

BILL ANALYSIS

C.S.H.B. 1040
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas State Board of Pharmacy was created in 1907 to regulate pharmacists and pharmacies. To accomplish its mission, the Board licenses qualified individuals to practice pharmacy or operate a pharmacy, and registers pharmacist-interns and pharmacy technicians. The Board ensures compliance with the Texas Pharmacy Act by investigating and resolving complaints against pharmacists and pharmacies and taking disciplinary action when necessary. The Board also provides information to licensees and the public.

The Pharmacy Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Pharmacy Board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTION 8, SECTION 14, SECTION 18, SECTION 19, SECTION 30, SECTION 34, and SECTION 35 of this bill. In addition, under the general rulemaking authority already granted to the policymaking body, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

The substitute relates to the continuation and functions of the Pharmacy Board and contains provisions to strengthen the Board's regulation of pharmacists and pharmacies in Texas and licensed out-of-state pharmacies, such as Internet pharmacies. The bill also incorporates standard language developed by the Sunset Commission for all agencies under review and standard provisions applicable to occupational licensing agencies.

Continuation of the Board

The substitute continues the Texas State Board of Pharmacy until September 1, 2017.

Regulation of Out-of-State Pharmacies

The substitute requires out-of-state (Class E) pharmacies to meet the same standards for licensure as Texas-based pharmacies. Requirements for licensure include proof of credit worthiness and an inspection report that is no more than two years old issued by a licensing board in the state of the pharmacy's physical location. Class E pharmacies must have an inspection report no more than three years old on file with the Board to renew a license. An out-of-state pharmacy may submit an inspection report conducted by an entity other than the pharmacy board in the pharmacy's home state if the state's licensing board does not conduct inspections, if the inspection is substantively equivalent to one conducted by the Board, and if the inspection entity meets board specifications for renewal and licensure. The bill also clarifies that the grounds for disciplinary action for out-of-state pharmacies include the same grounds for Texas-based pharmacies.

The bill allows the Board to initiate disciplinary action against an out-of-state pharmacy without having to allow that state's pharmacy board to take action first. The Board must notify the pharmacy board in the state where the pharmacy is located about the alleged action.

The substitute requires pharmacies that use an Internet site to post information on filing a complaint with the Board, including the Board's telephone number, mailing address, and Web address. In addition, on its Web site, the Board must list Internet pharmacies licensed in Texas, including the pharmacies name, license number, and state of physical location.

The bill also requires a pharmacist or pharmacy to determine that a prescription is valid before dispensing it, and prohibits the dispensing of a prescription drug if the pharmacist or pharmacy knows or should know it was issued on the basis of an Internet-based or telephonic consultation without a valid physician-patient relationship, and waives this requirement in an emergency.

Enforcement Authority over Pharmacists and Pharmacies

The substitute authorizes the Board to discipline a pharmacist or pharmacy owner who receives deferred adjudication for any felony or for misdemeanors involving moral turpitude or that relate to statutes affecting the practice of pharmacy. The bill allows the Board to take disciplinary action against a pharmacist or pharmacy based on the action of another state board of pharmacy or if the pharmacist or pharmacy owner does not comply with Board rules or disciplinary orders. The bill also allows the Board to discipline a pharmacist who fails to adequately supervise a task delegated to a pharmacy technician or who inappropriately delegates a task to a pharmacy technician, and allows the Board to discipline a pharmacist or pharmacy owner for drug audit shortages.

The bill authorizes a disciplinary panel of three Board members to temporarily suspend or restrict a pharmacist or pharmacy license, and authorizes the panel to meet by telephone conference call if immediate action is needed. The bill also allows staff to dismiss complaints if an investigation shows that no violation occurred or it is outside the Board's jurisdiction. The executive director is required to report to the Board at each public meeting each complaint dismissed since the previous meeting.

The bill increases the amount of administrative penalty the Board can impose on a license holder who violates the Act or Board rules to \$5,000 per violation per day, from \$2,500 per violation per day, and requires the Board to adopt an administrative penalty schedule in rule.

The bill authorizes the Board to use cease-and-desist orders with regard to practicing pharmacy without a license, and clarifies the Attorney General's authority, instead of the Board's, to petition district court for an injunction. The bill also clarifies that the Board retains jurisdiction over a pharmacist whose license has expired if the pharmacist is subject to a pending investigation or disciplinary action.

The bill updates standard Sunset across-the-board language requiring the Board to maintain information about parties, subject, and results of the review or investigation of the complaint and its disposition. The bill also allows the Board to recognize another health care professional, other than a licensed pharmacist, as a preceptor to supervise a pharmacist-intern.

Examinations

The substitute requires the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act. The bill also changes the basis for the Board's late renewal penalties from the examination fee to the renewal fee. For licenses expired 90 days or less the renewal fee is 1½ times the annual renewal fee and for licenses expired more than 90 days but less than a year the renewal fee is two times the annual renewal fee. Those licenses expired for a year or more may not renew the license, but may obtain a new license by complying with the requirements and procedures for obtaining an original license, including the examination requirement. The Board may retain all or part of an examination fee paid by an applicant who is unable to take the examination, but may refund the examination fee for those that provide advance notice of inability to take the examination or are unable to take the examination because of an emergency.

Regulation of Pharmacy Technicians and Technician Trainees

The substitute authorizes the Board to discipline a pharmacy technician who receives deferred adjudication for any felony or for misdemeanors involving moral turpitude or that relate to statutes affecting the practice of pharmacy. It also expands the range of disciplinary sanctions for pharmacy technicians by authorizing the Board to temporarily suspend or to restrict,

reprimand, or retire a pharmacy technician's license, impose an administrative penalty, or place the pharmacy technician on probation.

The bill also requires the Board to register pharmacy technician trainees, and authorizes the Board to hold these trainees to the same disciplinary grounds and disciplinary actions that are applied to pharmacy technicians in this bill.

Licensure of Pharmacists from Another State

The substitute removes the requirement that a pharmacist licensed in another state must possess at the time of initial licensing, other qualifications necessary to be licensed in this state. The bill also authorizes the Board to issue a license to a pharmacist who proves that they hold a current license and that it is unencumbered by disciplinary action in another state.

Elimination of Pharmacy Board Operating Account

The substitute eliminates the Pharmacy Board Operating Account, a dedicated account within the General Revenue Fund, and provides for the transfer of money in the account to General Revenue. The bill requires the Board to deposit all revenue into the General Revenue Fund.

Release of Confidential Information

The substitute makes information regarding the home address and telephone number of licensees and registrants confidential and not subject to disclosure under the Texas Public Information Act. Each person licensed or registered must provide a business address or address of record that is subject to disclosure and that may be posted on the Board's Internet site or in the Board's licensure verification database.

Conflict of Interest and Board Member Provisions

The bill removes the statutory prohibition against salaried faculty members at a college of pharmacy from serving on the Board as a pharmacist member. The substitute updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill adds standard Sunset language authorizing the Governor to designate the Board's presiding officer. The bill updates standard Sunset language requiring members of the Board to complete training before assuming their duties.

The bill makes conforming and technical changes.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes a provision in the original bill that would have given the Pharmacy Board access to financial, pricing, and sales information. The substitute removes language in the original bill amending the Public Information Act regarding the disclosure of personal information about a pharmacist or pharmacy owner. The substitute clarifies that home addresses and home telephone numbers of licensees are confidential and not subject to disclosure under the Public Information Act, and it extends this confidentiality and protection from disclosure to persons registered by the Board. Licensees and registrants must provide a business address or address of record that is subject to disclosure. The substitute adds a provision to allow the Board to recognize another health care professional, other than a licensed pharmacist, as a preceptor to supervise a pharmacist-intern. The substitute clarifies that the Board retains jurisdiction over a pharmacist whose license has expired if the pharmacist is subject to a pending investigation or disciplinary action. The substitute deletes unnecessary language providing grounds for disciplining out-of-state pharmacies. The substitute authorizes the Board to temporarily suspend the registration of pharmacy technicians and pharmacy technician trainees just as it may temporarily suspend the license of a pharmacist or pharmacy owner.

The substitute authorizes the Board to discipline pharmacy technicians and pharmacy technician trainees for deferred adjudication for felonies and certain misdemeanors in addition to convictions. The substitute expands the disciplinary actions that may be taken against pharmacy

technician trainees, making them subject to the same disciplinary actions applied to pharmacy technicians in the bill. The substitute makes several technical changes to the bill, changing the term "board" order to "disciplinary" order; deleting language that was inadvertently applied to pharmacies; changing the term "technician-in-training" to "technician trainee;" and changing the term "physician-patient" relationship to "practitioner-patient" relationship.