

By: Van de Putte

S.B. No. 869

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the practice of pharmacy; authorizing fees.

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

SECTION 1. Subsection (e), Section 353.204, Occupations Code, is amended to read as follows:

(e) The Texas State Board of Pharmacy is responsible for enforcing this chapter with regard to a violation of this chapter by a pharmacist. A violation of this chapter by a pharmacist is considered to be a violation of Subtitle J[~~, other than Chapter 567~~].

SECTION 2. Section 551.001, Occupations Code, is amended to read as follows:

Sec. 551.001. SHORT TITLE. This [~~The chapters of this~~] subtitle[~~, other than Chapter 567,~~] may be cited as the Texas Pharmacy Act.

SECTION 3. Section 551.003, Occupations Code, is amended by amending Subdivision (32) and adding Subdivision (32-a) to read as follows:

(32) "Pharmacy technician" means an individual employed by a pharmacy whose responsibility is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. The term does

1 not include a pharmacy technician trainee.

2 (32-a) "Pharmacy technician trainee" means an
3 individual who is registered with the board as a pharmacy
4 technician trainee and is authorized to participate in a pharmacy
5 technician training program.

6 SECTION 4. Section 554.002, Occupations Code, is amended to
7 read as follows:

8 Sec. 554.002. REGULATION OF PRACTICE OF PHARMACY. The
9 board shall regulate the practice of pharmacy in this state by:

10 (1) issuing a license after examination or by
11 reciprocity to an applicant qualified to practice pharmacy and
12 issuing a license to a pharmacy under this subtitle;

13 (2) renewing a license to practice pharmacy and a
14 license to operate a pharmacy;

15 (3) determining and issuing standards for recognizing
16 and approving degree requirements of colleges of pharmacy whose
17 graduates are eligible for a license in this state;

18 (4) specifying and enforcing requirements for
19 practical training, including an internship;

20 (5) enforcing the provisions of this subtitle relating
21 to:

22 (A) the conduct or competence of a pharmacist
23 practicing in this state and the conduct of a pharmacy operating in
24 this state; and

25 (B) the suspension, revocation, retirement, or
26 restriction of a license to practice pharmacy or to operate a
27 pharmacy or the imposition of an administrative penalty or

1 reprimand on a license holder;

2 (6) regulating the training, qualifications, and
3 employment of a pharmacist-intern, ~~and~~ pharmacy technician, and
4 pharmacy technician trainee; and

5 (7) determining and issuing standards for recognizing
6 and approving a pharmacy residency program for purposes of
7 Subchapter W, Chapter 61, Education Code.

8 SECTION 5. Subsection (b), Section 554.007, Occupations
9 Code, is amended to read as follows:

10 (b) The board may receive and spend money, or use gifts,
11 grants, and other funds and assets [~~from a party, other than the~~
12 ~~state~~], in addition to money collected under Subsection (a), in
13 accordance with state law.

14 SECTION 6. The heading to Section 554.053, Occupations
15 Code, is amended to read as follows:

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

18 SECTION 7. Subsections (a) and (b), Section 554.053,
19 Occupations Code, are amended to read as follows:

20 (a) The board shall establish rules for the use and the
21 duties of a pharmacy technician and pharmacy technician trainee in
22 a pharmacy licensed by the board. A pharmacy technician and
23 pharmacy technician trainee shall be responsible to and must be
24 directly supervised by a pharmacist.

25 (b) The board may not adopt a rule establishing a ratio of
26 pharmacists to pharmacy technicians and pharmacy technician
27 trainees in a Class C pharmacy or limiting the number of pharmacy

1 technicians or pharmacy technician trainees that may be used in a
2 Class C pharmacy.

3 SECTION 8. Section 557.004, Occupations Code, is amended to
4 read as follows:

5 Sec. 557.004. LIMITATIONS ON REGISTRATION. (a) The board
6 may:

- 7 (1) refuse to issue a registration to an applicant; or
8 (2) restrict, suspend, or revoke a pharmacist-intern
9 registration for a violation of this subtitle.

10 (b) The board may take disciplinary action against an
11 applicant for a pharmacist-intern registration or the holder of a
12 current or expired pharmacist-intern registration in the same
13 manner as against an applicant for a license or a license holder by
14 imposing a sanction authorized under Section 565.051 if the board
15 finds that the applicant or registration holder has engaged in
16 conduct described by Section 565.001.

17 SECTION 9. Section 559.003, Occupations Code, is amended by
18 adding Subsection (e) to read as follows:

19 (e) A person may not renew a license to practice pharmacy if
20 the person holds a license to practice pharmacy in another state
21 that has been suspended, revoked, canceled, or subject to an action
22 that prohibits the person from practicing pharmacy in that state.

23 SECTION 10. Subsection (b), Section 560.052, Occupations
24 Code, is amended to read as follows:

25 (b) To qualify for a pharmacy license, an applicant must
26 submit to the board:

- 27 (1) a license fee set by the board, except as provided

1 by Subsection (d); and

2 (2) a completed application that:

3 (A) is on a form prescribed by the board;

4 (B) is given under oath; ~~and~~

5 (C) includes proof that a license held in this
6 state or another state, if applicable, has not been restricted,
7 suspended, revoked, or surrendered for any reason; and

8 (D) includes a statement of:

9 (i) the ownership;

10 (ii) the location of the pharmacy;

11 (iii) the license number of each pharmacist
12 who is employed by the pharmacy, if the pharmacy is located in this
13 state, or who is licensed to practice pharmacy in this state, if the
14 pharmacy is a Class E pharmacy;

15 (iv) the license number of the
16 pharmacist-in-charge; and

17 (v) any other information the board
18 determines necessary.

19 SECTION 11. Section 561.003, Occupations Code, is amended
20 by adding Subsection (f) to read as follows:

21 (f) A pharmacy may not renew a license under this section if
22 the pharmacy's license to operate in another state has been
23 suspended, revoked, canceled, or subject to an action that
24 prohibits the pharmacy from operating in that state.

25 SECTION 12. Section 562.012, Occupations Code, is amended
26 to read as follows:

27 Sec. 562.012. SUBSTITUTION OF DOSAGE FORM PERMITTED. With

1 the patient's consent [~~and notification to the practitioner~~], a
2 pharmacist may dispense a dosage form of a drug different from that
3 prescribed, such as a tablet instead of a capsule or a liquid
4 instead of a tablet, if the dosage form dispensed:

5 (1) contains the identical amount of the active
6 ingredients as the dosage prescribed for the patient;

7 (2) is not an enteric-coated or timed release product;
8 and

9 (3) does not alter desired clinical outcomes.

10 SECTION 13. Section 562.103, Occupations Code, is amended
11 by amending Subsection (b) and adding Subsection (c) to read as
12 follows:

13 (b) A Class A or Class C pharmacy that serves the public
14 shall:

15 (1) display the word "pharmacy" or a similar word or
16 symbol as determined by the board in a prominent place on the front
17 of the pharmacy; and

18 (2) display in public view the license of the
19 pharmacist-in-charge of [~~each pharmacist employed in~~] the
20 pharmacy.

21 (c) A pharmacy shall maintain and make available to the
22 public on request proof that each pharmacist, pharmacist-intern,
23 pharmacy technician, and pharmacist technician trainee working in
24 the pharmacy holds the appropriate license or registration.

25 SECTION 14. Subsection (a), Section 565.001, Occupations
26 Code, is amended to read as follows:

27 (a) The board may discipline an applicant for or the holder

1 of a current or expired license to practice pharmacy if the board
2 finds that the applicant or license holder has:

3 (1) violated this subtitle or a board rule adopted
4 under this subtitle;

5 (2) engaged in unprofessional conduct as defined by
6 board rule;

7 (3) engaged in gross immorality as defined by board
8 rule;

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

12 (5) engaged in fraud, deceit, or misrepresentation, as
13 defined by board rule, in practicing pharmacy or in seeking a
14 license to practice pharmacy;

15 (6) been convicted of or placed on deferred
16 adjudication community supervision or deferred disposition or the
17 applicable federal equivalent for:

18 (A) a misdemeanor:

19 (i) involving moral turpitude; or

20 (ii) under Chapter 481 or 483, Health and
21 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
22 Act of 1970 (21 U.S.C. Section 801 et seq.); or

23 (B) a felony;

24 (7) used alcohol or drugs in an intemperate manner
25 that, in the board's opinion, could endanger a patient's life;

26 (8) failed to maintain records required by this
27 subtitle or failed to maintain complete and accurate records of

1 purchases or disposals of drugs listed in Chapter 481 or 483, Health
2 and Safety Code, or the Comprehensive Drug Abuse Prevention and
3 Control Act of 1970 (21 U.S.C. Section 801 et seq.);

4 (9) violated any provision of:

5 (A) Chapter 481 or 483, Health and Safety Code,
6 or the Comprehensive Drug Abuse Prevention and Control Act of 1970
7 (21 U.S.C. Section 801 et seq.), or rules relating to one of those
8 laws; or

9 (B) Section 485.031, 485.032, 485.033, or
10 485.034, Health and Safety Code;

11 (10) aided or abetted an unlicensed person in the
12 practice of pharmacy if the pharmacist knew or reasonably should
13 have known that the person was unlicensed at the time;

14 (11) refused entry into a pharmacy for an inspection
15 authorized by this subtitle if the pharmacist received notification
16 from which the pharmacist knew or reasonably should have known that
17 the attempted inspection was authorized;

18 (12) violated any pharmacy or drug statute or rule of
19 this state, another state, or the United States;

20 (13) been negligent in the practice of pharmacy;

21 (14) failed to submit to an examination after hearing
22 and being ordered to do so by the board under Section 565.052;

23 (15) dispensed a prescription drug while acting
24 outside the usual course and scope of professional practice;

25 (16) been disciplined by a pharmacy board or by
26 another health [the] regulatory board of this state or another
27 state for conduct substantially equivalent to conduct described

1 under this subsection;

2 (17) violated a disciplinary order, including a
3 confidential order or contract under the program to aid impaired
4 pharmacists and pharmacy students under Chapter 564;

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

7 (19) inappropriately delegated a task delegated to a
8 pharmacy technician or pharmacy technician trainee; [~~or~~]

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

10 (21) been convicted or adjudicated of a criminal
11 offense that requires registration as a sex offender under Chapter
12 62, Code of Criminal Procedure.

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

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

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

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

1 SECTION 18. Section 568.001, Occupations Code, is amended
2 to read as follows:

3 Sec. 568.001. RULES; QUALIFICATIONS [~~RELATING TO PHARMACY~~
4 ~~TECHNICIANS~~]. (a) In establishing rules under Section
5 554.053(c), the board shall require that:

6 (1) a pharmacy technician:

7 (A) [~~(1)~~] have a high school diploma or a high
8 school equivalency certificate or be working to achieve an
9 equivalent diploma or certificate; and

10 (B) [~~(2)~~] have passed a board-approved pharmacy
11 technician certification examination; and

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

15 (b) The board shall adopt rules that permit a pharmacy
16 technician and pharmacy technician trainee to perform only
17 nonjudgmental technical duties under the direct supervision of a
18 pharmacist.

19 SECTION 19. Section 568.002, Occupations Code, is amended
20 to read as follows:

21 Sec. 568.002. [~~PHARMACY TECHNICIAN~~] REGISTRATION REQUIRED.

22 (a) A person must register with the board before beginning work in
23 a pharmacy in this state as a pharmacy technician or a pharmacy
24 technician trainee [~~pharmacy technician must register with the~~
25 ~~board annually or biennially, as determined by board rule, on a form~~
26 ~~prescribed by the board~~].

27 (b) The board may allow a pharmacy technician to petition

1 the board for a special exemption from the pharmacy technician
2 certification requirement if the pharmacy technician[+]

3 [~~(1)~~] is in a county with a population of less than
4 50,000[~~+~~ or

5 [~~(2)~~ on September 1, 2001, has been employed as a
6 pharmacy technician in this state for at least 10 years and the
7 technician's employer approves the petition].

8 (c) An applicant for registration as a pharmacy technician
9 or a pharmacy technician trainee must:

10 (1) be of good moral character; and

11 (2) submit an application on a form prescribed by the
12 board.

13 (d) A person's registration as a pharmacy technician or
14 pharmacy technician trainee remains in effect as long as the person
15 meets the qualifications established by board rule.

16 SECTION 20. Subsection (a), Section 568.003, Occupations
17 Code, is amended to read as follows:

18 (a) The board may take disciplinary action under Section
19 568.0035 against an applicant for or the holder of a current or
20 expired pharmacy technician or pharmacy technician trainee
21 registration if the board determines that the applicant or
22 registrant has:

23 (1) violated this subtitle or a rule adopted under
24 this subtitle;

25 (2) engaged in gross immorality, as that term is
26 defined by the rules of the board;

27 (3) engaged in any fraud, deceit, or

1 misrepresentation, as those terms are defined by the rules of the
2 board, in seeking a registration to act as a pharmacy technician or
3 pharmacy technician trainee;

4 (4) been convicted of or placed on deferred
5 adjudication community supervision or deferred disposition or the
6 applicable federal equivalent for:

7 (A) a misdemeanor:

8 (i) involving moral turpitude; or

9 (ii) under Chapter 481 or 483, Health and
10 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
11 Act of 1970 (21 U.S.C. Section 801 et seq.); or

12 (B) a felony;

13 (5) developed an incapacity that prevents the
14 applicant or registrant from practicing as a pharmacy technician or
15 pharmacy technician trainee with reasonable skill, competence, and
16 safety to the public;

17 (6) violated:

18 (A) Chapter 481 or 483, Health and Safety Code,
19 or rules relating to those chapters;

20 (B) Sections 485.031-485.035, Health and Safety
21 Code; or

22 (C) a rule adopted under Section 485.011, Health
23 and Safety Code;

24 (7) violated the pharmacy or drug laws or rules of this
25 state, another state, or the United States;

26 (8) performed duties in a pharmacy that only a
27 pharmacist may perform, as defined by the rules of the board;

1 (9) used alcohol or drugs in an intemperate manner
2 that, in the board's opinion, could endanger a patient's life;

3 (10) engaged in negligent, unreasonable, or
4 inappropriate conduct when working in a pharmacy;

5 (11) violated a disciplinary order;

6 (12) been convicted or adjudicated of a criminal
7 offense that requires registration as a sex offender under Chapter
8 62, Code of Criminal Procedure; or

9 (13) been disciplined by a pharmacy or other health
10 regulatory board of this state or another state for conduct
11 substantially equivalent to conduct described by this subsection.

12 SECTION 21. Subsection (a), Section 568.0035, Occupations
13 Code, is amended to read as follows:

14 (a) On a determination that a ground for discipline exists
15 under Section 568.003, the board may:

16 (1) suspend the person's registration;

17 (2) revoke the person's registration;

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

22 (4) impose an administrative penalty under Chapter
23 566;

24 (5) refuse to issue or renew the person's
25 registration;

26 (6) place the offender's registration on probation and
27 supervision by the board for a period determined by the board and

1 impose a requirement that the registrant:

2 (A) report regularly to the board on matters that
3 are the basis of the probation;

4 (B) limit practice to the areas prescribed by the
5 board;

6 (C) continue or review professional education
7 until the registrant attains a degree of skill satisfactory to the
8 board in each area that is the basis of the probation; or

9 (D) pay the board a probation fee to defray the
10 costs of monitoring the registrant during the period of probation;

11 (7) reprimand the person;

12 (8) retire the person's registration as provided by
13 board rule; or

14 (9) impose more than one of the sanctions listed in
15 this section.

16 SECTION 22. Subsection (a), Section 568.0037, Occupations
17 Code, is amended to read as follows:

18 (a) The president of the board shall appoint a disciplinary
19 panel consisting of three board members to determine whether a
20 registration under this chapter should be temporarily suspended or
21 restricted. If a majority of the panel determines from evidence or
22 information presented to the panel that the registrant by
23 continuation in practice as a pharmacy technician or pharmacy
24 technician trainee would constitute a continuing threat to the
25 public welfare, the panel shall temporarily suspend or restrict the
26 registration as provided by Subsection (b).

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

1 to read as follows:

2 Sec. 568.004. RENEWAL OF REGISTRATION. The board may adopt
3 a system in which the registrations of pharmacy technicians and
4 pharmacy technician trainees expire on various dates during the
5 year.

6 SECTION 24. Section 568.005, Occupations Code, is amended
7 to read as follows:

8 Sec. 568.005. FEES. The board may adopt fees as necessary
9 for the registration of pharmacy technicians and pharmacy
10 technician trainees.

11 SECTION 25. Section 568.006, Occupations Code, is amended
12 to read as follows:

13 Sec. 568.006. RATIO OF PHARMACISTS TO PHARMACY TECHNICIANS
14 AND PHARMACY TECHNICIAN TRAINEES. The ratio of pharmacists to
15 pharmacy technicians and pharmacy technician trainees in a Class A
16 pharmacy must be at least one pharmacist for every five pharmacy
17 technicians or pharmacy technician trainees if the Class A pharmacy
18 dispenses not more than 20 different prescription drugs and does
19 not produce intravenous or intramuscular drugs on-site.

20 SECTION 26. The heading to Section 568.008, Occupations
21 Code, is amended to read as follows:

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

24 SECTION 27. Chapter 568, Occupations Code, is amended by
25 adding Section 568.009 to read as follows:

26 Sec. 568.009. CHANGE OF ADDRESS OR EMPLOYMENT. Not later
27 than the 10th day after the date of a change of address or

1 employment, a pharmacy technician or a pharmacy technician trainee
2 shall notify the board in writing of the change.

3 SECTION 28. Subsections (a) and (c), Section 569.001,
4 Occupations Code, are amended to read as follows:

5 (a) Every insurer or other entity providing pharmacist's
6 professional liability insurance, pharmacy technician professional
7 and supplemental liability insurance, or druggist's professional
8 liability insurance covering a pharmacist, pharmacy technician,
9 pharmacy technician trainee, or pharmacy license holder in this
10 state shall submit to the board the information described in
11 Section 569.002 at the time prescribed.

12 (c) If a pharmacist, pharmacy technician, pharmacy
13 technician trainee, or pharmacy licensed in this state does not
14 carry or is not covered by pharmacist's professional liability
15 insurance, pharmacy technician professional and supplemental
16 liability insurance, or druggist's professional liability
17 insurance and is insured by a nonadmitted carrier or other entity
18 providing pharmacy professional liability insurance that does not
19 report under this subtitle, the duty to report information under
20 Section 569.002 is the responsibility of the pharmacist, pharmacy
21 technician, pharmacy technician trainee, or pharmacy license
22 holder.

23 SECTION 29. Subsection (a), Section 569.002, Occupations
24 Code, is amended to read as follows:

25 (a) The following information must be furnished to the board
26 not later than the 30th day after receipt by the insurer of the
27 notice of claim letter or complaint from the insured:

1 (1) the name of the insured and the insured's state
2 pharmacy technician registration number, pharmacy technician
3 trainee registration number, or pharmacist or pharmacy license
4 number;

5 (2) the policy number; and

6 (3) a copy of the notice of claim letter or complaint.

7 SECTION 30. Subsection (b), Section 569.005, Occupations
8 Code, is amended to read as follows:

9 (b) The board shall review the information relating to a
10 pharmacist, pharmacy technician, pharmacy technician trainee, or
11 pharmacy license holder against whom at least three professional
12 liability claims have been reported within a five-year period in
13 the same manner as if a complaint against the pharmacist, pharmacy
14 technician, pharmacy technician trainee, or pharmacy license
15 holder had been made under Chapter 555.

16 SECTION 31. Subsection (i), Section 411.081, Government
17 Code, is amended to read as follows:

18 (i) A criminal justice agency may disclose criminal history
19 record information that is the subject of an order of nondisclosure
20 under Subsection (d) to the following noncriminal justice agencies
21 or entities only:

22 (1) the State Board for Educator Certification;

23 (2) a school district, charter school, private school,
24 regional education service center, commercial transportation
25 company, or education shared service arrangement;

26 (3) the Texas Medical Board;

27 (4) the Texas School for the Blind and Visually

- 1 Impaired;
- 2 (5) the Board of Law Examiners;
- 3 (6) the State Bar of Texas;
- 4 (7) a district court regarding a petition for name
5 change under Subchapter B, Chapter 45, Family Code;
- 6 (8) the Texas School for the Deaf;
- 7 (9) the Department of Family and Protective Services;
- 8 (10) the Texas Juvenile Justice Department [~~Youth~~
9 ~~Commission~~];
- 10 (11) the Department of Assistive and Rehabilitative
11 Services;
- 12 (12) the Department of State Health Services, a local
13 mental health service, a local mental retardation authority, or a
14 community center providing services to persons with mental illness
15 or retardation;
- 16 (13) the Texas Private Security Board;
- 17 (14) a municipal or volunteer fire department;
- 18 (15) the Texas Board of Nursing;
- 19 (16) a safe house providing shelter to children in
20 harmful situations;
- 21 (17) a public or nonprofit hospital or hospital
22 district;
- 23 (18) [~~the Texas Juvenile Probation Commission,~~
24 [~~(19)~~] the securities commissioner, the banking
25 commissioner, the savings and mortgage lending commissioner, the
26 consumer credit commissioner, or the credit union commissioner;
- 27 (19) [~~(20)~~] the Texas State Board of Public

1 Accountancy;

2 (20) [~~(21)~~] the Texas Department of Licensing and
3 Regulation;

4 (21) [~~(22)~~] the Health and Human Services Commission;

5 (22) [~~(23)~~] the Department of Aging and Disability
6 Services;

7 (23) [~~(24)~~] the Texas Education Agency;

8 (24) [~~(25)~~] the Guardianship Certification Board;

9 (25) [~~(26)~~] a county clerk's office in relation to a
10 proceeding for the appointment of a guardian under Chapter XIII,
11 Texas Probate Code;

12 (26) [~~(27)~~] the Department of Information Resources
13 but only regarding an employee, applicant for employment,
14 contractor, subcontractor, intern, or volunteer who provides
15 network security services under Chapter 2059 to:

16 (A) the Department of Information Resources; or

17 (B) a contractor or subcontractor of the
18 Department of Information Resources;

19 (27) [~~(28)~~] the Court Reporters Certification Board;

20 (28) [~~(29)~~] the Texas Department of Insurance; [~~and~~]

21 (29) [~~(30)~~] the Teacher Retirement System of Texas;

22 and

23 (30) the Texas State Board of Pharmacy.

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

26 (1) Chapter 567; and

27 (2) Section 568.007.

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