

1-1 By: Van de Putte, Birdwell S.B. No. 1081
1-2 (In the Senate - Filed March 2, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 11, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 11, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1081 By: Nichols

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the dispensing of pharmaceuticals with an aesthetic
1-11 purpose by physicians and therapeutic optometrists.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 3, Occupations Code, is
1-14 amended by adding Chapter 116 to read as follows:

1-15 CHAPTER 116. DISPENSING OF PHARMACEUTICALS WITH AN AESTHETIC
1-16 PURPOSE

1-17 Sec. 116.001. DEFINITIONS. In this chapter:

1-18 (1) "Pharmaceutical with an aesthetic purpose" means:

1-19 (A) a drug listed in the pharmaceutical with an
1-20 aesthetic purpose group under Section 116.005; or

1-21 (B) a drug that:

1-22 (i) is not a controlled substance;

1-23 (ii) requires a prescription for
1-24 dispensing;

1-25 (iii) has been approved by the federal Food
1-26 and Drug Administration; and

1-27 (iv) is prescribed for the enhancement of
1-28 an individual's appearance.

1-29 (2) "Physician" means a person licensed to practice
1-30 medicine under Subtitle B.

1-31 (3) "Therapeutic optometrist" means a person licensed
1-32 to practice therapeutic optometry under Chapter 351.

1-33 Sec. 116.002. DISPENSING PERMITTED; FEE AUTHORIZED. (a) A
1-34 physician or therapeutic optometrist may dispense to the
1-35 physician's or therapeutic optometrist's patients a pharmaceutical
1-36 with an aesthetic purpose in excess of the patient's immediate
1-37 needs without obtaining a license under Chapter 558. The physician
1-38 or therapeutic optometrist may charge a fee for dispensing the
1-39 pharmaceutical.

1-40 (b) A physician may not dispense to that physician's
1-41 patients a pharmaceutical with an aesthetic purpose in excess of
1-42 the patient's immediate needs if the pharmaceutical is prescribed
1-43 for a use other than the enhancement of the patient's physical
1-44 appearance.

1-45 Sec. 116.003. NOTICE; LABELING; RECORDKEEPING.

1-46 (a) Before dispensing a pharmaceutical with an aesthetic purpose
1-47 to a patient, a physician or therapeutic optometrist must inform
1-48 the patient that the prescription for the pharmaceutical may be
1-49 filled at a pharmacy or dispensed in the physician's or therapeutic
1-50 optometrist's office.

1-51 (b) Each state and federal labeling and recordkeeping
1-52 requirement applicable to the pharmaceutical with an aesthetic
1-53 purpose must be followed and documented. A record maintained under
1-54 this section must be accessible as provided under state and federal
1-55 law.

1-56 Sec. 116.004. RULES; FEES. The Texas Medical Board shall
1-57 adopt rules for physicians, and the Texas Optometry Board shall
1-58 adopt rules for therapeutic optometrists, with the advice of the
1-59 Texas State Board of Pharmacy, to govern the packaging, labeling,
1-60 and dispensing of pharmaceuticals with an aesthetic purpose under
1-61 this chapter. The Texas Medical Board and the Texas Optometry Board
1-62 shall adopt reasonable fees as necessary to implement this chapter.
1-63 A fee adopted under this section may not exceed a fee adopted under

2-1 Section 554.006 for authorizing a pharmacist to dispense
2-2 pharmaceuticals.

2-3 Sec. 116.005. PHARMACEUTICAL WITH AN AESTHETIC PURPOSE
2-4 GROUP. The pharmaceutical with an aesthetic purpose group consists
2-5 of:

- 2-6 (1) bimatoprost; and
- 2-7 (2) eflornithine.

2-8 SECTION 2. Subsection (f), Section 157.002, Occupations
2-9 Code, is amended to read as follows:

2-10 (f) Subsections (b) and (c) do not authorize a physician or
2-11 a person acting under the supervision of a physician to keep a
2-12 pharmacy, advertised or otherwise, for the retail sale of dangerous
2-13 drugs, other than as authorized under Chapter 116 and Section
2-14 158.003, without complying with the applicable laws relating to the
2-15 dangerous drugs.

2-16 SECTION 3. Subsection (d), Section 563.051, Occupations
2-17 Code, is amended to read as follows:

2-18 (d) This section does not authorize a physician or a person
2-19 acting under the supervision of a physician to keep a pharmacy,
2-20 advertised or otherwise, for the retail sale of dangerous drugs,
2-21 other than as authorized under Chapter 116 and Section 158.003,
2-22 without complying with the applicable laws relating to the
2-23 dangerous drugs.

2-24 SECTION 4. The Texas Medical Board and Texas Optometry
2-25 Board shall adopt rules for the implementation of Chapter 116,
2-26 Occupations Code, as added by this Act, not later than March 1,
2-27 2012.

2-28 SECTION 5. (a) Except as provided by Subsection (b) of
2-29 this section, this Act takes effect immediately if it receives a
2-30 vote of two-thirds of all the members elected to each house, as
2-31 provided by Section 39, Article III, Texas Constitution. If this
2-32 Act does not receive the vote necessary for immediate effect, this
2-33 Act takes effect September 1, 2011.

2-34 (b) Sections 116.002 and 116.003, Occupations Code, as
2-35 added by this Act, take effect March 1, 2012.

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