

BILL ANALYSIS

Senate Research Center

S.B. 869
By: Van de Putte
Health & Human Services
7/23/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 869 is intended to clean-up ambiguous, obsolete, and redundant language in the Texas Pharmacy Act (Act). For example, S.B. 869 amends numerous portions of the Act to clarify the provisions applying to pharmacy technicians and pharmacy technician trainees. It also allows the Texas State Board of Pharmacy to spend gifts and grants in the same manner as other regulatory agencies, such as the Board of Nursing. It amends the Act to allow for a greater range of disciplinary sanctions for pharmacist-interns and updates and clarifies those sections of the Act that prohibit pharmacists from dispensing a controlled substance for a non-therapeutic purpose. The bill also updates the requirement to post the licenses of all pharmacists in a pharmacy, and specifies changes in the licensing process for pharmacists and pharmacies that have had their licenses revoked, canceled or otherwise disciplined such that the person or pharmacy cannot practice or operate in another state. Furthermore, S.B. 869 amends current Texas law to reflect changes in federal law that have made certain state policies obsolete and unnecessary.

S.B. 869 amends current law relating to the regulation of the practice of pharmacy and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas State Board of Pharmacy is modified in SECTION 7 (Section 554.053, Occupations Code), SECTION 19 (Section 568.001, Occupations Code), SECTION 20 (Section 568.002, Occupations Code), and SECTION 21 (Section 568.003, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 353.204(e), Occupations Code, as follows:

(e) Provides that the Texas State Board of Pharmacy (TSBP) is responsible for enforcing this chapter (Contact Lens Prescription Act) with regard to a violation of this chapter by a pharmacist. Provides that a violation of this chapter by a pharmacist is considered to be a violation of Subtitle J (Pharmacy and Pharmacists), rather than that a violation of this chapter by a pharmacist is considered to be a violation of Subtitle J, other than Chapter 567 (Labeling Requirements for Certain Prescription Drugs or Drug Products).

SECTION 2. Amends Section 551.001, Occupations Code, to authorize that this subtitle, rather than the chapters of this subtitle other than Chapter 567, be cited as the Texas Pharmacy Act.

SECTION 3. Amends Section 551.003, Occupations Code, by amending Subdivision (32) to redefine "pharmacy technician" and adding Subdivision (32-a) to define "pharmacy technician trainee."

SECTION 4. Amends Section 554.002, Occupations Code, to require TSBP to regulate the practice of pharmacy in this state by, among other actions, regulating the training, qualifications, and employment of a pharmacist-intern, pharmacy technician, and pharmacy technician trainee.

SECTION 5. Amends Section 554.007(b), Occupations Code, to authorize TSBP to receive and spend money, or use gifts, grants, and other funds and assets, in addition to money collected under Subsection (a), in accordance with state law, rather than to receive and spend money from a party, other than the state, in addition to money collected under Subsection (a), in accordance with state law.

SECTION 6. Amends the heading to Section 554.053, Occupations Code, to read as follows:

Sec. 554.053. RULEMAKING: PHARMACY TECHNICIAN AND PHARMACY TECHNICIAN TRAINEE.

SECTION 7. Amends Sections 554.053(a) and (b), Occupations Code, as follows:

(a) Requires TSBP to establish rules for the use and the duties of a pharmacy technician and pharmacy technician trainee in a pharmacy licensed by TSBP. Requires a pharmacy technician and pharmacy technician trainee to be responsible to and to be directly supervised by a pharmacist.

(b) Prohibits TSBP from adopting a rule establishing a ratio of pharmacists to pharmacy technicians and pharmacy technician trainees in a Class C pharmacy or limiting the number of pharmacy technicians or pharmacy technician trainees that are authorized to be used in a Class C pharmacy.

SECTION 8. Amends Section 557.004, Occupations Code, as follows:

Sec. 557.004. LIMITATIONS ON REGISTRATION. (a) Creates this subsection from existing text. Makes no further change to this subsection.

(b) Authorizes TSBP to take disciplinary action against an applicant for a pharmacist-intern registration or the holder of a current or expired pharmacist-intern registration in the same manner as against an applicant for a license or a license holder by imposing a sanction authorized under Section 565.051 (Discipline Authorized) if TSBP finds that the applicant or registration holder has engaged in conduct described by Section 565.001 (Applicant For or Holder of License to Practice Pharmacy).

SECTION 9. Amends Section 559.003, Occupations Code, by adding Subsection (e), to prohibit a person from renewing a license to practice pharmacy if the person holds a license to practice pharmacy in another state that has been suspended, revoked, canceled, or subject to an action that prohibits the person from practicing pharmacy in that state.

SECTION 10. Amends Section 560.052(b), Occupations Code, as follows:

(b) Requires an applicant, to qualify for a pharmacy license, to submit to TSBP, among other requirements, a completed application that meets certain criteria and includes proof that a license held in this state or another state, if applicable, has not been restricted, suspended, revoked, or surrendered for any reason. Makes nonsubstantive changes.

SECTION 11. Amends Section 561.003, Occupations Code, by adding Subsection (f), to prohibit a pharmacy from renewing a license under this section if the pharmacy's license to operate in another state has been suspended, revoked, canceled, or subject to an action that prohibits the pharmacy from operating in that state.

SECTION 12. Amends Section 562.012, Occupations Code, to authorize a pharmacist to dispense a dosage form of a drug different from that prescribed, such as a tablet instead of a capsule or a liquid instead of a tablet, if the form meets certain criteria and with the patient's consent, rather than with the patient's consent and notification to the practitioner.

SECTION 13. Amends Section 562.056, Occupations Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires that a prescription for a controlled substance, to be a valid prescription, be issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's professional practice. Provides that the responsibility for the proper prescribing and dispensing of controlled substances is on the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

(b) Provides that this section, rather than Subsection (a) (relating to requiring a pharmacist, before dispensing a prescription, to determine, in the exercise of sound professional judgment, that the prescription is a valid prescription; and prohibiting a pharmacist from dispensing a prescription drug if the pharmacist knows or should know that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid practitioner-patient relationship), does not prohibit a pharmacist from dispensing a prescription when a valid practitioner-patient relationship is not present in an emergency.

SECTION 14. Amends Section 562.103, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that a Class A or Class C pharmacy that serves the public to, among certain requirements, display in public view the license of the pharmacist-in-charge of the pharmacy, rather than each pharmacist employed in the pharmacy.

(c) Requires that a pharmacy maintain and make available to the public on request proof that each pharmacist, pharmacist-intern, pharmacy technician, and pharmacist technician trainee working in the pharmacy holds the appropriate license or registration.

SECTION 15. Amends Section 565.001(a), Occupations Code, as follows:

(a) Authorizes TSBP to discipline an applicant for or the holder of a current or expired license to practice pharmacy if TSBP finds that the applicant or license holder has:

(1)-(3) Makes no change to these subdivisions;

(4) developed an incapacity that prevents or could prevent the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public;

(5)-(15) Makes no change to these subdivisions;

(16) been disciplined by a pharmacy board or by another health regulatory board of this state or another state for conduct substantially equivalent to conduct described under this subsection;

(17) Makes no change to this subdivision;

(18) failed to adequately supervise a task delegated to a pharmacy technician or pharmacy technician trainee;

(19) inappropriately delegated a task delegated to a pharmacy technician or pharmacy technician trainee;

(20) been responsible for a drug audit shortage; or

(21) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure.

SECTION 16. Amends Section 565.055(c), Occupations Code, as follows:

(c) Authorizes that information or material compiled by TSBP in connection with an investigation, notwithstanding Subsection (b) (relating to providing that information or material compiled by TSBP in connection with an investigation is confidential and not subject to disclosure under Chapter 552, Government Code, or any means of legal compulsion for release), be disclosed:

(1)-(2) Makes no change to these subdivisions;

(3) to an entity in another jurisdiction that licenses or disciplines pharmacists or pharmacies or registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4)-(5) Makes no change to these subdivisions;

(6) Makes nonsubstantive changes; or

(7) to an entity that administers a TSBP-approved pharmacy technician certification examination, rather than under a court order.

SECTION 17. Amends Section 565.101(a), Occupations Code, to authorize a person whose pharmacy license, license to practice pharmacy, pharmacy technician registration, or pharmacy technician trainee registration in this state has been revoked or restricted under this subtitle, whether voluntarily or by TSBP action, to, at a certain time, petition TSBP for reinstatement or removal of the restriction of the license or registration.

SECTION 18. Amends the heading to Chapter 568, Occupations Code, to read as follows:

CHAPTER 568. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN
TRAINEES

SECTION 19. Amends Section 568.001, Occupations Code, as follows:

Sec. 568.001. New heading: RULES; QUALIFICATIONS. (a) Requires TSBP, in establishing rules under Section 554.053(c) (requiring TSBP to determine and issue certain standards and to maintain a list of programs that meet those standards), to require that:

(1) Makes nonsubstantive changes; and

(2) a pharmacy technician trainee have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate.

(b) Requires TSBP to adopt rules that permit a pharmacy technician and pharmacy technician trainee to perform only nonjudgmental technical duties under the direct supervision of a pharmacist.

SECTION 20. Amends Section 568.002, Occupations Code, as follows:

Sec. 568.002. New heading: REGISTRATION REQUIRED. (a) Requires a person to register with TSBP before beginning work in a pharmacy in this state as a pharmacy technician or a pharmacy technician trainee, rather than requiring a pharmacy technician to register with TSBP annually or biennially, as determined by TSBP rule, on a form prescribed by TSBP.

(b) Changes references to a technician to a pharmacy technician. Deletes existing text authorizing TSBP to allow a technician to petition TSBP for a special exemption from the technician certification requirement if the technician, on September 1, 2001, has been employed as a pharmacy technician in this state for at least 10 years and the technician's employer approves the petition.

(c) Requires an applicant for registration as a pharmacy technician or a pharmacy technician trainee to be of good moral character and to submit an application on a form prescribed by TSBP.

(d) Provides that a person's registration as a pharmacy technician or pharmacy technician trainee remains in effect as long as the person meets the qualifications established by TSBP rule.

SECTION 21. Amends Section 568.003(a), Occupations Code, as follows:

(a) Authorizes TSBP to take disciplinary action under Section 568.0035 (Discipline Authorized; Effect on Trainee) against an applicant for or the holder of a current or expired pharmacy technician or pharmacy technician trainee registration if TSBP determines that the applicant or registrant has:

(1)-(2) Makes no change to these subdivisions;

(3) engaged in any fraud, deceit, or misrepresentation, as those terms are defined by the rules of TSBP, in seeking a registration to act as a pharmacy technician or pharmacy technician trainee; or

(4)-(13) Makes no change to these subdivisions.

SECTION 22. Amends Section 568.0035(a), Occupations Code, as follows:

(a) Authorizes TSBP, on a determination that a ground for discipline exists under Section 568.003 (Grounds for Disciplinary Action), to:

(1)-(2) Makes no change to these subdivisions;

(3) restrict the person's registration to prohibit the person from performing certain acts or from practicing as a pharmacy technician or pharmacy technician trainee in a particular manner for a term and under conditions determined by TSBP; or

(4)-(9) Makes no change to these subdivisions.

SECTION 23. Amends Section 568.0037(a), Occupations Code, to require the disciplinary panel appointed to determine whether a registration under this chapter should be temporarily suspended or restricted, if a majority of the panel determines from evidence or information presented to the panel that the registrant by continuation in practice as a pharmacy technician or pharmacy technician trainee would constitute a continuing threat to the public welfare, to temporarily suspend or restrict the registration as provided by Subsection (b) (relating to authorizing a disciplinary panel to temporarily suspend or restrict a registration under this chapter).

SECTION 24. Amends Section 568.004, Occupations Code, to authorize TSBP to adopt a system in which the registrations of pharmacy technicians and pharmacy technician trainees expire on various dates during the year.

SECTION 25. Amends Section 568.005, Occupations Code, to authorize TSBP to adopt fees as necessary for the registration of pharmacy technicians and pharmacy technician trainees.

SECTION 26. Amends Section 568.006, Occupations Code, as follows:

Sec. 568.006. New heading: RATIO OF PHARMACISTS TO PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES. Requires that the ratio of pharmacists to pharmacy technicians and pharmacy technician trainees in a Class A pharmacy be at least one pharmacist for every five pharmacy technicians or pharmacy

technician trainees if the Class A pharmacy dispenses not more than 20 different prescription drugs and does not produce intravenous or intramuscular drugs on-site.

SECTION 27. Amends the heading to Section 568.008, Occupations Code, to read as follows:

Sec. 568.008. PHARMACY TECHNICIANS IN HOSPITALS WITH CLINICAL PHARMACY PROGRAM.

SECTION 28. Amends Chapter 568, Occupations Code, by adding Section 568.009, as follows:

Sec. 568.009. CHANGE OF ADDRESS OR EMPLOYMENT. Requires a pharmacy technician or a pharmacy technician trainee, not later than the 10th day after the date of a change of address or employment, to notify TSBP in writing of the change.

SECTION 29. Amends Sections 569.001(a) and (c), Occupations Code, as follows:

(a) Requires every insurer or other entity providing certain insurance, including a druggist's professional liability insurance covering a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder in this state to submit to TSBP certain information at the time prescribed.

(c) Provides that if a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy licensed in this state does not carry or is not covered by certain insurance and is insured by a nonadmitted carrier or other entity providing pharmacy professional liability insurance that does not report under this subtitle, the duty to report information under Section 569.002 (Information to Be Reported) is the responsibility of the pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder.

SECTION 30. Amends Section 569.002(a), Occupations Code, to require that certain information be furnished to TSBP not later than the 30th day after receipt by the insurer of the notice of claim letter or complaint from the insured, including the name of the insured and the insured's state pharmacy technician registration number, pharmacy technician trainee registration number, or pharmacist or pharmacy license number.

SECTION 31. Amends Section 569.005(b), Occupations Code, to require TSBP to review the information relating to a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder against whom at least three professional liability claims have been reported within a five-year period in the same manner as if a certain complaint had been made under Chapter 555 (Public Interest Information and Complaint Procedures).

SECTION 32. Amends Section 411.081(i), Government Code, as follows:

(i) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of a certain order of nondisclosure to the certain enumerated noncriminal justice agencies or entities only, including the Texas Juvenile Justice Department, rather than the Texas Youth Commission, and TSBP. Deletes existing text authorizing disclosure to the Texas Juvenile Probation Commission.

SECTION 33. Repealer: Chapter 567 (Labeling Requirements for Certain Prescription Drugs or Drug Products), Occupations Code; and

Repealer: Section 568.007 (Registration of Pharmacy Technician Trainee), Occupations Code.

SECTION 34. Effective date: upon passage or September 1, 2013.