

## **BILL ANALYSIS**

Senate Research Center

S.B. 803  
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Health & Human Services  
6/26/2003  
Enrolled

### **DIGEST AND PURPOSE**

Currently, Texas law allows advertising and marketing by compounding pharmacists to promote the provision of nonsterile prescription compounding services. Previous advertising restrictions on compounding pharmacists were enacted in accordance with the Food and Drug Administration Modernization Act (FDAMA) which exempts compounded drugs from the FDA's standard drug approval requirements under the Federal Food, Drug, and Cosmetic Act (FDCA), so long as the providers of the compounded drugs abide by several restrictions. However, the United States Supreme Court held in *Thompson v. Western States Medical Center* that the FDAMA's prohibitions on soliciting prescriptions for and advertising of compounded drugs amounted to an unconstitutional restriction on commercial speech. S.B. 803 changes Texas law to reflect the U.S. Supreme Court decision.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 562, Occupations Code, by adding Subchapter D, as follows:

#### **SUBCHAPTER D. ADVERTISING OR PROMOTING BY PHARMACIST OR PHARMACY**

Sec. 562.151. COMPOUNDING SERVICE AND COMPOUNDED DRUG PRODUCTS.  
Authorizes a compounding pharmacist to advertise or promote nonsterile prescription compounding services provided by the pharmacist or pharmacy and specific compounded drug products that the pharmacy or pharmacist dispenses or delivers.

SECTION 2. Effective date: September 1, 2003.