

SUBJECT: Regulating pharmacists and the dispensing of certain drugs

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Gray, Coleman, Longoria, Maxey, Wohlgemuth

0 nays

4 absent — Capelo, Delisi, Glaze, Uresti

SENATE VOTE: On final passage, April 5 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — *Registered but did not testify*: Chuck Courtney, Texas Retailers Association on behalf of the Texas Federation of Drug Stores; David A. Gonzales, Texas Pharmacy Association; Brad Shields, Texas Society of Hospital Pharmacies

Against — None

On — Gay Dodson, Texas State Board of Pharmacy; Lisa McGiffert, Consumers Union

BACKGROUND: The Texas Pharmacy Act (Occupations Code, ch. 551 et seq.) regulates the practice of pharmacy in Texas.

Pharmacies in the state must be licensed annually by the Texas State Board of Pharmacy. Only licensed pharmacies may display the word “pharmacy.” If a pharmacy does not file an application for renewal and pay the renewal fee on or before the date its license expires, the board must suspend its license.

To practice pharmacy in the state, a person must hold a license from the Texas State Board of Pharmacy. Licenses must be renewed every one or two years. To renew a license, a license holder must complete at least 24 hours of continuing education in the preceding 24 months. Pharmacists may not dispense a controlled substance or dangerous drug without a valid prescription and may not dispense a dangerous drug on a prescription issued

in Mexico or Canada if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.

DIGEST: SB 768 would make a number of changes to the Texas Pharmacy Act, Dangerous Drug Act, and Controlled Substances Act.

The bill would allow certain pharmacies, rather than nursing homes and mental health residences, to maintain an emergency medication kit at these facilities to be used for the emergency medical needs of those facilities' residents. The bill also would expand the kinds of drugs that could be contained in the kit to include both controlled substances and dangerous drugs and would transfer responsibility for determining which drugs could be kept in the kits and how those drugs could be used from the Department of Human Services to the Texas State Board of Pharmacy. The board also would have to adopt rules for recordkeeping and security requirements for the kits.

The number of hours of continuing education a licensed pharmacist would have to complete in order to renew a license would increase from 24 to 30.

The Texas State Board of Pharmacy could retain jurisdiction over pharmacists and pharmacies whose licenses expired during an investigation or disciplinary action.

Pharmacists would be prohibited from dispensing a dangerous drug if the pharmacist knew or should have known that the prescription were issued without a valid patient-practitioner relationship, regardless of where that prescription were issued. The bill also would add controlled substances to that prohibition.

The bill also would:

- ! require pharmacist-interns to be engaged in a board-approved, rather than a school-based, internship program;
- ! prohibit the posting of the word "apothecary" in a facility that was not a licensed pharmacy;
- ! allow the board to discipline an applicant for or holder of a license if that person had used alcohol or drugs in an intemperate manner that could

endanger a person's life, rather than developed a drug or alcohol dependency; and

- ! amend the definition of "dangerous drug" to match the federal definition.

The bill would take effect September 1, 2001. The continuing education requirements for licensed pharmacists would apply only to a 24-month license period that began on or after that date. Rules relating to the emergency medical kits maintained at nursing homes and mental health residences would remain in effect until the board adopted new rules.

**SUPPORTERS
SAY:**

CSSB 768 would clarify and tighten regulation of the practice of pharmacy. These changes were recommend by the Texas State Board of Pharmacy and have been agreed to by the major pharmacy associations.

By clarifying that pharmacies could maintain emergency medication kits, the bill would enable pharmacies to own and be reimbursed for the medications in these kits. Because these kits currently are considered the property of the facilities' doctors, pharmacies that stock the kits are unable to receive reimbursement from Medicaid for the drugs they provide. By specifying that pharmacies own these kits, the bill would enable all pharmacies that maintained these kits, neighborhood or corporate, to be paid for these medications.

The bill also would allow emergency medication kits to contain dangerous drugs approved by the board for times when a patient would need to begin taking medication immediately to relieve pain or prevent a condition from worsening. Patients should have immediate access to medication in emergency instances in which a patient was in pain or had a deteriorating health condition — not merely for life-threatening emergencies — until a prescription could be filled. The concern that these kits would become mini-pharmacies is unfounded. The bill clearly would limit the kinds of drugs that could be kept in or used from these kits to those necessary for emergency situations, and the board would be required to set rules on the amount and type of medications that could be kept in the kits for these purposes. Since only a limited type and amount of drugs could be kept in these emergency kits, the bill would not pre-empt local pharmacies, and this bill would not require these facilities to use the drugs in the kit to the exclusion of local pharmacists.

The bill would increase the number of continuing education hours a pharmacist would have to complete in order to renew his or her license, making Texas consistent with requirements in nearly all (42) of the states.

The bill would enable the Texas State Pharmacy Board to maintain jurisdiction over a pharmacist or pharmacy whose license had expired during an investigation. In the past, the board has lost jurisdiction to discipline some pharmacists and pharmacies who had allowed their licenses to lapse. By allowing the board to maintain jurisdiction over these individuals and pharmacies, the bill would ensure that they were appropriately disciplined.

The bill would ensure that a pharmacist did not dispense a dangerous drug if the pharmacist knew or should have known that the prescription were issued without a valid patient-practitioner relationship, regardless of where that prescription were issued. All prescriptions should be subject to this safeguard. This provision also would clarify that pharmacists could not fill prescriptions obtained without a valid patient-practitioner relationship, such as through an online doctor. The bill would not jeopardize the businesses of online pharmacies that dispensed medications on the basis of prescriptions issued through a valid patient-practitioner relationship, but only would prevent the issuing and filling of these prescriptions by doctors who did not conduct an actual exam of the patient.

OPPONENTS
SAY:

By allowing pharmacies to own emergency kits in nursing homes and mental health residences and by expanding the kinds of drugs that these kits could contain, SB 768 could enable pharmacies to maintain these kits as mini-pharmacies from which nursing homes could obtain first doses of prescribed medications until the prescription arrived from the pharmacy. Currently, these facilities sometimes must turn to a local pharmacist to provide these first doses. By allowing these facilities to keep these drugs in an emergency kit that could be provided in advance from a corporate pharmacy, the bill would take this business away from local pharmacies. Although the board would be required to set the rules for what types and amounts of medications could be kept in the kits for emergencies, there is nothing that would prevent the Board from broadly defining what counts as an emergency and allowing a broad variety of drugs to be kept in these kits.

NOTES:

The committee substitute added a provision allowing certain pharmacies to maintain an emergency medication kit at nursing homes and mental health facilities, and repealed similar provisions in statute giving this authority to these institutions. The substitute authorized the Texas State Board of Pharmacy to discipline an applicant for or holder of a license for using alcohol or drugs in an intemperate manner that could endanger a patient's life, rather than for having a drug or alcohol dependency. The substitute removed a provision authorizing the board to determine that confidentiality requirements did not apply to a disciplinary order if the license holder had been the subject of a previous confidential disciplinary order.