

SUBJECT: Authorizing a new class of pharmacy

COMMITTEE: Public Health — favorable, with amendment

VOTE: 6 ayes — Gray, Capelo, Glaze, Maxey, McClendon, Uresti
0 nays
3 absent — Coleman, Delisi, Hilderbran

SENATE VOTE: On final passage, Local and Uncontested Calendar, May 3 — 30-0

WITNESSES: (*On companion bill, HB 2850:*)
For — Tim Vordendaumen, Coalition of Texas Long Term Care Pharmacies
Against — None
On — David Gonzales, Legend Pharmacies

BACKGROUND : The Texas Pharmacy Act (art. 4542a-1, VTCS) specifies five classes of licensed pharmacies that vary according to practice setting, required degree of supervision by a pharmacist, and whether the supervision must be on-site.

DIGEST: SB 1086, as amended, would authorize the Board of Pharmacy to create a new, unspecified class of pharmacy in addition to the five classes specified in current law.

An additional class of pharmacy could be established by rule if the board determined that the practice setting would provide pharmaceutical care services to the public, that an existing class of pharmacy was not appropriate, and that a new class was necessary to protect public health and safety.

The bill would specify that the new class of pharmacy could not deal primarily in orthotics or prosthetics and that no pharmacy would have to obtain an additional class of license for services it was providing as of the effective date.

The board would have to require by rule continuous on-site supervision of a pharmacy during the time it was open for pharmacy services.

The bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

SB 1086 would give the pharmacy board the authority it needs to tailor regulation to changing pharmaceutical practices by creating an additional licensing class.

Each class of pharmacy has its own set of rules to recognize the special circumstances under which drugs are dispensed. For example, a Class A license governs freestanding drugstores, which operate very differently from Class C licensed facilities in hospitals and other institutions.

A special class of licensing also informs the public and health-benefit payers that the pharmacy is qualified to do a special type of business and that it employs credentialed professionals.

SB 1086 would not require the board to establish an additional class, and the board could only do so if existing classes would not be appropriate. Creating classes by board rule rather than by statute would be a more appropriate way to make these kinds of decisions because of the expertise and flexibility needed to address changes in the field. For example, drug sales through the Internet have mushroomed in the past few months and soon may warrant special regulation.

If for some reason the board overstepped its authority when creating a new class, the Legislature still could rein in the board and redirect its activities through legislation.

One new type of pharmacy gaining a foothold in Texas is a specialized long-term care pharmacy, which operates under conditions that are a cross between a Class C institutional type of pharmacy and a Class E mail-order type of pharmacy. Other states recognize these kinds of pharmacies with a special licensing class, and Texas should too.

**OPPONENTS
SAY:**

This bill is unnecessary because the board probably could license all types of pharmacies under the classes it uses now. Many “specialized” pharmacies simply are variations on the basic five classes and would require only a few

exemptions in current rules for appropriate enforcement. For example, the board now makes special exemptions under the Class A license for pharmacies that dispense only sterile products.

A new class of pharmacy could give certain drugstores an unfair competitive advantage over current classes of licenses if the new class were allowed to operate under less stringent rules.

The Legislature should retain authority over the creation of any new class of pharmacy to guard against board encroachment into other health-care practice areas not under its authority.

**OTHER
OPPONENTS
SAY:**

Requiring continuous on-site supervision for a new class of pharmacy would bind the board's hands unnecessarily in creating a new class and would not be necessary to ensure public health and safety. For example, the board now has a Class D license that requires supervision by a pharmacist "according to the needs of the pharmacy" and is used for facilities such as Planned Parenthood offices, in which a pharmacist is on site once a week.

NOTES:

The committee amendment would add the specification that the new class of pharmacy could not deal primarily in orthotics or prosthetics.