

3/7 *Judiciary*
Com's second reading

1 IN THE SENATE

BY COMMITTEE ON HEALTH AND HOUSING

2 SENATE BILL NO. 85

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act to create a Territorial Board of
7 Pharmacy; providing for the appointment of
8 its Members, their tenure and compensation;
9 providing for the powers, duties and
10 responsibilities of such Territorial Board
11 of Pharmacy; providing for the registration
12 and licensing of pharmacists and businesses
13 selling and handling drugs; setting a
14 schedule of registration and license fees;
15 prescribing the duties and responsibilities
16 of pharmacists; providing for restrictions
17 on the sales of certain drugs, medicines,
18 devices and other preparations; providing
19 for restrictions on the use of titles, terms
20 and symbols associated with the profession
21 of pharmacy; establishing grounds for the
22 denial of registration and suspension and
23 revocation of licenses; providing for
24 hearings and appeals; providing penalties;
25 repealing Article 4, Chapter 3, Title 35,
26 ACLA, 1949; authorizing an appropriation;
27 and declaring an emergency."

28 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

29 Section 1. DESIGNATION. This Act shall be known as the Alaska

1 Pharmacy Act.

2 Section 2. DEFINITIONS. As used in this Act, the following
3 words or terms shall have the meanings indicated, unless the con-
4 text otherwise requires:

5 (a) "Board" means the Territorial Board of Pharmacy.

6 (b) "Owner" means the owner of a place of business for
7 wholesaling, retailing, compounding or dispensing drugs, medicines
8 or poisons.

9 (c) "Pharmacy" or "drug store," or "pharmacy or drug
10 department," means a place of business in which physicians' pre-
11 scriptions are compounded or dispensed and in which drugs and
12 medicines are compounded or dispensed.

13 (d) "Prophylactic" means any device or medical prepara-
14 tion which is designed, intended or may be used for the prevention
15 or treatment of venereal disease.

16 (e) "Recognized college of pharmacy" means a college,
17 school or department of pharmacy whose entrance requirements and
18 courses of study are approved by the National Association of
19 Boards of Pharmacy.

20 (f) "Retail" means a sale to the ultimate user.

21 (g) "Retail dealer" means a person who sells to the
22 ultimate user.

23 (h) "Sell" means to possess in violation of the intent
24 of this Act, exchange, barter, give away or otherwise dispose of.

25 (i) "Wholesale" means a sale by a manufacturer, whole-
26 sale dealer, distributor, or jobber to a person who sells, or
27 intends to sell, directly to the user.

28 (j) "Wholesale dealer" means a manufacturer, wholesale
29 dealer, distributor or jobber.

1 (k) "Drug" or "drugs" means drugs or medical supplies
2 which contain poisonous, potent, habit-forming or deleterious
3 ingredients, or medicines containing ingredients which may be
4 considered dangerous or harmful if taken in overdose.

5 (l) "Medical supplies" means items for the cure or
6 treatment of disease or injury which do not require prescription
7 by a physician and which do not contain poisonous, potent, habit-
8 forming or deleterious ingredients, or any ingredient, or ingre-
9 dients, which may be considered dangerous or harmful if taken in
10 overdose.

11 (m) "Responsible manager" means the licensed pharmacist
12 who is in charge of a pharmacy or drug store, or of a pharmacy or
13 drug department, the owner of which is not a licensed pharmacist.

14 Section 3. TERRITORIAL BOARD OF PHARMACY. There is hereby
15 created the Territorial Board of Pharmacy, hereinafter called the
16 Board, to be composed of five Members, each of whom shall be a
17 licensed pharmacist under the Laws of Alaska, who has been
18 actively engaged in the lawful practice of pharmacy in Alaska for
19 a period of three years immediately preceding his appointment;
20 Provided, however, that whenever possible, the Board shall in-
21 clude at least one Member from each Judicial Division. The
22 Members shall be appointed by the Governor, ^{with the recommendation of the} for overlapping terms
23 of five years, or until their successors are appointed and ^{qualified} con-
24 firmed, and appointments shall be made to fill unexpired terms.
25 The first Members shall be appointed for terms of one, two, three,
26 four and five years respectively, said terms, and all succeeding
27 terms, to commence on April 1 of each year.

28 Section 4. POWERS OF THE BOARD. The Board shall have the
29 power to select a President and Secretary from its membership

1 and to adopt rules for the conduct of its business; to examine
2 applicants for registration as pharmacists; to investigate, indi-
3 vidually or collectively, all alleged violations of the pro-
4 visions of this Act, or of any other Territorial or Federal
5 statute relating to the practice of pharmacy; and to do whatever
6 else not inconsistent with law it deems necessary and advisable
7 to carry out the purposes of this Act.

8 Section 5. DUTIES OF THE BOARD. It shall be the duty of
9 the Board to examine all qualified applicants for registration as
10 pharmacists: Provided, that such examinations shall in each case
11 be graded by a Member who is resident in a Judicial Division
12 other than the Division in which the applicant is resident; to
13 grant certificates of registration to such persons as may be
14 entitled to same under the provisions of this Act; to initiate
15 prosecution of all persons in violation of this Act; to report
16 biennially to the Territorial Legislature upon the condition of
17 pharmacy in the Territory, which report shall include a resume
18 of the proceedings of the Board during the biennium and the names
19 of all persons registered under this Act; to maintain a record
20 of the names and places of business of persons registered under
21 this Act, together with adequate evidence to justify such regis-
22 tration; and to issue from time to time, as the Board deems
23 necessary, a list of potentially dangerous medicinal ingredients
24 or preparations that may be sold only under the direct supervi-
25 sion of a licensed pharmacist; Provided, however, that the failure
26 to include any ingredient or preparation in such list shall not
27 be construed as affecting any provision of this Act, or of any
28 other appropriate law or regulation, which may prohibit or other-
29 wise restrict the sale of such ingredient or preparation.

1 Section 6. MEETINGS OF THE BOARD. The Board shall meet at
2 least once each year at the call of the President for the trans-
3 action of such business as may properly come before it; Provided,
4 however, that the President shall call the Board into session
5 when requested in writing by at least two Members. The Secretary
6 of the Board shall give at least thirty days written notice to
7 all Members prior to any meeting. Three Members shall constitute
8 a quorum for the conduct of all business which may properly come
9 before the Board; Provided, that when the Board meets for the
10 purpose of examining applicants for registration, two Members
11 shall constitute a quorum.

12 Section 7. EXPENSES OF MEMBERS. Members of the Board shall
13 be reimbursed for actual travel expenses incidental to the dis-
14 charge of their duties under this Act and shall, while in the
15 performance of such duties, be entitled to the per diem allowed
16 by law.

17 Section 8. ELIGIBILITY FOR REGISTRATION. An applicant for
18 registration as a pharmacist shall be at least twenty-one years of
19 age, a citizen of the United States and fluent in the reading,
20 writing and speaking of the English language; shall furnish the
21 Board with affidavits from not less than two reputable citizens
22 of the United States attesting to his good moral character and
23 freedom from addiction to the use of drugs or alcoholic liquors;
24 shall be a graduate of a recognized college of pharmacy; and shall
25 attain on examination a general average of not less than seventy-
26 five per cent and a grade of not less than sixty per cent in an
27 examination in each of the following subjects:

28 (a) Pharmacy.

29 (b) Materia medica.

- 1 (c) Chemistry.
2 (d) Toxicology and posology.
3 (e) Compounding of prescriptions.
4 (f) Laws relating to the practice of pharmacy.
5 (g) In the d^ecretion of the examiner, practical
6 pharmacy.

7 An applicant who is unsuccessful in his initial examination
8 shall be entitled to a second examination within one year.

9 An applicant otherwise qualified may be registered as a
10 pharmacist without examination by reciprocity through the National
11 Association of Boards of Pharmacy.

12 Section 9. TEMPORARY REGISTRATION. An applicant otherwise
13 eligible for registration as a pharmacist shall be given a
14 temporary license upon written or oral examination before any
15 Member of the Board and certification by said Member to the Secre-
16 tary of the Board that such applicant is competent to receive a
17 temporary license; Provided, however, that said temporary license
18 shall be valid for a period not longer than three months, or until
19 the next regular meeting of the Board, whichever is the longer
20 period; Provided further, that an applicant shall not receive more
21 than one temporary license and shall not be issued a temporary
22 license if at any time he has been denied registration by the
23 Board.

24 Section 10. LICENSES AND FEES. The following schedule of
25 fees shall be collected at the time, and for the purpose, indi-
26 cated:

27 (a) An applicant for registration as a licensed
28 pharmacist without examination by reciprocity through the National
29 Association of Boards of Pharmacy shall pay a fee of \$15.00 prior

1 to the issuance of such license.

2 (b) An applicant for registration by-examination shall
3 pay a fee of \$15.00 before such examination, and, if he is unsuc-
4 cessful in such examination, before any subsequent examination.

5 (c) An applicant for temporary registration shall pay
6 a fee of \$5.00 to the examining Member and this money shall be
7 forwarded to the Secretary of the Board with the Member's
8 certification.

9 (d) A license to practice pharmacy shall be subject to
10 renewal annually, on or before the first day of June, upon the
11 payment of a fee of \$5.00; Provided, that if the license fee
12 remains unpaid for a period of ninety days from the date due,
13 said license shall be renewed only after the payment of an addi-
14 tional fee of \$10.00.

15 (e) A wholesale dealer shall obtain a license on or
16 before the thirty-first day of May each year and the fee for such
17 license shall be \$5.00.

18 (f) A retail dealer shall obtain a license on or be-
19 fore the thirty-first day of May each year and the fee for such
20 license shall be \$2.00.

21 A license to operate a pharmacy or drug store, or
22 pharmacy or drug department, shall be issued only to establish-
23 ments which operate a bona fide prescription department.

24 Failure to have proper sanitary appliances and to
25 maintain orderly and sanitary premises shall be grounds for
26 refusing a license to a pharmacy or drug store, or pharmacy or
27 drug department.

28 The registration certificate and license required by
29 this section shall be in such form, and shall be issued in such

1 manner, as the Board may prescribe, and shall be conspicuously
2 displayed in the premises for which issued or in which the holder
3 is professionally employed.

4 Any previously licensed pharmacist who has not been
5 registered for a period of three years shall submit to an oral
6 examination before the Board and shall satisfy said Board of his
7 competence prior to the renewal of his registration.

8 Section 11. DUTIES AND RESPONSIBILITIES OF LICENSED
9 PHARMACISTS, OWNERS AND PERSONS SELLING DRUGS.

10 (a) Every owner or responsible manager of a pharmacy
11 shall report to the Board at such times as the Board may direct,
12 but not more often than once each year, the names of all clerks
13 employed in his pharmacy.

14 (b) Every owner, or, if such owner is not a licensed
15 pharmacist, every responsible manager, shall be responsible for
16 the quality of all drugs, chemicals or other medicines sold or
17 dispensed by him, except those sold in the original packages of
18 the manufacturer, and except those articles and preparations
19 known as patent or proprietary medicines.

20 (c) At the time of dispensing, there shall be affixed
21 to every box, bottle, jar, tube, or other container of a prescrip-
22 tion, a label bearing the name and address of the pharmacy at
23 which the prescription was compounded, the serial number of the
24 prescription, the name and directions of the prescriber, the name
25 of the patient, the date of dispensing, and the initials of the
26 registered pharmacist who compounded the prescription.

27 (d) Each pharmacy or drug store, or pharmacy or drug
28 department, shall maintain a record for not less than five years
29 of every prescription compounded or dispensed therein and such

1 record shall be open at all times to inspection by the Board, by
2 any of its Members, agents or employees, and, with respect to any
3 particular prescription, by the medical doctor who issued said
4 prescription.

5 (e) The owner, or, if the owner is not a licensed
6 pharmacist, the responsible manager, of every drug store, and the
7 proprietor of every general store, or roadhouse, shall keep in
8 his place of business a record in which sales of the following
9 items shall be entered: the compounds and salts of arsenic and
10 mercury (calomel excepted); caustic hydrates of sodium and
11 potassium; the concentrated mineral acids; hydrocyanic acids and
12 their salts; yellow phosphorus; the essential oils of pennyroyal,
13 tansy and savine; croton oil; aconite; carbolic acid; and any of
14 the poisonous alkaloids or alkaloidal salts. This record shall
15 state the quantity and date of purchase, for what purpose to be
16 used, and the name and address of the buyer. Said record shall
17 be available during hours of business and subject to inspection
18 by the U. S. Attorney, U. S. Marshal or Deputy Marshal, any
19 Territorial or municipal police officer, acting within his area
20 of jurisdiction, and any duly authorized agent of the Board. A
21 record of each sale shall be retained for a period of five years
22 from the date of each such transaction.

23 (f) A pharmacy or drug store must have a pharmacist
24 licensed pursuant to this Act on duty during the hours that such
25 pharmacy or drug store is open for business.

26 (g) If the owner of a pharmacy or drug store, or the
27 owner of a business which includes a pharmacy or drug department,
28 is not a licensed pharmacist pursuant to this Act, he shall place
29 a licensed pharmacist, to be designated the responsible manager,

1 in charge of such pharmacy or drug store, or pharmacy or drug
2 department, and such responsible manager shall be in complete and
3 full control of every part of such pharmacy, drug store, or
4 pharmacy or drug department subject to this Act, and shall be
5 responsible for insuring compliance with all laws, rules and regu-
6 lations relating to the operation of a pharmacy, drug store, or
7 pharmacy or drug department. Upon being appointed a responsible
8 manager, the licensed pharmacist shall immediately advise the
9 Board of such appointment.

10 (h) Only a pharmacist licensed pursuant to this Act
11 shall compound and dispense the prescription of a physician;
12 Provided, that nothing in this section shall limit the authority
13 of a licensed medical doctor to compound and dispense medicinal
14 preparations.

15 (i) In communities which have only one licensed
16 pharmacy or drug store, it shall be the responsibility of the
17 owner of such pharmacy or drug store to have a licensed pharmacist
18 on duty, or on call, at all times.

19 (j) Each pharmacy or drug store licensed pursuant to
20 this Act shall have immediately available on the premises a copy
21 of the most recent revision of the "National Formulary," a copy of
22 the most recent revision of the "United States Pharmacopoeia,"
23 and sufficient technical equipment to compound properly physicians
24 prescriptions and pharmaceutical preparations. Compliance with
25 the provisions of this section shall be a condition precedent to
26 licensing under the provisions of Section 10 of this Act.

27 (k) Drugs or medical supplies which contain poisonous,
28 potent, habit-forming or deleterious ingredients shall be dis-
29 pensed only by a licensed pharmacist and the nature of such drug

1 or medical preparation shall be made known to the purchaser by the
2 licensed pharmacist at the time of sale.

3 Section 12. RESTRICTIONS ON SALES OF DRUGS. It shall be
4 unlawful for any business enterprise, other than a pharmacy or
5 drug store, or a pharmacy or drug department, licensed under this
6 Act, to sell any medical preparation for internal use containing
7 an ingredient, or ingredients, considered dangerous or harmful if
8 taken in overdose.

9 It shall further be unlawful for any business enterprise,
10 other than a pharmacy or drug store, or a pharmacy or drug depart-
11 ment, licensed under this Act, to sell any preparation which
12 contains any ingredient, or ingredients, listed in the most recent
13 editions of the "United States Pharmacopoeia," the "National
14 Formulary," the "United States Dispensatory," or the "Homeopathic
15 Pharmacopoeia."

16 An anti-histimine preparation, whether in liquid, powder,
17 tablet, capsule, ointment or other form, shall be sold only in a
18 pharmacy or drug store, or in a pharmacy or drug department,
19 licensed pursuant to this Act, and under the supervision of a
20 pharmacist registered under this Act.

21 No mechanical device or vending machine, whether located on
22 premises subject to regulation by this Act or elsewhere, shall be
23 used to dispense drugs, medicines or preparations containing
24 poisons.

25 Stores and roadhouses, *at a distance of at least fifteen miles from the* ~~not subject to license by this Act, and~~
26 ~~located outside a radius of fifteen miles from any city or town~~
27 ~~in which there is a licensed pharmacy or drug store, or pharmacy~~
28 ~~or drug department,~~ shall be authorized to handle and sell non-
29 poisonous patent medicines, remedies for horses, dogs and other

Provision of a licensed pharmacist

1 domestic birds and animals, and household remedies and surgical
2 dressings; Provided, that such medicines, remedies and surgical
3 dressings are still in their original packages and are properly
4 and clearly labeled.

5 Hospitals and clinics, when dispensing for out-patient treat-
6 ment, shall have a licensed pharmacist in charge of such dispen-
7 sary, except that compounding and dispensing of prescriptions in
8 such dispensary may be done by, or under the supervision of, the
9 prescribing physician or surgeon.

10 Nothing in this Act shall be construed as affecting in any
11 way the practice of medicine by a properly licensed medical
12 doctor, nor to limit in any way his supplying his patients with
13 such medicinal preparations and articles as he deems proper.

14 Section 13. PROPHYLACTICS. It shall be unlawful to sell
15 prophylactics other than in places of business licensed pursuant
16 to this Act and the holder of a wholesale license shall sell
17 prophylactics only at wholesale and the holder of a retail license
18 shall sell prophylactics only at retail; Provided, that nothing
19 in this section shall be construed as limiting the right of a
20 licensed physician or surgeon to supply his patients with such
21 medical preparations and devices as he deems necessary or bene-
22 ficial.

23 It shall be unlawful to sell any medical preparation or
24 device as a prophylactic when such preparation or device has no
25 efficacy for the prevention or treatment of a venereal disease
26 and the decision of the Board as to the efficacy of any medical
27 preparation or device for the prevention or treatment of a
28 venereal disease shall be conclusive.

29 The Board shall establish standards for prophylactics and

1 may seize and destroy any prophylactic which does not meet these
2 standards.

3 Section 14. ILLEGAL USE OF TITLES, TERMS AND SYMBOLS.

4 (a) It shall be unlawful for any person to assume or
5 use the title "pharmacist," or any variation thereof, or to hold
6 himself out to be a pharmacist, without being registered pursuant
7 to this Act.

8 (b) It shall be unlawful for any person to use or ex-
9 hibit the titles "pharmacist," "assistant pharmacist," or "drug-
10 gist," or the descriptive terms "pharmacy," "drug store," "drug
11 sundries," or any other title or term of similar import containing
12 the word "drug," in, or upon, any business premises, or in any
13 advertisement for such business through the media of press,
14 periodical, directory or other publication, or by radio or tele-
15 vision, except that such business have a licensed pharmacist in
16 regular and continuous employment.

17 (c) It shall further be unlawful for any person to dis-
18 play in any place of business the characteristic pharmacy symbol
19 of bottles, or globes, either colored or containing colored
20 liquids, except that such business have a licensed pharmacist in
21 regular and continuous employment.

22 Section 15. GROUNDS FOR REFUSING OR REVOKING A LICENSE. The
23 following grounds shall be deemed sufficient to warrant the refusal,
24 suspension or revocation of a license to practice pharmacy:

25 (a) Conviction of any felony or of a misdemeanor involv-
26 ing moral turpitude.

27 (b) Gross immorality.

28 (c) Selling, bartering, or otherwise making available,
29 morphine, cocaine or other narcotic to a person addicted to the

1 use of drugs.

2 (d) Drug addiction.

3 (e) Intemperance in the use of alcohol.

4 (f) Violation of the provisions of this Act.

5 (g) Conduct or habits inconsistent with professional
6 standards.

7 Section 16. COMPLAINTS AND HEARINGS. The Board may deny an
8 applicant otherwise qualified the opportunity to be examined; or
9 deny a license to an applicant who has successfully completed the
10 prescribed examination; or deny a license to an applicant for
11 registration by reciprocity; or institute proceedings to suspend,
12 revoke or otherwise terminate a registration, but only upon the
13 basis of a specific complaint and after a hearing. Complaints
14 shall be in the form of an affidavit and shall be filed in dupli-
15 cate with the Secretary of the Board.

16 If, after consideration of the complaint, the Board deter-
17 mines that the complainant has alleged sufficient cause for
18 disciplinary action, the Board shall set a time and place for a
19 hearing thereon and shall cause a copy of the complaint to be
20 served upon the accused, which service shall be accomplished at
21 least thirty days prior to the date set for the hearing. Service
22 upon the accused shall be by delivery in person of a copy of the
23 Board's order with respect to such hearing and a copy of the
24 complaint, or, if personal service is not practicable, then
25 service shall be by delivery to his last known residence and busi-
26 ness address, or by registered mail to his last known place of
27 receiving mail; and any of the means of service herein described
28 shall be sufficient notice to the accused to justify a hearing
29 and order based upon the complaint.

1 Section 17. CONDUCT OF HEARINGS. The Board shall adopt
2 rules for the conduct of hearings, which rules shall include a
3 guarantee against self-incrimination and shall recognize the
4 inviolability of privileged communications. The accused shall
5 have the right to be accompanied by counsel, of his own choosing,
6 who may advise the accused and make brief objections to the
7 relevancy of questions and to procedure.

8 The Board may administer oaths and subpoena and compel the
9 attendance of witnesses. The accused shall have the right to be
10 heard with respect to the complaint and to have witnesses sub-
11 poenaed in his behalf upon a showing that such witnesses have
12 knowledge essential to a proper decision: Provided, that when it
13 is not practicable to require the attendance of any witness, the
14 Board may accept an affidavit from such witness in lieu of
15 appearance.

16 Section 18. DISCIPLINARY ACTION. The Board may, by a
17 majority vote of a quorum, issue an order dismissing the complaint,
18 denying a license, reprimanding a licensee, or suspending or re-
19 voking a license, or take such other punitive action in less
20 degree as the nature of the complaint and the facts may warrant.
21 All orders issued by the Board as a result of a hearing shall be
22 in writing, signed by a majority of a quorum and filed with the
23 Secretary of the Board. The accused shall receive an authenti-
24 cated copy of each such order.

25 Section 19. APPEAL. Any person who is denied a license by
26 the Board, or who is denied a renewal of license, or whose license
27 is suspended or revoked, shall have the right to an appeal to the
28 United States District Court for the District of Alaska, which
29 appeal shall be in the form and manner prescribed by the rules of

1 procedure of said Court; Provided, that said appeal must be filed
2 within sixty days from the date of the order from which the appeal
3 is taken.

4 Section 20. VIOLATION. Any person who violates any provi-
5 sion of this Act for which no other punishment is provided herein
6 shall be guilty of a misdemeanor punishable by a fine not to
7 exceed \$200.00, or imprisonment for a period not to exceed three
8 months, or by both such fine and imprisonment.

9 Section 21. CONSTRUCTION. Nothing in this Act shall be
10 construed as amending, modifying, repealing or otherwise changing
11 any provision of the Alaska Uniform Narcotic Drug Act or the
12 Alaska Food, Drug and Cosmetic Act.

13 Section 22. APPROPRIATION; AUDIT; CERTIFYING OFFICER.
14 Funds for carrying out the provisions of this Act shall be set
15 forth in the general appropriation bill.

16 The expenditures of the Board shall be subject to audit on
17 the same basis as the expenditures of the several executive depart-
18 ments.

19 All fees collected by the Secretary of the Board pursuant to
20 this Act shall be covered into the General Fund of the Territory
21 of Alaska.

22 The Secretary of the Board shall be the certifying officer
23 and his signature shall be sufficient evidence to the Auditor of
24 the validity of all claims for travel, per diem, salaries and
25 other authorized expenses. The Secretary of the Board shall
26 obtain such surety bond as the Board may from time to time direct.

27 Section 23. REPEALER. Article 4 of Chapter 3 of Title 35,
28 Alaska Compiled Laws Annotated, 1949, (being Sections 35-3-61
29 through 35-3-79, Alaska Compiled Laws Annotated, 1949) is hereby

1 repealed.

2 Section 24. EFFECTIVE DATE. An emergency is hereby declared
3 to exist and this Act shall be in full force and effect from and
4 after the date of its passage and approval.
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