

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 3640**

(SENATE AUTHORS: SHERAN)

DATE	D-PG	OFFICIAL STATUS
05/22/2016	7428	Introduction and first reading Referred to Health, Human Services and Housing

1.1 A bill for an act  
1.2 relating to state government; creating a Pharmaceutical Industry Commission;  
1.3 proposing coding for new law in Minnesota Statutes, chapter 152A.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[152A.06] DEFINITIONS.**

1.6 Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this  
1.7 section have the meanings given them.

1.8 Subd. 2. **Legislative function.** "Legislative function" means the establishment and  
1.9 promulgation of all rules, orders, and directives of general or particular applicability,  
1.10 governing the conduct of the regulated persons or businesses, together with such  
1.11 investigative procedures as are incident thereto and all other valid acts and procedures  
1.12 which are historically or functionally legislative in character.

1.13 Subd. 3. **Administrative function.** "Administrative function" means all duties and  
1.14 procedures concerning the execution and enforcement of the laws, rules, orders, directives,  
1.15 duties, and obligations imposed for the control and government of the persons or  
1.16 businesses regulated, together with investigative activities incident thereto and procedures  
1.17 inherently administrative or executive in character.

1.18 Subd. 4. **Quasi-judicial function.** "Quasi-judicial function" means the  
1.19 promulgation of all orders and directives of particular applicability governing the conduct  
1.20 of the regulated persons or businesses, together with procedures inherently judicial.

1.21 Sec. 2. **[152A.07] PHARMACEUTICAL INDUSTRY COMMISSION.**

1.22 Subdivision 1. **Members.** The Pharmaceutical Industry Commission shall consist of  
1.23 five members. The terms of members shall be six years and until their successors have

2.1 been appointed and qualified. Each commissioner shall be appointed by the governor by  
2.2 and with the advice and consent of the senate.

2.3 Subd. 2. **Removal; vacancy.** The removal of members and filling of vacancies on  
2.4 the commission shall be as provided in section 15.0575.

2.5 Subd. 3. **Chair.** The governor shall select one of the commissioners to serve as the  
2.6 chair for a term concurrent with that of the governor. If a vacancy occurs in the position of  
2.7 chair, the governor shall select a new chair to complete the unexpired term.

2.8 Subd. 4. **Powers and duties of chair.** The chair shall be the principal executive  
2.9 officer of the commission and shall preside at meetings of the commission. The chair shall  
2.10 organize the work of the commission and may make assignments to commission members,  
2.11 appoint committees, and give direction to the commission staff through the executive  
2.12 secretary subject to the approval of the commission.

2.13 Subd. 5. **Quorum.** A majority of the commission shall constitute a quorum, and  
2.14 the act or decision of a majority of commissioners present, if at least a quorum is present,  
2.15 shall be the act or decision of the commission. If a vacancy exists on the commission, a  
2.16 majority of the remaining commissioners constitutes a quorum.

2.17 Subd. 6. **Record of proceedings.** An audio magnetic or audio electronic recording  
2.18 device shall be used to keep a record of all proceedings before the commission.

2.19 **Sec. 3. [152A.08] CONFLICT OF INTEREST.**

2.20 (a) No person, while a member of the commission, while acting as executive secretary  
2.21 of the commission, or while employed in a professional capacity by the commission, shall  
2.22 receive any income, other than dividends or other earnings from a mutual fund or trust if  
2.23 these earnings do not constitute a significant portion of the person's income, directly or  
2.24 indirectly, from any pharmaceutical company, drug manufacturer, or other organization.

2.25 (b) A professional employee of the commission must immediately disclose to the  
2.26 commission or to the commissioner of the department, respectively, any communication,  
2.27 direct or indirect, with a person who is a party to a pending proceeding before the  
2.28 commission regarding future benefits, compensation, or employment to be received from  
2.29 that person.

2.30 **Sec. 4. [152A.09] EMPLOYMENT RESTRICTIONS; CIVIL PENALTY.**

2.31 (a) A person who serves as a commissioner shall not, while employed with or within  
2.32 one year after leaving the commission, accept employment with, receive compensation  
2.33 directly or indirectly from, or enter into a contractual relationship with a pharmaceutical

3.1 company or drug manufacturer, or an affiliated company of an entity that is subject  
 3.2 to regulation by the commission.

3.3 (b) A drug manufacturer or pharmaceutical company, or a person acting on behalf  
 3.4 of the entity, shall not negotiate or offer to employ or compensate a commissioner of the  
 3.5 commission while the person is so employed or within one year after the person leaves  
 3.6 that employment.

3.7 (c) For the purposes of this section, "affiliated company" means a company that  
 3.8 controls, is controlled by, or is under common control with an entity subject to regulation  
 3.9 by the commission.

3.10 (d) A person who violates this section is subject to a civil penalty not to exceed  
 3.11 \$10,000 for each violation. The attorney general may bring an action in district court to  
 3.12 collect the penalties provided in this section.

3.13 **Sec. 5. [152A.10] EXECUTIVE SECRETARY; COMMISSION EMPLOYEES.**

3.14 Subdivision 1. **Selection of executive secretary.** The commission shall appoint an  
 3.15 executive secretary, not a member, who shall be in the unclassified service of the state  
 3.16 and shall serve at the pleasure of the commission. The executive secretary shall take,  
 3.17 subscribe, and file an oath similar to that required of the commissioners, and shall be  
 3.18 subject to the same disqualifications as the commissioners.

3.19 Subd. 2. **Powers and duties of executive secretary.** The executive secretary shall:

3.20 (1) cause to be kept full and correct records of all transactions and proceedings  
 3.21 of the commission;

3.22 (2) appoint, subject to chapter 43A and the approval of the commission, all other  
 3.23 classified employees of the commission and supervise and direct their activities;

3.24 (3) have custody of the seal of the commission;

3.25 (4) serve as the administrative officer of the commission with responsibility for  
 3.26 personnel, budget, and other administrative details related to the work of the commission  
 3.27 or as required by state law;

3.28 (5) prepare orders, reports, and other materials as assigned by the commission and  
 3.29 recommend to the commission such measures as may be appropriate to achieve the  
 3.30 objectives of the commission;

3.31 (6) advise the commission of its financial position and recommend a budget for its  
 3.32 approval; and

3.33 (7) perform other duties as the commission directs.

3.34 Subd. 3. **Acting secretary.** The commission may designate any responsible  
 3.35 employee to serve as acting secretary in the absence of the secretary.

4.1 Subd. 4. **Officers and employees.** The commission may establish other positions in  
4.2 the unclassified service if the positions meet the criteria of section 43A.08, subdivision  
4.3 1a, clauses (1) to (7). The commission may employ other persons as may be necessary  
4.4 to carry out its functions.

4.5 Subd. 5. **Transcripts of proceedings.** Hearing reporters may provide transcripts of  
4.6 proceedings before the commission to persons requesting transcripts who pay a reasonable  
4.7 charge therefor to the reporter. The amount of the charge shall be fixed by the commission  
4.8 and retained by the reporter, notwithstanding any other law to the contrary.

4.9 Sec. 6. **[152A.11] COMMISSION FUNCTIONS AND POWERS.**

4.10 Subdivision 1. **Legislative and quasi-judicial functions.** The functions of the  
4.11 commission shall be legislative and quasi-judicial in nature. The commission may make  
4.12 such investigations and determinations, hold such hearings, prescribe such rules, and issue  
4.13 such orders with respect to the control and conduct of the businesses coming within its  
4.14 jurisdiction as the legislature itself might make but only as it shall from time to time  
4.15 authorize.

4.16 Subd. 2. **Powers; generally.** The commission shall, to the extent prescribed by law:

4.17 (1) investigate the management of all drug manufacturers or pharmaceutical  
4.18 companies operating in Minnesota, the manner in which their businesses are conducted,  
4.19 and the adequacies of the services that they are affording to the public, and make all  
4.20 appropriate orders relating to the continuation, termination, or modification of all services  
4.21 and facilities with a view to properly promoting the health and safety of the public;

4.22 (2) review and ascertain the reasonableness of rates and charges for any prescription  
4.23 drug sold in Minnesota; and

4.24 (3) approve the rates for prescription drugs covered under the state employee group  
4.25 insurance program administered under sections 43A.22 to 43A.31.

4.26 Subd. 3. **Manner of fact-finding.** The commission may:

4.27 (1) subpoena, in the same manner as a district court summons is served, at such  
4.28 time and place as it may designate, any books, papers, or accounts kept by any regulated  
4.29 business within or without the state, or compel production of verified copies in lieu thereof;

4.30 (2) prepare all forms or blanks for the purpose of obtaining information which it may  
4.31 deem necessary or useful in the proper exercise of its authority and duties in connection  
4.32 with regulated businesses, and prescribe the time and manner within which such forms or  
4.33 blanks shall be completed and filed with it;

4.34 (3) inspect, at all reasonable times, and copy the books, records, memoranda,  
4.35 correspondence, or other documents and records of any business under its jurisdiction; and

5.1 (4) examine, under oath, any officer, agent, or employee thereof in relation to its  
5.2 business and affairs.

5.3 Subd. 4. **Hearing upon petition.** With respect to those matters within its  
5.4 jurisdiction, the commission shall receive, hear, and determine all petitions filed with the  
5.5 commission in accordance with the rules of practice and procedure promulgated by the  
5.6 commission, and may investigate, hold hearings, and make determinations upon its own  
5.7 motion to the same extent, and in every instance, in which it may do so upon petition.

5.8 Subd. 5. **Operation with regard to federal law.** The commission is authorized:

5.9 (1) to cooperate with all federal agencies for the purpose of harmonizing state and  
5.10 federal regulations within the state to the extent and in the manner deemed advisable; and

5.11 (2) to conduct joint hearings with any federal agency or commission within or without  
5.12 the state and participate in any proceedings before any federal agency or commission  
5.13 when it considers such participation advisable and in the interest of the people of this state.