

- SUBJECT:** Allowing pharmacy board investigators to carry firearms, make arrests
- COMMITTEE:** Public Safety — favorable, without amendment
- VOTE:** 5 ayes — Merritt, Frost, P. King, Lewis, Rodriguez  
0 nays  
4 absent — Burnam, Driver, Mallory Caraway, Vo
- SENATE VOTE:** On final passage, April 27 — 30-1 (Williams)
- WITNESSES:** (*On House companion bill, HB 1639:*)  
For — Chris Jones, Combined Law Enforcement Associations of Texas;  
(*Registered, but did not testify:* Kathy Barber, Thomas Ratliff, Texas  
Federation of Drug Stores; Richard Beck, Texas Pharmacy Business  
Council; Kevin Cooper, Texas Retailers Association; Tom Gaylor, Texas  
Municipal Police Association; Brad Shields, Texas Society of Health  
System Pharmacists)  
  
Against — None  
  
On — Robert Ebrom Jr., Texas State Board of Pharmacy; (*Registered, but  
did not testify:* Gay Dodson, Texas State Board of Pharmacy)
- BACKGROUND:** In 1981, the 67th Legislature enacted HB 1628 by Von Dohlen, the Sunset bill for the Texas State Board of Pharmacy (TSBP). One provision of the legislation, now codified as Occupations Code, sec. 554.010, permits the Texas State Board of Pharmacy (TSBP) to commission peace officers, with the restriction that these employees cannot carry firearms nor have the power to make an arrest.
- DIGEST:** SB 650 would amend Occupations Code, sec. 554.010 to remove TSBP officers' restriction on carrying firearms or making arrests.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

SB 650 would remove an antiquated restriction on the authority of TSBP peace officers to carry firearms or make arrest and would allow them to protect themselves and the public. Much has changed since 1981 when TSBP investigators were involved in administrative, rather than criminal, procedures. Now, diversion of prescription drugs from pharmacies ranks only behind marijuana as the source of most drug abuse in this country. Last year, TSBP received reports of more than 890,000 dosage units stolen or diverted from pharmacies. The agency's investigators must deal with national rings of criminals who operate Internet pharmacies or "pill mills" and "pain clinics." The seven TSBP investigators already must meet state training and licensing standards, and they should be able to fulfill their duty to make arrests when they witness the commission of a felony.

SB 650 also would address TSBP's inability to share in the proceeds of seized assets because federal agencies do not recognize pharmacy investigators as law enforcement officers due to their current restrictions. During a recent joint investigation of multiple internet pharmacies in Dallas, TSBP worked closely with Drug Enforcement Administration and the Federal Bureau of Investigation. The three agencies seized millions of dollars in assets, but the TSBP was ineligible to receive a share estimated to be \$600,000. TSBP also lost an estimated \$300,000 as a portion of seizures in a combined state and federal investigation in San Antonio seven years ago and could be disqualified from sharing in assets from ongoing state-federal efforts in Houston. These funds should go to the TSBP to fund its operations and reduce funding requests made to the Legislature.

Enough safeguards exist to prevent TSBP investigators from abusing their authority in seizing assets as part of criminal investigations. Current law requires due process appeals on forfeited assets, and the agency would remain accountable to the Legislature for any expenditures funded by the proceeds from seized assets.

**OPPONENTS  
SAY:**

The Legislature should not expand the number of agencies that can participate in "entrepreneurial" law enforcement, in which they derive portions of their operating budgets from drug asset seizures. While confiscating stolen prescription medicine or items purchased with proceeds of illegal drug deals could be justified, seizing property and cash

has become a steady and lucrative income stream for too many law enforcement agencies. The line between legitimate forfeitures and treasure hunting by law enforcement agencies can be difficult to find.

NOTES:

The House companion bill, HB 1639 by Hopson, was reported favorably by the House Public Safety Committee on March 26, but died in the Calendars Committee.