropriate professional services. Provides that a pharmacist shall receive specified break periods. Provides that a pharmacy may not require a pharmacist to work during a break period, shall make available a break room meeting specified requirements, shall keep a complete and accurate record of the break periods and may not require a pharmacist to work more than 8 hours a workday. Provides for enforcement and penalties. Provides whistleblower protections for an employee of a pharmacy if the pharmacy retaliates against the employee for certain actions. Requires pharmacies to maintain a record of any errors in the receiving, filling, or dispensing of prescriptions.

LRB100 07870 SMS 17941 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Pharmacy Practice Act is amended by changing
5 Sections 15 and 18 and by adding Section 15.3 as follows:

6 (225 ILCS 85/15) (from Ch. 111, par. 4135)

7 (Section scheduled to be repealed on January 1, 2018)

8 Sec. 15. Pharmacy requirements.

9 (1) It shall be unlawful for the owner of any pharmacy, as
10 defined in this Act, to operate or conduct the same, or to
11 allow the same to be operated or conducted, unless:

12 (a) It has a licensed pharmacist, authorized to
13 practice pharmacy in this State under the provisions of
14 this Act, and at least one pharmacy technician registered
15 under the provisions of this Act on duty whenever the
16 practice of pharmacy is conducted;

17 (b) Security provisions for all drugs and devices, as
18 determined by rule of the Department, are provided during
19 the absence from the licensed pharmacy of all licensed
20 pharmacists. Maintenance of security provisions is the
21 responsibility of the licensed pharmacist in charge; ~~and~~

22 (c) The pharmacy is licensed under this Act to conduct
23 the practice of pharmacy in any and all forms from the

1 physical address of the pharmacy's primary inventory where
2 U.S. mail is delivered. If a facility, company, or
3 organization operates multiple pharmacies from multiple
4 physical addresses, a separate pharmacy license is
5 required for each different physical address;-

6 (d) The pharmacy sets a prescription filling limit of
7 not more than 10 prescriptions filled per hour;

8 (e) The pharmacy mandates at least 10 pharmacy
9 technician hours per 100 prescriptions filled;

10 (f) The pharmacy places a general prohibition on
11 activities that distract pharmacists that includes:

12 (i) advertising or soliciting that may jeopardize
13 patient health, safety, or welfare; and

14 (ii) any activities or external factors, including
15 promotional requirements and productivity quotas, that
16 interfere with the pharmacist's ability to provide
17 appropriate professional services;

18 (g) Notwithstanding any other provision of law, the
19 pharmacy provides a minimum of 2 15-minute paid rest breaks
20 and one 30-minute meal period in each workday on which the
21 pharmacist works at least 7 hours; a pharmacy may not
22 require a pharmacist to work during a break period; a
23 pharmacy that violates this paragraph shall pay to the
24 pharmacist 3 times the pharmacist's regular hourly rate of
25 pay for each workday during which the required breaks were
26 not provided;

1 (h) The pharmacy makes available at all times a room on
2 the pharmacy's premises with adequate seating and tables
3 for the purpose of allowing a pharmacist to enjoy break
4 periods in a clean and comfortable environment;

5 (i) The pharmacy keeps a complete and accurate record
6 of the break periods of its pharmacists; and

7 (j) The pharmacy limits a pharmacist from working more
8 than 8 hours a workday;

9 (2) The Department may allow a pharmacy that is not located
10 at the same location as its home pharmacy and at which pharmacy
11 services are provided during an emergency situation, as defined
12 by rule, to be operated as an emergency remote pharmacy. An
13 emergency remote pharmacy operating under this subsection (2)
14 shall operate under the license of the home pharmacy.

15 (3) The Secretary may waive the requirement for a
16 pharmacist to be on duty at all times for State facilities not
17 treating human ailments. This waiver of the requirement remains
18 in effect until it is rescinded by the Secretary and the
19 Department provides written notice of the rescission to the
20 State facility.

21 (4) It shall be unlawful for any person, who is not a
22 licensed pharmacy or health care facility, to purport to be
23 such or to use in name, title, or sign designating, or in
24 connection with that place of business, any of the words:
25 "pharmacy", "pharmacist", "pharmacy department", "apothecary",
26 "druggist", "drug", "drugs", "medicines", "medicine store",

1 "drug sundries", "prescriptions filled", or any list of words
2 indicating that drugs are compounded or sold to the lay public,
3 or prescriptions are dispensed therein. Each day during which,
4 or a part which, such representation is made or appears or such
5 a sign is allowed to remain upon or in such a place of business
6 shall constitute a separate offense under this Act.

7 (5) The holder of any license or certificate of
8 registration shall conspicuously display it in the pharmacy in
9 which he is engaged in the practice of pharmacy. The pharmacist
10 in charge shall conspicuously display his name in such
11 pharmacy. The pharmacy license shall also be conspicuously
12 displayed.

13 (6) It is unlawful for any pharmacy or pharmacy's agent or
14 representative to take any action against any person in
15 retaliation for the exercise of rights under this Section. In
16 any civil proceeding brought under this subsection, if the
17 plaintiff establishes that he or she was employed by the
18 defendant, exercised rights under this Section, or alleged in
19 good faith that the defendant was not complying with this
20 Section, and was thereafter terminated, demoted, or otherwise
21 penalized by the defendant, then a rebuttable presumption shall
22 arise that the defendant's action was taken in retaliation for
23 the exercise of rights established by this Section. To rebut
24 the presumption, the defendant must prove that the sole reason
25 for the termination, demotion, or penalty was a legitimate
26 business reason.

1 (7) A person claiming violation of this Section shall be
2 entitled to all remedies available under law or in equity,
3 including, but not limited to, damages, back pay,
4 reinstatement, or injunctive relief. Any person terminated in
5 violation of this Section shall recover treble his or her lost
6 normal daily compensation and fringe benefits, together with
7 interest thereon, and any consequential damages suffered by the
8 employee. The court shall award reasonable attorney's fees and
9 costs to a prevailing plaintiff in an enforcement action under
10 this Section.

11 (Source: P.A. 95-689, eff. 10-29-07; 96-219, eff. 8-10-09;
12 96-1000, eff. 7-2-10.)

13 (225 ILCS 85/15.3 new)

14 Sec. 15.3. Whistleblower protection.

15 (a) In this Section, "retaliatory action" means the
16 reprimand, discharge, suspension, demotion, denial of
17 promotion or transfer, or change in the terms and conditions of
18 employment of any employee of a pharmacy that is taken in
19 retaliation for the employee's involvement in a protected
20 activity as set forth in paragraphs (1) through (3) of
21 subsection (b).

22 (b) A pharmacy shall not take any retaliatory action
23 against an employee of the pharmacy because the employee does
24 any of the following:

25 (1) discloses or threatens to disclose to a supervisor

1 or to a public body an activity, inaction, policy, or
2 practice implemented by a pharmacy that the employee
3 reasonably believes is in violation of a law, rule, or
4 regulation;

5 (2) provides information to or testifies before any
6 public body conducting an investigation, hearing, or
7 inquiry into any violation of a law, rule, or regulation by
8 a pharmacy; or

9 (3) assists or participates in a proceeding to enforce
10 the provisions of this Act.

11 (c) A violation of this Section may be established only
12 upon a finding that: (1) the employee of the pharmacy engaged
13 in conduct described in subsection (b) of this Section, and (2)
14 this conduct was a contributing factor in the retaliatory
15 action alleged by the employee. There is no violation of this
16 Section, however, if the facility demonstrates by clear and
17 convincing evidence that it would have taken the same
18 unfavorable personnel action in the absence of that conduct.

19 (d) The employee of the pharmacy may be awarded all
20 remedies necessary to make the employee whole and to prevent
21 future violations of this Section. Remedies imposed by the
22 court may include, but are not limited to, all of the
23 following:

24 (1) reinstatement of the employee to either the same
25 position held before the retaliatory action or to an
26 equivalent position;

- 1 (2) two times the amount of back pay;
2 (3) interest on the back pay;
3 (4) reinstatement of full fringe benefits and
4 seniority rights; and
5 (5) payment of reasonable costs and attorney's fees.
6 (e) Nothing in this Section shall be deemed to diminish the
7 rights, privileges, or remedies of an employee of a pharmacy
8 under any other federal or State law, rule, or regulation or
9 under any employment contract.

10 (225 ILCS 85/18) (from Ch. 111, par. 4138)

11 (Section scheduled to be repealed on January 1, 2018)

12 Sec. 18. Record retention. Except as provided in subsection
13 (b), there shall be kept in every drugstore or pharmacy a
14 suitable book, file, or electronic record keeping system in
15 which shall be preserved for a period of not less than 5 years
16 the original, or an exact, unalterable image, of every written
17 prescription and the original transcript or copy of every
18 verbal prescription filled, compounded, or dispensed, in such
19 pharmacy; and such book or file of prescriptions shall at all
20 reasonable times be open to inspection to the pharmacy
21 coordinator and the duly authorized agents or employees of the
22 Department. In addition, any errors in the receiving, filling,
23 or dispensing of prescriptions of any kind, including any
24 errors resulting in an adverse drug interaction or adversely
25 affecting the health of the patient, shall be a part of these

1 records.

2 Every prescription filled or refilled shall contain the
3 unique identifiers of the persons authorized to practice
4 pharmacy under the provision of this Act who fills or refills
5 the prescription.

6 Records kept pursuant to this Section may be maintained in
7 an alternative data retention system, such as a direct digital
8 imaging system, provided that:

9 (1) the records maintained in the alternative data
10 retention system contain all of the information required in
11 a manual record;

12 (2) the data processing system is capable of producing
13 a hard copy of the electronic record on the request of the
14 Board, its representative, or other authorized local,
15 State, or federal law enforcement or regulatory agency;

16 (3) the digital images are recorded and stored only by
17 means of a technology that does not allow subsequent
18 revision or replacement of the images; and

19 (4) the prescriptions may be retained in written form
20 or recorded in a data processing system, provided that such
21 order can be produced in printed form upon lawful request.

22 As used in this Section, "digital imaging system" means a
23 system, including people, machines, methods of organization,
24 and procedures, that provides input, storage, processing,
25 communications, output, and control functions for digitized
26 representations of original prescription records.

1 Inpatient drug orders may be maintained within an
2 institution in a manner approved by the Department.

3 (Source: P.A. 94-84, eff. 6-28-05; 95-689, eff. 10-29-07.)