

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 426**

Introduced by Pankonin, 2

Read first time January 16, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend section  
2 71-1,147, Reissue Revised Statutes of Nebraska; to adopt  
3 the Pharmacy Technician Act; to provide a penalty; to  
4 harmonize provisions; to eliminate provisions relating to  
5 pharmacy technicians; to repeal the original section; and  
6 to outright repeal section 71-1,147.34, Reissue Revised  
7 Statutes of Nebraska, and section 71-1,147.33, Revised  
8 Statutes Cumulative Supplement, 2006.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 13 of this act shall be known  
2 and may be cited as the Pharmacy Technician Act.

3           Sec. 2. The Legislature finds that pharmacy technicians  
4 should be regulated to protect the public health and welfare of the  
5 citizens of the State of Nebraska.

6           Sec. 3. For purposes of the Pharmacy Technician Act:

7           (1) Board means the Board of Pharmacy;

8           (2) Chart order means an order for a drug or device  
9 issued by a practitioner for a patient who is in the hospital  
10 where the chart is stored or for a patient receiving detoxification  
11 treatment or maintenance treatment pursuant to section 28-412.  
12 Chart order does not include a prescription;

13           (3) Compounding means the preparation of components into  
14 a drug product (a) as the result of a practitioner's medical order  
15 or initiative occurring in the course of practice based upon the  
16 relationship between the practitioner, patient, and pharmacist or  
17 (b) for the purpose of, or as an incident to, research, teaching,  
18 or chemical analysis and not for sale or dispensing. Compounding  
19 includes the preparation of drugs or devices in anticipation of  
20 receiving medical orders based upon routine, regularly observed  
21 prescribing patterns;

22           (4) Delegated dispensing means the practice of pharmacy  
23 by which one or more pharmacists jointly agree, on a voluntary  
24 basis, to work in conjunction with one or more persons pursuant  
25 to sections 71-1,147.42 to 71-1,147.64 under a protocol which

1 provides that such person may perform certain dispensing functions  
2 authorized by the pharmacist or pharmacists under certain specified  
3 conditions and limitations;

4 (5) Deliver or delivery means to actually,  
5 constructively, or attempt to transfer a drug or device from one  
6 person to another, whether or not for consideration;

7 (6) Department means the Department of Health and Human  
8 Services Regulation and Licensure;

9 (7) Device means an instrument, apparatus, implement,  
10 machine, contrivance, implant, in vitro reagent, or other similar  
11 or related article, including any component, part, or accessory,  
12 which is prescribed by a practitioner and dispensed by a pharmacist  
13 or other person authorized by law to do so;

14 (8) Dispense or dispensing means interpreting,  
15 evaluating, and implementing a medical order, including preparing  
16 and delivering a drug or device to a patient or caregiver  
17 in a suitable container appropriately labeled for subsequent  
18 administration to, or use by, a patient. Dispensing includes (a)  
19 dispensing incident to practice, (b) dispensing pursuant to a  
20 delegated dispensing permit, (c) dispensing pursuant to a medical  
21 order, and (d) any transfer of a prescription drug or device to a  
22 patient or caregiver other than by administering;

23 (9) Distribute means to deliver a drug or device, other  
24 than by administering or dispensing;

25 (10) Drugs, medicines, and medicinal substances means (a)

1 articles recognized in the official United States Pharmacopoeia,  
2 the Homeopathic Pharmacopoeia of the United States, the official  
3 National Formulary, or any supplement to any of them, (b) articles  
4 intended for use in the diagnosis, cure, mitigation, treatment, or  
5 prevention of diseases in humans or animals, (c) articles, except  
6 food, intended to affect the structure or any function of the  
7 body of a human or an animal, (d) articles intended for use as a  
8 component of any articles specified in subdivision (a), (b), or (c)  
9 of this subdivision, except any device or its components, parts, or  
10 accessories, and (e) prescription drugs or devices as defined in  
11 subdivision (31) of this section;

12 (11) Electronic signature has the definition found in  
13 section 86-621;

14 (12) Electronic transmission means transmission of  
15 information in electronic form. Electronic transmission may  
16 include computer-to-computer transmission or computer-to-facsimile  
17 transmission;

18 (13) Facility means a health care facility as defined in  
19 section 71-413;

20 (14) Facsimile means a copy generated by a system that  
21 encodes a document or photograph into electrical signals, transmits  
22 those signals over telecommunications lines, and reconstructs the  
23 signals to create an exact duplicate of the original document at  
24 the receiving end;

25 (15) Hospital has the definition found in section 71-419;

1           (16) Labeling means the process of preparing and affixing  
2 a label to any drug container or device container, exclusive  
3 of the labeling by a manufacturer, packer, or distributor of  
4 a nonprescription drug or commercially packaged legend drug or  
5 device. Any such label shall include all information required by  
6 federal and state law or regulation;

7           (17) Medical order means a prescription, a chart order,  
8 or an order for pharmaceutical care issued by a practitioner;

9           (18) Nonprescription drugs means nonnarcotic medicines or  
10 drugs which may be sold without a medical order and which are  
11 prepackaged for use by the consumer and labeled in accordance with  
12 the requirements of the laws and regulations of this state and the  
13 federal government;

14           (19) Patient counseling means the verbal communication  
15 by a pharmacist, pharmacist intern, or practitioner, in a manner  
16 reflecting dignity and the right of the patient to a reasonable  
17 degree of privacy, of information to the patient or caregiver in  
18 order to improve therapeutic outcomes by maximizing proper use of  
19 prescription drugs and devices and also includes the duties set out  
20 in section 71-1,147.35;

21           (20) Person means an individual, corporation,  
22 partnership, limited liability company, association, or other legal  
23 entity;

24           (21) Pharmaceutical care means the provision of drug  
25 therapy for the purpose of achieving therapeutic outcomes that

1 improve a patient's quality of life. Such outcomes include (a) the  
2 cure of disease, (b) the elimination or reduction of a patient's  
3 symptomatology, (c) the arrest or slowing of a disease process, or  
4 (d) the prevention of a disease or symptomatology. Pharmaceutical  
5 care includes the process through which the pharmacist works in  
6 concert with the patient and his or her caregiver, physician, or  
7 other professionals in designing, implementing, and monitoring a  
8 therapeutic plan that will produce specific therapeutic outcomes  
9 for the patient;

10 (22) Pharmacist means any person who is licensed by the  
11 State of Nebraska to practice pharmacy;

12 (23) Pharmacist in charge means a pharmacist who is  
13 designated on a pharmacy license or designated by a hospital as  
14 being responsible for the practice of pharmacy in the pharmacy  
15 for which a pharmacy license is issued and who works within the  
16 physical confines of such pharmacy for a majority of the hours  
17 per week that the pharmacy is open for business averaged over a  
18 twelve-month period or thirty hours per week, whichever is less;

19 (24) Pharmacist intern means a person who meets the  
20 requirements of section 71-1,144;

21 (25) Pharmacy technician means an individual registered  
22 under the Pharmacy Technician Act;

23 (26) Pharmacy has the same meaning as in section 71-425;

24 (27) Practice of pharmacy means (a) the interpretation,  
25 evaluation, and implementation of a medical order, (b) the

1 dispensing of drugs and devices, (c) drug product selection,  
2 (d) the administration of drugs or devices, (e) drug utilization  
3 review, (f) patient counseling, (g) the provision of pharmaceutical  
4 care, and (h) the responsibility for compounding and labeling of  
5 dispensed or repackaged drugs and devices, proper and safe storage  
6 of drugs and devices, and maintenance of proper records. The active  
7 practice of pharmacy means the performance of the functions set  
8 out in this subdivision by a pharmacist as his or her principal or  
9 ordinary occupation;

10 (28) Practitioner means a certified registered nurse  
11 anesthetist, a certified nurse midwife, a dentist, an optometrist,  
12 a nurse practitioner, a physician assistant, a physician, a  
13 podiatrist, or a veterinarian;

14 (29) Prescribe means to issue a medical order;

15 (30) Prescription means an order for a drug or device  
16 issued by a practitioner for a specific patient, for emergency use,  
17 or for use in immunizations. Prescription does not include a chart  
18 order;

19 (31) Prescription drug or device or legend drug or  
20 device means (a) a drug or device which is required under  
21 federal law to be labeled with one of the following statements  
22 prior to being dispensed or delivered: (i) Caution: Federal law  
23 prohibits dispensing without prescription; (ii) Caution: Federal  
24 law restricts this drug to use by or on the order of a licensed  
25 veterinarian; or (iii) "Rx Only" or (b) a drug or device which is

1 required by any applicable federal or state law to be dispensed  
2 pursuant only to a prescription or chart order or which is  
3 restricted to use by practitioners only;

4 (32) Signature means the name, word, or mark of a person  
5 written in his or her own hand with the intent to authenticate a  
6 writing or other form of communication or a digital signature which  
7 complies with section 86-611 or an electronic signature;

8 (33) Supervision means the immediate personal guidance  
9 and direction by the licensed pharmacist on duty in the facility of  
10 the performance by a pharmacy technician of authorized activities  
11 or functions subject to verification by such pharmacist, except  
12 that when a pharmacy technician performs authorized activities or  
13 functions to assist a pharmacist on duty in the facility when the  
14 prescribed drugs or devices will be administered by a licensed  
15 staff member or consultant or by a licensed physician assistant to  
16 persons who are patients or residents of a facility, the activities  
17 or functions of such pharmacy technician shall only be subject to  
18 verification by a pharmacist on duty in the facility;

19 (34) Verification means the confirmation by a supervising  
20 pharmacist of the accuracy and completeness of the acts, tasks,  
21 or functions undertaken by a pharmacy technician to assist the  
22 pharmacist in the practice of pharmacy; and

23 (35) Written control procedures and guidelines means  
24 the document prepared and signed by the pharmacist in charge  
25 and approved by the board which specifies the manner in which

1 basic levels of competency of pharmacy technicians employed by  
2 the pharmacy are determined, the manner in which supervision is  
3 provided, the manner in which the functions of pharmacy technicians  
4 are verified, the maximum ratio of pharmacy technicians to one  
5 pharmacist used in the pharmacy, and guidelines governing the use  
6 of pharmacy technicians and the functions which they may perform.

7           Sec. 4. (1) All pharmacy technicians employed by a  
8 licensed health care facility shall be registered with the State of  
9 Nebraska.

10           (2) To register as a pharmacy technician, an individual  
11 shall (a) be at least eighteen years of age, (b) be a high  
12 school graduate or be officially recognized by the State Department  
13 of Education as possessing the equivalent degree of education,  
14 (c) have never been convicted of any drug-related misdemeanor or  
15 felony, (d) file an application with the department, and (e) pay  
16 the applicable fee not to exceed fifty dollars biennially.

17           (3) A registered pharmacy technician, under the written  
18 control procedures and guidelines of an employing pharmacy, may  
19 perform those functions which do not require professional judgment  
20 and which are subject to verification to assist a pharmacist in the  
21 practice of pharmacy.

22           (4) A pharmacy technician shall apply for registration  
23 as provided in this section within thirty days after being hired  
24 by a pharmacy or facility. Pharmacy technicians employed in that  
25 capacity on the effective date of this act shall apply for

1 registration within thirty days after the effective date of this  
2 act.

3           Sec. 5. (1) A pharmacy technician shall only perform  
4 tasks which do not require professional judgment and which are  
5 subject to verification to assist a pharmacist in the practice of  
6 pharmacy.

7           (2) The functions and tasks which shall not be performed  
8 by pharmacy technicians include, but are not limited to:

9           (a) Receiving oral medical orders from a practitioner or  
10 his or her agent;

11           (b) Providing patient counseling;

12           (c) Performing any evaluation or necessary clarification  
13 of a medical order or performing any functions other than strictly  
14 clerical functions involving a medical order;

15           (d) Supervising or verifying the tasks and functions of  
16 pharmacy technicians;

17           (e) Interpreting or evaluating the data contained in a  
18 patient's record maintained pursuant to section 71-1,147.35;

19           (f) Releasing any confidential information maintained by  
20 the pharmacy;

21           (g) Performing any professional consultations; and

22           (h) Drug product selection, with regard to an individual  
23 medical order, in accordance with the Nebraska Drug Product  
24 Selection Act.

25           (3) The Director of Regulation and Licensure shall,

1 upon recommendation of the board, waive any of the limitations  
2 in subsection (2) of this section for purposes of a scientific  
3 study of the role of pharmacy technicians approved by the board.  
4 Such study shall be based upon providing improved patient care  
5 or enhanced pharmaceutical care. Any such waiver shall state the  
6 length of the study and shall require that all study data and  
7 results be made available to the board upon the completion of the  
8 study. Nothing in this subsection requires the board to approve any  
9 study proposed by this subsection.

10 (4) A pharmacy employing pharmacy technicians shall be  
11 responsible for the supervision and performance of the pharmacy  
12 technicians.

13 (5) The pharmacist in charge shall be responsible  
14 for the practice of pharmacy and the establishment of written  
15 control procedures and guidelines governing the qualifications,  
16 onsite training, functions, supervision, and verification of the  
17 performance of pharmacy technicians. The supervision of such  
18 technicians at the place of employment shall be performed by  
19 the licensed pharmacist who is on duty in the facility with the  
20 pharmacy technicians.

21 (6)(a) Each pharmacy shall document, in a manner  
22 and method specified in the written control procedures and  
23 guidelines, the basic competence of the pharmacy technician prior  
24 to performance of tasks and functions by such technician. Such  
25 basic competence shall include, but not be limited to:

- 1           (i) Basic pharmaceutical nomenclature;  
2           (ii) Metric system measures, both liquid and solid;  
3           (iii) The meaning and use of Roman numerals;  
4           (iv) Abbreviations used for dosages and directions to  
5 patients;  
6           (v) Basic medical terms, including terms relating to  
7 ailments, diseases, or infirmities;  
8           (vi) The use and operation of automated dispensing and  
9 record-keeping systems if used by the employing pharmacy;  
10           (vii) Applicable statutes, rules, and regulations  
11 governing the preparation, compounding, dispensing, and  
12 distribution of drugs or devices, record keeping with regard to  
13 such functions, and the employment, use, and functions of pharmacy  
14 technicians; and  
15           (viii) The contents of the written control procedures and  
16 guidelines.  
17           (b) Written control procedures and guidelines shall  
18 specify the functions that pharmacy technicians may perform in the  
19 employing pharmacy. The written control procedures and guidelines  
20 shall specify the means used by the employing pharmacy to verify  
21 that the prescribed drug or device, the dosage form, and the  
22 directions provided to the patient or caregiver conform to the  
23 medical order authorizing the drug or device to be dispensed.  
24           (c) The written control procedures and guidelines shall  
25 specify the manner in which the verification made prior to

1 dispensing is documented.

2 (7) Each pharmacy or facility shall, before using  
3 pharmacy technicians, file with the board a copy of its written  
4 control procedures and guidelines and receive approval of its  
5 written control procedures and guidelines from the board. The  
6 board shall, within ninety days after the filing of such written  
7 control procedures and guidelines, review and either approve or  
8 disapprove them. The board shall notify the pharmacy or facility  
9 of the approval or disapproval. The board or its representatives  
10 shall have access to the approved written control procedures  
11 and guidelines upon request. Any written control procedures and  
12 guidelines for supportive pharmacy personnel that were filed by a  
13 pharmacy and approved by the board prior to the effective date of  
14 this act shall be deemed to be approved and to apply to pharmacy  
15 technicians.

16 Sec. 6. (1) The Pharmacy Technician Registry is created.  
17 The department shall list each pharmacy technician registration in  
18 the registry. A listing in the registry shall be valid for the term  
19 of the registration and upon renewal unless such listing is refused  
20 renewal or is removed as provided in section 8 of this act.

21 (2) The registry shall contain the following information  
22 on each individual who meets the conditions set out in section 4 of  
23 this act: (a) The individual's full name; (b) information necessary  
24 to identify the individual; (c) any conviction of a drug-related  
25 felony or misdemeanor reported to the department; and (d) any other

1 information as the department may require by rule and regulation.

2           Sec. 7. Registration as a pharmacy technician shall be  
3 renewed biennially on January 1 of every odd-numbered year. The  
4 department may prescribe by rule and regulation how a pharmacy  
5 technician can show continued competency for purposes of renewal.  
6 Payment of an applicable fee not to exceed fifty dollars biennially  
7 shall be a condition of renewal.

8           Sec. 8. (1) A registration to practice as a pharmacy  
9 technician may be denied, refused renewal, removed, or suspended  
10 or have other disciplinary measures taken against it for failure  
11 to meet the requirements of or for violation of the Pharmacy  
12 Technician Act or the rules and regulations adopted under the act.

13           (2) If the department proposes to deny, refuse renewal of  
14 or remove or suspend a registration, it shall send the applicant  
15 or registrant a notice setting forth the action to be taken and  
16 the reasons for the determination. The denial, refusal to renew,  
17 removal, or suspension shall become final thirty days after mailing  
18 the notice unless the applicant or registrant gives written notice  
19 to the department of his or her desire for an informal conference  
20 or for a formal hearing.

21           (3) Notice may be served by any method specified in  
22 section 25-505.01, or the department may permit substitute or  
23 constructive service as provided in section 25-517.02 when service  
24 cannot be made with reasonable diligence by any of the methods  
25 specified in section 25-505.01.

1           (4) Pharmacy technicians may participate in the Licensee  
2 Assistance Program described in section 71-172.01.

3           Sec. 9. (1) If a pharmacy technician performs functions  
4 requiring professional judgment and licensure as a pharmacist,  
5 performs functions not specified under approved written control  
6 procedures and guidelines, or performs functions without  
7 supervision and such acts are known to the pharmacist supervising  
8 the pharmacy technician or the pharmacist in charge or are of such  
9 a nature that they should have been known to a reasonable person,  
10 such acts may be considered acts of unprofessional conduct on the  
11 part of the pharmacist supervising the pharmacy technician or the  
12 pharmacist in charge pursuant to section 71-147, and disciplinary  
13 measures may be taken against such pharmacist supervising the  
14 pharmacy technician or the pharmacist in charge pursuant to the  
15 Uniform Licensing Law.

16           (2) Acts described in subsection (1) of this section  
17 may be grounds for the department, upon the recommendation of the  
18 board, to apply to the district court in the judicial district in  
19 which the pharmacy is located for an order to cease and desist  
20 from the performance of any unauthorized acts. On or at any time  
21 after such application the court may, in its discretion, issue an  
22 order restraining such pharmacy or its agents or employees from the  
23 performance of unauthorized acts. After a hearing the court shall  
24 either grant or deny the application. Such order shall continue  
25 until the court, after a hearing, finds the basis for such order

1 has been removed.

2           Sec. 10. A person whose registration has been denied,  
3 refused renewal, removed, or suspended from the Pharmacy Technician  
4 Registry may reapply for registration or for lifting of the  
5 disciplinary sanction at any time in accordance with the rules and  
6 regulations adopted and promulgated by the department.

7           Sec. 11. A pharmacy technician may report first-hand  
8 knowledge of facts giving him or her reason to believe that  
9 any person in his or her profession, or any person in another  
10 profession under the regulatory provisions of the Nebraska Health  
11 and Human Services System, may be practicing while his or her  
12 ability to practice is impaired by alcohol, controlled substances,  
13 or narcotic drugs. A report made to the department under this  
14 section shall be confidential. Any person making a report to the  
15 department under this section, except for those self-reporting,  
16 shall be completely immune from criminal or civil liability of  
17 any nature, whether direct or derivative, for filing a report or  
18 for disclosure of documents, records, or other information to the  
19 department under this section.

20           Sec. 12. The department, upon recommendation of the  
21 board, shall set fees for registration and renewal of registration  
22 as set forth in sections 4 and 7 of this act in an amount not to  
23 exceed fifty dollars per biennium. The fees shall be used to carry  
24 out the purposes of the Pharmacy Technician Act. The fees received  
25 pursuant to the act shall be remitted to the State Treasurer for

1 credit to the Department of Health and Human Services Regulation  
2 and Licensure Cash Fund. The fees are nonrefundable. Such fund  
3 shall be used by the department for the purpose of administering  
4 the act.

5           Sec. 13. Any person who intentionally violates the  
6 Pharmacy Technician Act is guilty of a Class III misdemeanor.

7           Sec. 14. Section 71-1,147, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           71-1,147 (1) Except as provided for pharmacy technicians  
10 in ~~section 71-1,147.33~~ the Pharmacy Technician Act and for  
11 individuals authorized to dispense under a delegated dispensing  
12 permit, no person other than a licensed pharmacist, a pharmacist  
13 intern, or a practitioner with a pharmacy license shall provide  
14 pharmaceutical care, compound and dispense drugs or devices, or  
15 dispense pursuant to a medical order. Notwithstanding any other  
16 provision of law to the contrary, a pharmacist or pharmacist intern  
17 may dispense drugs or devices pursuant to a medical order of  
18 a practitioner authorized to prescribe in another state if such  
19 practitioner could be authorized to prescribe such drugs or devices  
20 in this state.

21           (2) Except as provided for pharmacy technicians in  
22 ~~section 71-1,147.33~~ the Pharmacy Technician Act and for individuals  
23 authorized to dispense under a delegated dispensing permit, it  
24 shall be unlawful for any person to permit or direct a person  
25 who is not a pharmacist intern, a licensed pharmacist, or a

1 practitioner with a pharmacy license to provide pharmaceutical  
2 care, compound and dispense drugs or devices, or dispense pursuant  
3 to a medical order.

4 (3) It shall be unlawful for any person to coerce  
5 or attempt to coerce a pharmacist to enter into a delegated  
6 dispensing agreement or to supervise any pharmacy technician for  
7 any purpose or in any manner contrary to the professional judgment  
8 of the pharmacist. Violation of this subsection by a health care  
9 professional regulated pursuant to the provisions of Chapter 71  
10 shall be considered an act of unprofessional conduct. A violation  
11 of this subsection by a facility shall be prima facie evidence  
12 in an action against the license of the facility pursuant to the  
13 Health Care Facility Licensure Act. Any pharmacist subjected to  
14 coercion or attempted coercion pursuant to this subsection has a  
15 cause of action against the person and may recover his or her  
16 damages and reasonable attorney's fees.

17 (4) Violation of this section by an unlicensed person  
18 shall be a Class III misdemeanor.

19 Sec. 15. Original section 71-1,147, Reissue Revised  
20 Statutes of Nebraska, is repealed.

21 Sec. 16. The following sections are outright repealed:  
22 Section 71-1,147.34, Reissue Revised Statutes of Nebraska, and  
23 section 71-1,147.33, Revised Statutes Cumulative Supplement, 2006.