

BILL ANALYSIS

C.S.S.B. 869
By: Van de Putte
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that numerous revisions to provisions of the Texas Pharmacy Act, including provisions relating to pharmacy technicians and pharmacy technician trainees, licensing and license renewal requirements, and the powers and duties of the Texas State Board of Pharmacy, are necessary to clean up ambiguous, obsolete, and redundant language and to improve the regulation of pharmacies and pharmacists in Texas. C.S.S.B 869 seeks to make these necessary revisions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTIONS 7 and 19 of this bill.

ANALYSIS

C.S.S.B. 869 amends the Occupations Code to include regulating the training, qualifications, and employment of a pharmacy technician trainee, defined by the bill as an individual who is registered with the Texas State Board of Pharmacy as a pharmacy technician trainee and is authorized to participate in a pharmacy technician training program, among the regulatory duties of the board. The bill requires the board to establish rules for the use and the duties of a pharmacy technician trainee and requires a trainee to be responsible to and be directly supervised by a pharmacist. The bill requires the board, in establishing rules relating to the standards for recognition and approval of a training program for pharmacy technicians, to require that 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. The bill requires the board to adopt rules that permit a pharmacy technician trainee to perform only nonjudgmental duties under the supervision of a pharmacist. The bill makes applicable to a pharmacy technician trainee certain statutory provisions relating to a prohibition against establishing a ratio of pharmacy technicians in a Class C pharmacy or limiting the number of pharmacy technicians that may be used in a Class C pharmacy, a petition for reinstatement or removal of a restriction from a pharmacy license or registration, disciplinary actions by the board against a license or registration holder, the temporary suspension or restriction of a registration, the renewal of registrations, registration fees, the ratio of pharmacists to pharmacy technicians, reporting requirements of an insurer or other entity providing certain types of liability insurance, and the investigation by the board of certain liability claims.

C.S.S.B. 869 authorizes the board to use gifts, grants, and other funds and assets, in addition to money, in accordance with state law and removes a provision specifying that such authority applies only to money from a party, other than the state. The bill authorizes the board 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 an authorized sanction if the board finds that the applicant or registration holder has engaged in conduct that warrants disciplinary action. The bill prohibits 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. The bill requires an applicant for a pharmacy license, in order to qualify for the license, to submit to the board proof that a license held in Texas or another state, if applicable, has not been restricted, suspended, revoked, or surrendered for any reason. The bill prohibits a pharmacy from renewing a license 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.

C.S.S.B. 869 removes the requirement that a pharmacist notify the practitioner before dispensing a dosage form of a drug different from that prescribed. The bill requires a prescription for a controlled substance to be issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's professional practice in order to be a valid prescription. The bill specifies 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.

C.S.S.B. 869 requires a Class A or Class C pharmacy that serves the public to display in public view the license of the pharmacist-in-charge of the pharmacy, rather than the license of each pharmacist employed in the pharmacy. The bill requires a pharmacy to 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. The bill includes among the grounds on which the board is authorized to discipline an applicant for or the holder of a current or expired license to practice pharmacy circumstances in which the board finds that the applicant or license holder has developed an incapacity that could prevent the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public; has been disciplined by a pharmacy board or by another health regulatory board of this state or another state for conduct substantially equivalent to prohibited conduct under Texas law; has failed to adequately supervise a task delegated to or inappropriately delegated a task to a pharmacy technician trainee; or has been convicted or adjudicated of a criminal offense that requires registration as a sex offender.

C.S.S.B. 869 authorizes information or material compiled by the board in connection with an investigation concerning an alleged violation of statutory provisions regulating pharmacies and pharmacists or a board rule to be disclosed to an entity in another jurisdiction that registers or disciplines pharmacy technicians or pharmacy technician trainees or to an entity that administers a board-approved pharmacy technician certification examination and removes the authority to disclose such information or material under a court order.

C.S.S.B. 869 requires a person to register with the board before beginning work in a pharmacy in Texas as a pharmacy technician or a pharmacy technician trainee and removes the requirement for a pharmacy technician to register with the board annually or biennially, as determined by board rule. The bill 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 the board. The bill specifies 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 board rule. The bill, in a provision authorizing the board to take disciplinary action against a pharmacy technician under certain conditions, specifies that the board is authorized to take such disciplinary action against an applicant for or the holder of a current or expired pharmacy technician or pharmacy technician trainee registration. The bill 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 the board in writing of the change.

C.S.S.B. 869 repeals statutory provisions relating to labeling requirements for certain prescription drugs or drug products and provisions relating to the registration of a pharmacy technician trainee.

C.S.S.B. 869 amends the Government Code to add the Texas State Board of Pharmacy to the list of entities to whom a criminal justice agency is authorized to disclose criminal history record information that is the subject of an order of nondisclosure.

C.S.S.B. 869 repeals Chapter 567 and Section 568.007, Occupations Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 869 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subsection (e), Section 353.204, Occupations Code, is amended.	SECTION 1. Same as engrossed version except for recitation.
SECTION 2. Section 551.001, Occupations Code, is amended.	SECTION 2. Same as engrossed version.
SECTION 3. Section 551.003, Occupations Code, is amended.	SECTION 3. Same as engrossed version.
SECTION 4. Section 554.002, Occupations Code, is amended.	SECTION 4. Same as engrossed version.
SECTION 5. Subsection (b), Section 554.007, Occupations Code, is amended.	SECTION 5. Same as engrossed version except for recitation.
SECTION 6. The heading to Section 554.053, Occupations Code, is amended.	SECTION 6. Same as engrossed version.
SECTION 7. Subsections (a) and (b), Section 554.053, Occupations Code, are amended.	SECTION 7. Same as engrossed version except for recitation.
SECTION 8. Section 557.004, Occupations Code, is amended.	SECTION 8. Same as engrossed version.
SECTION 9. Section 559.003, Occupations Code, is amended.	SECTION 9. Same as engrossed version.
SECTION 10. Subsection (b), Section 560.052, Occupations Code, is amended.	SECTION 10. Same as engrossed version except for recitation.
SECTION 11. Section 561.003, Occupations Code, is amended.	SECTION 11. Same as engrossed version.
SECTION 12. Section 562.012, Occupations Code, is amended.	SECTION 12. Same as engrossed version.

No equivalent provision.

SECTION 13. Section 562.103, Occupations Code, is amended.

SECTION 14. Subsection (a), Section 565.001, Occupations Code, is amended.

SECTION 15. Subsection (c), Section 565.055, Occupations Code, is amended to read as follows:

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:
(A) licenses or disciplines pharmacists or pharmacies; or

(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

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

(a-1) To be a valid prescription, a prescription for a controlled substance must be issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's professional practice. 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) This section [~~Subsection (a)~~] does not prohibit a pharmacist from dispensing a prescription when a valid practitioner-patient relationship is not present in an emergency.

SECTION 14. Same as engrossed version.

SECTION 15. Same as engrossed version except for recitation.

SECTION 16. Section 565.055(c), Occupations Code, is amended to read as follows:

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:
(A) licenses or disciplines pharmacists or pharmacies; or

(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

- (5) to a law enforcement agency;
- (6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; [ø]
- (7) ~~under a court order; or~~
- (8) to an entity that administers a board-approved pharmacy technician certification examination.

SECTION 16. Subsection (a), Section 565.101, Occupations Code, is amended.

SECTION 17. The heading to Chapter 568, Occupations Code, is amended.

SECTION 18. Section 568.001, Occupations Code, is amended.

SECTION 19. Section 568.002, Occupations Code, is amended.

SECTION 20. Subsection (a), Section 568.003, Occupations Code, is amended.

SECTION 21. Subsection (a), Section 568.0035, Occupations Code, is amended.

SECTION 22. Subsection (a), Section 568.0037, Occupations Code, is amended.

SECTION 23. Section 568.004, Occupations Code, is amended.

SECTION 24. Section 568.005, Occupations Code, is amended.

SECTION 25. Section 568.006, Occupations Code, is amended.

SECTION 26. The heading to Section 568.008, Occupations Code, is amended.

SECTION 27. Chapter 568, Occupations Code, is amended.

SECTION 28. Subsections (a) and (c), Section 569.001, Occupations Code, are amended.

SECTION 29. Subsection (a), Section 569.002, Occupations Code, is amended.

SECTION 30. Subsection (b), Section 569.005, Occupations Code, is amended.

- (5) to a law enforcement agency;
- (6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) to an entity that administers a board-approved pharmacy technician certification examination ~~under a court order~~.

SECTION 17. Same as engrossed version except for recitation.

SECTION 18. Same as engrossed version.

SECTION 19. Same as engrossed version.

SECTION 20. Same as engrossed version.

SECTION 21. Same as engrossed version except for recitation.

SECTION 22. Same as engrossed version except for recitation.

SECTION 23. Same as engrossed version except for recitation.

SECTION 24. Same as engrossed version.

SECTION 25. Same as engrossed version.

SECTION 26. Same as engrossed version.

SECTION 27. Same as engrossed version.

SECTION 28. Same as engrossed version.

SECTION 29. Same as engrossed version except for recitation.

SECTION 30. Same as engrossed version except for recitation.

SECTION 31. Same as engrossed version except for recitation.

SECTION 31. Subsection (i), Section 411.081, Government Code, is amended.

SECTION 32. The following provisions of the Occupations Code are repealed:

- (1) Chapter 567; and
- (2) Section 568.007.

SECTION 33. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 32. Same as engrossed version except for recitation.

SECTION 33. Same as engrossed version.

SECTION 34. Same as engrossed version.