

By: Van de Putte, et al.
(Zerwas)

S.B. No. 1081

Substitute the following for S.B. No. 1081:

By: Coleman

C.S.S.B. No. 1081

A BILL TO BE ENTITLED

AN ACT

relating to the dispensing of pharmaceuticals with an aesthetic purpose by physicians and therapeutic optometrists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 116 to read as follows:

CHAPTER 116. DISPENSING OF PHARMACEUTICALS WITH AN AESTHETIC

PURPOSE

Sec. 116.001. DEFINITIONS. In this chapter:

(1) "Pharmaceutical with an aesthetic purpose" means a drug that:

(A) requires a prescription for dispensing;

(B) has been approved by the federal Food and Drug Administration; and

(C) is:

(i) listed in the pharmaceutical with an aesthetic purpose group under Section 116.005; or

(ii) not a controlled substance and is prescribed for the enhancement of a patient's appearance.

(2) "Physician" means a person licensed to practice medicine under Subtitle B.

(3) "Therapeutic optometrist" means a person licensed to practice therapeutic optometry under Chapter 351.

Sec. 116.002. DISPENSING PERMITTED; FEE AUTHORIZED. (a) A

1 physician or therapeutic optometrist may dispense to the
2 physician's or therapeutic optometrist's patients a pharmaceutical
3 with an aesthetic purpose in excess of the patient's immediate
4 needs without obtaining a license under Chapter 558. The physician
5 or therapeutic optometrist may charge a fee for dispensing the
6 pharmaceutical.

7 (b) A physician or therapeutic optometrist may not dispense
8 to that physician's or therapeutic optometrist's patients a
9 pharmaceutical with an aesthetic purpose in excess of the patient's
10 immediate needs if the pharmaceutical is prescribed for a use other
11 than the enhancement of the patient's physical appearance.

12 (c) A therapeutic optometrist may not dispense a
13 pharmaceutical with an aesthetic purpose if that prescription does
14 not fall within the scope of the practice of therapeutic optometry,
15 as defined by Section 351.002.

16 Sec. 116.003. NOTICE; LABELING; RECORDKEEPING.

17 (a) Before dispensing a pharmaceutical with an aesthetic purpose
18 to a patient, a physician or therapeutic optometrist must inform
19 the patient that the prescription for the pharmaceutical may be
20 filled at a pharmacy or dispensed in the physician's or therapeutic
21 optometrist's office.

22 (b) Each state and federal labeling and recordkeeping
23 requirement applicable to the pharmaceutical with an aesthetic
24 purpose must be followed and documented. A record maintained under
25 this section must be accessible as provided under state and federal
26 law.

27 Sec. 116.004. RULES; FEES. The Texas Medical Board shall

1 adopt rules for physicians, and the Texas Optometry Board shall
2 adopt rules for therapeutic optometrists, with the advice of the
3 Texas State Board of Pharmacy, to govern the packaging, labeling,
4 and dispensing of pharmaceuticals with an aesthetic purpose under
5 this chapter. The Texas Medical Board and the Texas Optometry Board
6 shall adopt reasonable fees as necessary to implement this chapter.
7 A fee adopted under this section may not exceed a fee adopted under
8 Section 554.006 for authorizing a pharmacist to dispense
9 pharmaceuticals.

10 Sec. 116.005. PHARMACEUTICAL WITH AN AESTHETIC PURPOSE
11 GROUP. The pharmaceutical with an aesthetic purpose group consists
12 of:

13 (1) bimatoprost; and

14 (2) eflornithine.

15 SECTION 2. Subsection (f), Section 157.002, Occupations
16 Code, is amended to read as follows:

17 (f) Subsections (b) and (c) do not authorize a physician or
18 a person acting under the supervision of a physician to keep a
19 pharmacy, advertised or otherwise, for the retail sale of dangerous
20 drugs, other than as authorized under Chapter 116 and Section
21 158.003, without complying with the applicable laws relating to the
22 dangerous drugs.

23 SECTION 3. Subsection (d), Section 563.051, Occupations
24 Code, is amended to read as follows:

25 (d) This section does not authorize a physician or a person
26 acting under the supervision of a physician to keep a pharmacy,
27 advertised or otherwise, for the retail sale of dangerous drugs,

1 other than as authorized under Chapter 116 and Section 158.003,
2 without complying with the applicable laws relating to the
3 dangerous drugs.

4 SECTION 4. The Texas Medical Board and Texas Optometry
5 Board shall adopt rules for the implementation of Chapter 116,
6 Occupations Code, as added by this Act, not later than March 1,
7 2012.

8 SECTION 5. (a) Except as provided by Subsection (b) of
9 this section, this Act takes effect immediately if it receives a
10 vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2011.

14 (b) Sections 116.002 and 116.003, Occupations Code, as
15 added by this Act, take effect March 1, 2012.