

(127th General Assembly)
(Substitute Senate Bill Number 203)

AN ACT

To amend sections 3719.21, 4729.99, 4776.02, and 4776.04
and to enact section 4729.42 of the Revised Code to
prohibit unauthorized pharmacy-related drug conduct
relative to persons employed as pharmacy technicians.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3719.21, 4729.99, 4776.02, and 4776.04 be amended and section 4729.42 of the Revised Code be enacted to read as follows:

Sec. 3719.21. Except as provided in division (C) of section 2923.42, division (B) of section 2923.44, divisions (D)(1), (F), and (H) of section 2925.03, division (D)(1) of section 2925.02, 2925.04, or 2925.05, division (E)(1) of section 2925.11, division (F) of section 2925.13, division (F) of section 2925.36, division (D) of section 2925.22, division (H) of section 2925.23, division (M) of section 2925.37, division (B) of section 2925.42, division (B) of section 2929.18, division (D) of section 3719.99, division (B)(1) of section 4729.65, ~~and~~ division (E)(3) of section 4729.99, and division (I)(3) of section 4729.99 of the Revised Code, the clerk of the court shall pay all fines or forfeited bail assessed and collected under prosecutions or prosecutions commenced for violations of this chapter, section 2923.42 of the Revised Code, or Chapter 2925. of the Revised Code, within thirty days, to the executive director of the state board of pharmacy, and the executive director shall deposit the fines into the state treasury to the credit of the occupational licensing and regulatory fund.

Sec. 4729.42. (A) As used in this section, "qualified pharmacy technician" means a person who is under the personal supervision of a pharmacist and to whom all of the following apply:

- (1) The person is eighteen years of age or older.
- (2) The person possesses a high school diploma, possesses a certificate of high school equivalence, or was employed prior to the effective date of this section as a pharmacy technician without a high school diploma or a certificate of high school equivalence.
- (3) The person has passed an examination approved by the state board

of pharmacy to determine a person's competency to perform services as a pharmacy technician.

(4) Except as otherwise provided in this section, the person has submitted to a criminal records check in accordance with section 4776.02 of the Revised Code as if the person was an applicant for an initial license who is subject to that section, and the results of the criminal records check do not show that the person previously has been convicted of or pleaded guilty to any felony in this state, any other state, or the United States.

(B) Except as provided in division (E) of this section, no person who is not a pharmacist, pharmacy intern, or qualified pharmacy technician shall do any of the following in a pharmacy or while performing a function of a pharmacy:

(1) Engage in the compounding of any drug;

(2) Package or label any drug;

(3) Prepare or mix any intravenous drug to be injected into a human being.

(C) No pharmacist shall allow any person employed or otherwise under the control of the pharmacist to violate division (B) of this section.

(D) No person who owns, manages, or conducts a pharmacy shall allow any person employed or otherwise under the control of the person who owns, manages, or conducts the pharmacy to violate division (B) of this section.

(E)(1) Division (B) of this section does not prohibit a health care professional authorized to engage in the activities specified in division (B)(1), (2), or (3) of this section while acting in the course of the professional's practice.

(2) Division (B) of this section does not prohibit the activities performed by a student as an integral part of a pharmacy technician training program that is operated by a vocational school district or joint vocational school district, certified by the department of education, or approved by the Ohio board of regents.

(3) In the case of a person employed after the effective date of this section, division (B) of this section does not prohibit the person's activities for the first two hundred ten days following the initial date of employment, if both of the following apply:

(a) The person is participating in or has completed a pharmacy technician training program that meets the board's standards for those programs and is making substantial progress in preparation to take a pharmacy technician examination approved by the board.

(b) The results of the person's criminal records check show that the

person previously has not been convicted of or has not pleaded guilty to any felony in this state, any other state, or the United States.

(4) In the case of a person who completes a pharmacy technician training program that is operated by a vocational school district or joint vocational school district, division (B) of this section does not prohibit the person's activities for the first two hundred ten days following the date of completing the program, if both of the following apply:

(a) The person is making substantial progress in preparation to take a pharmacy technician examination approved by the board.

(b) The results of the person's criminal records check show that the person previously has not been convicted of or has not pleaded guilty to any felony in this state, any other state, or the United States.

(5) In the case of a person employed on the effective date of this section in the capacity of a pharmacy technician, division (B) of this section does not do either of the following:

(a) Require the person to undergo a criminal records check if the person has been employed for five years or longer.

(b) Prohibit the person's activities until the earlier of either of the following:

(i) If the person has not passed an examination described in division (A)(3) of this section, one year after the effective date of this section;

(ii) If a criminal records check is required because the person has not been employed for five years or longer, the date on which the person and the employer receive the results of a criminal records check that show the person previously has been convicted of or pleaded guilty to any felony in this state, any other state, or the United States.

Sec. 4729.99. (A) Whoever violates section 4729.16, division (A) or (B) of section 4729.38, or section 4729.57 of the Revised Code is guilty of a minor misdemeanor. Each day's violation constitutes a separate offense.

(B) Whoever violates section 4729.27, 4729.28, or 4729.36 of the Revised Code is guilty of a misdemeanor of the third degree. Each day's violation constitutes a separate offense. If the offender previously has been convicted of or pleaded guilty to a violation of this chapter, that person is guilty of a misdemeanor of the second degree.

(C) Whoever violates section 4729.32, 4729.33, or 4729.34 of the Revised Code is guilty of a misdemeanor.

(D) Whoever violates division (A), (B), (D), or (E) of section 4729.51 of the Revised Code is guilty of a misdemeanor of the first degree.

(E)(1) Whoever violates section 4729.37, division (C)(2) of section 4729.51, division (J) of section 4729.54, or section 4729.61 of the Revised

Code is guilty of a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this chapter or a violation of Chapter 2925. or 3719. of the Revised Code, that person is guilty of a felony of the fourth degree.

(2) If an offender is convicted of or pleads guilty to a violation of section 4729.37, division (C) of section 4729.51, division (J) of section 4729.54, or section 4729.61 of the Revised Code, if the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender, as defined in section 2929.01 of the Revised Code, and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term authorized or required by division (E)(1) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under sections 2929.11 to 2929.18 of the Revised Code, shall impose upon the offender, in accordance with division (D)(3)(a) of section 2929.14 of the Revised Code, the mandatory prison term specified in that division and may impose an additional prison term under division (D)(3)(b) of that section.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of court shall pay any fine imposed for a violation of section 4729.37, division (C) of section 4729.51, division (J) of section 4729.54, or section 4729.61 of the Revised Code pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(F) Whoever violates section 4729.531 of the Revised Code or any rule adopted thereunder or section 4729.532 of the Revised Code is guilty of a misdemeanor of the first degree.

(G) Whoever violates division (C)(1) of section 4729.51 of the Revised Code is guilty of a felony of the fourth degree. If the offender has previously been convicted of or pleaded guilty to a violation of this chapter, or of a violation of Chapter 2925. or 3719. of the Revised Code, that person is guilty of a felony of the third degree.

(H) Whoever violates division (C)(3) of section 4729.51 of the Revised Code is guilty of a misdemeanor of the first degree. If the offender has previously been convicted of or pleaded guilty to a violation of this chapter, or of a violation of Chapter 2925. or 3719. of the Revised Code, that person is guilty of a felony of the fifth degree.

(D)(1) Whoever violates division (B) of section 4729.42 of the Revised Code is guilty of unauthorized pharmacy-related drug conduct. Except as otherwise provided in this section, unauthorized pharmacy-related drug conduct is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (B), (C), or (D) of that section, unauthorized pharmacy-related drug conduct is a misdemeanor of the first degree on a second offense and a felony of the fifth degree on a third or subsequent offense.

(2) Whoever violates division (C) or (D) of section 4729.42 of the Revised Code is guilty of permitting unauthorized pharmacy-related drug conduct. Except as otherwise provided in this section, permitting unauthorized pharmacy-related drug conduct is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (B), (C), or (D) of that section, permitting unauthorized pharmacy-related drug conduct is a misdemeanor of the first degree on a second offense and a felony of the fifth degree on a third or subsequent offense.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code or any other provision of law that governs the distribution of fines, the clerk of the court shall pay any fine imposed pursuant to division (D)(1) or (2) of this section to the state board of pharmacy if the board has adopted a written internal control policy under division (F)(2) of section 2925.03 of the Revised Code that addresses fine moneys that it receives under Chapter 2925. of the Revised Code and if the policy also addresses fine moneys paid under this division. The state board of pharmacy shall use the fines so paid in accordance with the written internal control policy to subsidize the board's law enforcement efforts that pertain to drug offenses.

Sec. 4776.02. (A) An applicant for an initial license or restored license from a licensing agency, or a person seeking to satisfy the criteria for being a qualified pharmacy technician that are specified in section 4729.42 of the Revised Code, shall submit a request to the bureau of criminal identification and investigation for a criminal records check of the applicant or person. The request shall be accompanied by a completed copy of the form prescribed under division (C)(1) of section 109.572 of the Revised Code, a set of fingerprint impressions obtained as described in division (C)(2) of that section, and the fee prescribed under division (C)(3) of that section. The applicant or person shall ask the superintendent of the bureau of criminal identification and investigation in the request to obtain from the federal bureau of investigation any information it has pertaining to the applicant or person.

An applicant or person requesting a criminal records check shall provide the bureau of criminal identification and investigation with the applicant's or person's name and address and, regarding an applicant, with the licensing agency's name and address.

(B) Upon receipt of the completed form, the set of fingerprint impressions, and the fee provided for in division (A) of this section, the superintendent shall conduct a criminal records check of the applicant or person under division (B) of section 109.572 of the Revised Code. Upon completion of the criminal records check, the superintendent shall report the results of the criminal records check and any information the federal bureau of investigation provides to whichever of the following is applicable:

(1) If the request was submitted by an applicant for an initial license or restored license, to the licensing agency identified in the request for a criminal records check;

(2) If the request was submitted by a person seeking to satisfy the criteria for being a qualified pharmacy technician that are specified in section 4729.42 of the Revised Code, to the person who submitted the request and to the employer or potential employer specified in the request.

Sec. 4776.04. The results of any criminal records check conducted pursuant to a request made under this chapter and any report containing those results, including any information the federal bureau of investigation provides, are not public records for purposes of section 149.43 of the Revised Code and shall not be made available to any person or for any purpose other than as follows:

(A) If the request for the criminal records check was submitted by an applicant for an initial license or restored license, as follows:

(1) The superintendent of the bureau of criminal identification and investigation shall make the results available to the licensing agency for use in determining, under the agency's authorizing chapter of the Revised Code, whether the applicant who is the subject of the criminal records check should be granted a license under that chapter.

~~(B)(2)~~ The licensing agency shall make the results available to the applicant who is the subject of the criminal records check or to the applicant's representative.

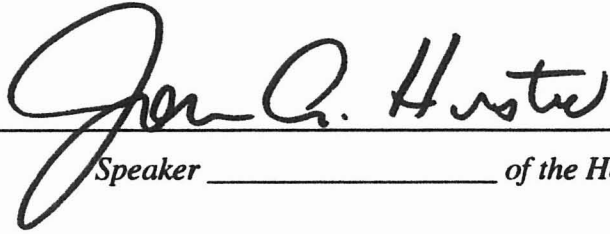
(B) If the request for the criminal records check was submitted by a person seeking to satisfy the criteria for being a qualified pharmacy technician that are specified in section 4729.42 of the Revised Code, the superintendent of the bureau of criminal identification and investigation shall make the results available to both of the following:

(1) The person who submitted the request and is the subject of the

criminal records check:

(2) The employer or potential employer specified in the request.

SECTION 2. That existing sections 3719.21, 4729.99, 4776.02, and 4776.04 of the Revised Code are hereby repealed.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed December 17, 2008

Approved January 7, 2009



Governor.

Sub. S. B. No. 203

2120

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Marc C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
7th day of January, A. D. 2009.

Jim B.

Secretary of State.

File No.

175

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April 8, 2009