

SUBJECT: Continuing the Texas State Board of Pharmacy

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Delisi, Coleman, Dawson, Jackson, McReynolds, Truitt, Zedler
0 nays
2 absent — Laubenberg, Solis

SENATE VOTE: On final passage, May 5 — 29-0

WITNESSES: (*On House companion bill, HB 1040 by Truitt:*)
For — VirGene K. Adams, Texas Pharmacy Association
Against — None
On — Gay Dodson, Texas State Board of Pharmacy; Joe Walraven, Sunset Advisory Commission

BACKGROUND: The Texas State Board of Pharmacy, created in 1907 by the Texas Pharmacy Act, regulates the practice of pharmacy, the operation of pharmacies, and the distribution of prescription drugs. The board's nine members serve staggered, six-year terms and are appointed by the governor. The board has a fiscal 2004-05 budget of \$6.5 million, with an approved staff of 54 in fiscal 2005. The board licenses more than 22,000 pharmacists and more than 6,000 pharmacies, and registers about 22,000 pharmacy technicians.

A Class E, or nonresident, pharmacy license may be issued to a pharmacy located in another state whose primary business is to deliver a prescription drug or device to a patient through mail or a delivery service.

The board underwent sunset review in 1993 and was continued by the 73rd Legislature. If not continued by the 79th Legislature, the board will be abolished September 1, 2005.

DIGEST:

SB 410 would continue the Texas State Board of Pharmacy until September 1, 2017. It would add regulatory mechanisms for Class E pharmacies, modify the board's enforcement authority over in-state pharmacists and pharmacies, provide for more disciplinary sanctions against pharmacy technicians, and authorize the board to register and discipline pharmacy technician trainees.

SB 410 would add standard Sunset provisions governing conflict of interest, training of board members, designation of a presiding officer, and information on complaints. It also would add provisions governing late renewal penalties for pharmacists and pharmacies; requirements for complaint dismissal by staff; travel reimbursement; establishment of advisory committees; access to examinations in compliance with the Americans with Disabilities Act of 1990; and an exam fee refund. The bill would revise rules governing reciprocity of licenses with practitioners from other states.

Internet and telephone prescriptions. The board would have to provide on its website a list and information for all Internet pharmacies licensed by the board. If a pharmacy sold drugs over the Internet, its website would have to include information on how to file a complaint. Unless it was an emergency, a pharmacist would be required to determine if a prescription was valid and could not dispense the prescription if the pharmacist knew or should have known that the prescription was issued on the basis of an Internet-based or telephone-based consultation without a valid practitioner-patient relationship. A pharmacy would be responsible for ensuring its agents and employees adhered to the proper issuance of valid prescriptions.

Class E pharmacies. SB 410 would add requirements to qualify for a Class E pharmacy license or license renewal. The bill would remove provisions requiring the board to first file a complaint against a Class E pharmacy with the regulatory agency in the state in which the pharmacy was located. The board could take direct disciplinary action against a Class E pharmacy, provided it notified the other state's regulatory agency of the action. The board could discipline an applicant for or holder of a Class E pharmacy license for the same violations for which it could discipline an in-state pharmacy.

Enforcement. A three-member disciplinary panel would be formed to suspend temporarily a license or registration when necessary. The board would be granted cease-and-desist authority to stop unlicensed activity,

and the current limit of \$2,500 per violation on the assessment of administrative penalties would be increased to \$5,000 per violation.

Permissible punishments could be made against applicants for and possessors of both current and expired licenses to practice pharmacy. Practitioners of pharmacy, operators of a pharmacy, pharmacy technicians and pharmacy technician trainees could be punished if they were convicted of or placed on deferred adjudication or deferred disposition for a misdemeanor involving moral turpitude, certain violations of the Health and Safety Code, and violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970. The board would have authority to discipline an applicant or license holder that was a legal business entity if the board found that the managing officer had been responsible for these violations.

Further punishments could be exacted against a practitioner of pharmacy or an operator of a pharmacy if the person had been convicted of a felony, disciplined by the regulatory board of another state, violated a disciplinary order, failed adequately to supervise a task dedicated to a pharmacy technician, or been responsible for a drug audit shortage.

Pharmacy technicians and trainees. The board could take disciplinary actions against pharmacy technicians, including revoking, restricting, suspending, retiring, or placing on probation a person's registration; refusing renewal; imposing an administrative penalty; or reprimanding the person. The bill would require that pharmacy technician trainees register with the board before beginning work in a pharmacy. It would outline the requirements for registration and allow for the same disciplinary actions taken against technicians to be taken against trainees.

The bill would take effect September 1, 2005, and the state pharmacy account would be abolished and the funds transferred to general revenue on that date.

**SUPPORTERS
SAY:**

SB 410 appropriately would continue the Texas State Board of Pharmacy. It also would shift \$4.8 million to general revenue through the elimination of the Pharmacy Board Operating Account. The board then could receive money through general appropriations, which would align practice with that of other agencies and reduce administrative costs for an additional dedicated account.

Out-of-state pharmacies. The board's authority to regulate out-of-state pharmacies has not kept pace with changes in technology. Today, many consumers' prescriptions are filled by pharmacies across the country. Although technological strides, such as the Internet, offer great benefits to consumers, they also pose hazards. Without adequate regulation of these distant pharmacies, consumers are at risk of receiving unsafe or inappropriate medications, not receiving appropriate oversight from healthcare professionals, or having illegal access to prescription drugs. SB 410 would strengthen the board's ability to regulate out-of-state pharmacies through increased licensing and enforcement capabilities.

Out-of-state pharmacies would have to meet the same standards for licensure and be subject to the same grounds for taking disciplinary action as Texas-based pharmacies. This would be a fair requirement to both protect Texas citizens and place out-of-state pharmacies on a level playing field with those operating in a more traditional manner within the state. In addition, out-of-state pharmacies would be subject to new requirements for drug audit shortages.

Increased enforcement capabilities. SB 410 would provide major advancements in enforcement capabilities, including authorizing the board to discipline a pharmacist for improper supervision of pharmacy technicians or for drug audit shortages. Currently, the board can take action only on the lesser offense of inadequate recordkeeping, even if the loss involves controlled substances. This does not provide an adequate incentive for pharmacists and owners to properly attend to their responsibility in ensuring drugs are not taken illegally.

The bill would provide the same tools for disciplining pharmacy technicians as for pharmacists and pharmacy owners, including the authority to restrict, reprimand, retire, or temporarily suspend a pharmacy technician's registration, impose an administrative penalty, or place the technician on probation. Pharmacy technician trainees would be registered and could be disciplined through the same means as pharmacy technicians, pharmacists, and pharmacy owners. This would ensure that such employees were held accountable for their actions and acted in the interest of public health in the same manner as any other professional in the field.

OPPONENTS
SAY:

While it is imperative that Texas continue to regulate pharmacists and pharmacies, some of the elements of SB 410 should be changed. The dedicated Pharmacy Board Operating Account was generated by fees collected from pharmacists and pharmacies, and these funds should be

directed to pharmacy-related endeavors. For example, the funds could be used to assist more people in obtaining an education to become a Texas pharmacist.

The bill should not require the registration of pharmacy technician trainees, because the board already has extensive licensing responsibilities, and these trainees would be supervised by licensed professionals. In addition, the bill already would provide that these supervising professionals could be held responsible for the actions of those they supervised, so there would be a mechanism to exact punishment for a trainee's violations.

NOTES:

The companion bill, HB 1040 by Truitt, et al., was reported favorably, as substituted, by the Public Health Committee on April 21.

The fiscal note estimates a net positive impact of \$4,847,320 to general revenue related funds in 2006 and a positive impact of \$33,320 every year thereafter. This mainly would be due to the transfer of \$4,814,000 from the general revenue dedicated Pharmacy Board Operating Account No. 523 to the general revenue fund.