

# House Bill 3174

Sponsored by Representative BENTZ; Representatives HEARD, NEARMAN, SMITH

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires State Board of Pharmacy to notify person subject to investigation for violation of proposed disciplinary action, to advise person to retain counsel and to impose penalties commensurate with offense.

## A BILL FOR AN ACT

1  
2 Relating to discipline of pharmacists; creating new provisions; and amending ORS 689.335, 689.405  
3 and 689.445.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 689.405 is amended to read:

6 689.405. (1) The State Board of Pharmacy may refuse to issue or renew, or may suspend, revoke  
7 or restrict the license of any person or the certificate of registration of any drug outlet upon one  
8 or more of the following grounds:

9 (a) Unprofessional conduct as that term is defined by the rules of the board.

10 (b) Repeated or gross negligence.

11 (c) Incapacity of a nature that prevents a person from engaging in the activity for which the  
12 person is licensed with reasonable skill, competence and safety to the public.

13 (d) Impairment as defined in ORS 676.303.

14 (e) Being found guilty by the board of a violation of subparagraph (B) of this paragraph, or by  
15 a court of competent jurisdiction of one or more of the following:

16 (A) A felony, as defined by the laws of this state; or

17 (B) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of  
18 statutes, rules or regulations of any other state, or of the federal government.

19 (f) Fraud or intentional misrepresentation by a licensee or registrant in securing or attempting  
20 to secure the issuance or renewal of a license.

21 (g) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without  
22 a license, or falsely using the title of pharmacist.

23 (h) Aiding and abetting an individual in performing the duties of a pharmacy technician without  
24 licensing.

25 (i) Being found by the board to be in violation of any of the provisions of ORS 435.010 to 435.130,  
26 453.025, 453.045, 475.035 to 475.190, 475.744, 475.752 to 475.980 or this chapter or rules adopted  
27 pursuant to ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.744, 475.752 to 475.980  
28 and this chapter.

29 (j) Disciplinary action by another state regarding a license, based upon acts by the licensee  
30 similar to acts described in this subsection. A certified copy of the record of disciplinary action of  
31 the state taking the disciplinary action is conclusive evidence thereof.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (2) Upon receipt of a complaint under this chapter, the board shall conduct an investigation as  
2 described under ORS 676.165.

3 **(3) Prior to investigating a person for violation of this chapter, the board shall:**

4 **(a) Notify the person of the proposed disciplinary action, permit the person to respond**  
5 **to the notice and consider alternative actions before publishing a notice of action under ORS**  
6 **183.413 to 183.470; and**

7 **(b) Advise the person to retain an attorney.**

8 [(3)] (4) Actions taken under subsection (1) of this section shall be considered a contested case  
9 under ORS chapter 183.

10 **SECTION 2.** ORS 689.335 is amended to read:

11 689.335. (1) No drug outlet designated in ORS 689.305 shall be operated until a certificate of  
12 registration has been issued to said facility by the State Board of Pharmacy. Upon the finding of a  
13 violation of ORS 689.305 or 689.405, the board may impose one or more of the penalties under ORS  
14 689.445.

15 (2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board  
16 may be granted in accordance with the procedures specified by ORS 689.445 [(2)] (3).

17 **SECTION 3.** ORS 689.445 is amended to read:

18 689.445. (1) Upon the finding of the existence of grounds for discipline of any person holding a  
19 license, seeking a license or renewal of a license under the provisions of ORS 435.010 to 435.030,  
20 475.125 and 475.135 and this chapter, the State Board of Pharmacy may impose one or more of the  
21 following penalties:

22 (a) Suspension of the offender's license for a term to be determined by the board;

23 (b) Revocation of the offender's license;

24 (c) Restriction of the offender's license to prohibit the offender from performing certain acts or  
25 from engaging in the practice of pharmacy in a particular manner for a term to be determined by  
26 the board;

27 (d) A civil penalty not to exceed:

28 (A) \$1,000 for each offense committed by an individual; and

29 (B) \$10,000 for each offense committed by a drug outlet;

30 (e) Refusal to renew offender's license; or

31 (f) Placement of the offender on probation and supervision by the board for a period to be de-  
32 termined by the board.

33 **(2) The board shall impose a penalty commensurate with the offense and shall consider**  
34 **the person's professional record in imposing the penalty.**

35 [(2)] (3) Any person whose license issued pursuant to this chapter has been suspended, revoked  
36 or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the  
37 right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition  
38 shall be made in writing and in the form prescribed by the board. Upon investigation and hearing,  
39 the board may in its discretion grant or deny such petition, or it may modify its original finding to  
40 reflect any circumstances which have changed sufficiently to warrant such modifications. Pardon  
41 and restoration of civil rights to any person formerly licensed by the board does not obligate the  
42 board to restore revoked, restricted or suspended licenses.

43 [(3)] (4) Nothing in this chapter shall be construed as barring criminal prosecutions for vio-  
44 lations of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.744, 475.752 to 475.980 and  
45 this chapter where such violations are deemed as criminal offenses in other statutes of this state

1 or of the United States.

2 [(4)] (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

3 [(5)] (6) All penalties recovered under ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to  
4 475.190, 475.744, 475.752 to 475.980 and this chapter shall be deposited into the State Board of  
5 Pharmacy Account established in ORS 689.139.

6 **SECTION 4. The amendments to ORS 689.335, 689.405 and 689.445 by sections 1 to 3 of this**  
7 **2015 Act apply to complaints received on or after January 1, 2016.**

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