

## **BILL ANALYSIS**

S.B. 410  
By: Whitmire  
Public Health  
Committee Report (Unamended)

### **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.

### **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. Additional requirements for licensure include proof of credit worthiness and an inspection report that is no more than two years old and issued by a licensing board in the state of the pharmacy's physical location. 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 inspection entities a Class E pharmacy may submit an inspection report conducted by an entity other than the pharmacy board in the pharmacy's home state. Class E pharmacies must have an inspection report issued no more than three years before the date the renewal application is received, and by a licensing board in the state of the pharmacy's physical location or another entity that meets Board specifications. For pharmacy licenses expired 90 days or less the renewal fee is 1½ times the normally required renewal fee and for licenses expired more than 90 days but less than a year the renewal fee is two times the normally renewal fee. Those pharmacy 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 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 bill requires pharmacies to post on its initial home page general information on filing a complaint with the Board that details specific information on how to file a complaint with the Board not more than two links away from its initial home page, including the Board's telephone number, mailing address, and Internet website address. In addition, on its website, the Board must list all the Internet pharmacies, including the pharmacies name, license number, and state of physical location that are physically located in this state or another state that dispenses a prescription drug in response to a request received by way of the Internet and delivers the drug or device by United States mail, common carrier, or delivery service.

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 that the prescription 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 bill also clarifies that the Board retains jurisdiction over a current or expired license if; a pharmacist or pharmacy owner receives deferred adjudication for any felony or for misdemeanors involving moral turpitude or that relate to statutes affecting the practice of pharmacy; disciplinary action has been taken against a pharmacist or pharmacy by another state board of pharmacy; the pharmacist or pharmacy owner does not comply with Board rules or disciplinary orders; a certified copy of the record of the state taking action is presented as conclusive evidence of the action taken against the pharmacy; the pharmacy violates a disciplinary order; the pharmacist fails to adequately supervise a task delegated to a pharmacy technician or who inappropriately delegates a task to a pharmacy technician; the pharmacist is responsible for any drug audit shortages. The bill removes language that limited the actions the Board may take in imposing a sanction.

The bill authorizes a disciplinary panel (panel) of three Board members, appointed by the president of the Board, to temporarily suspend or restrict a pharmacist or pharmacy license or registration, and authorizes the panel to meet by telephone conference call if immediate action is needed and the convening of the panel at one location is inconvenient for any member. The bill also allows appropriate 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 to \$5,000 per violation per day, from \$2,500 for each violation 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 or registration after notice and opportunity for a hearing, and clarifies the Attorney General's authority, instead of the Board's, to petition district court for an injunction.

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 bill 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 a person whose license expired 90 days or less the renewal fee is 1½ times the normally required renewal fee and for licenses expired more than 90 days but less than a year the renewal fee is two times the normally 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. The Board's policy must establish the required notification period and the emergencies that warrant a refund, as well as requiring the Board to make efforts to ensure that the policy does not conflict with the policy of a national testing body involved in administering the examination.

#### ***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, revoke, restrict, refuse to issue or renew the registration, place on probation with certain guidelines, reprimand, retire the registration, impose an administrative penalty, or place the pharmacy technician on probation.

The bill requires the Board to register pharmacy technician trainees and the application for registration to be on a form prescribed by the Board. This bill authorizes the Board to hold these trainees to the same disciplinary grounds and disciplinary actions that are applied to pharmacy technicians in this bill and the registration remains in effect as long as the person meets the qualifications specified by Board rule.

#### ***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, if the license is unencumbered by disciplinary action in another state, and if the state in which the applicant is currently or was initially licensed as a pharmacist grants reciprocal licensing to pharmacists licensed by examination in this 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***

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 from serving as an officer, employee, or paid consultant of a related Texas trade association or if the member's spouse is an officer or manager of a related Texas trade association.

#### ***Board Member Provisions***

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 adds that the definition of "Texas trade association" as a statewide association and deals with mutual business or professional problems as well as promoting their common interest. The bill entitles a Board member to receive reimbursement for travel expenses as described by the General Appropriations Act and removes language that prohibited reimbursement for any other travel expenses, including expenses for meals and lodging. The bill also allows the development of formal policies outlining the structure, role, and responsibilities for committees that consist of Board members created to assist the Board.

The bill repeals language on felony drug convictions and discipline for Class E license holders.

Changes made by this bill are prospective. The bill makes conforming and technical changes.

**EFFECTIVE DATE**

September 1, 2005.