

SUBJECT: Continuing the Texas State Board of Pharmacy, modifying regulations

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

WITNESSES: For — (*Registered, but did not testify:* Amanda Martin, Texas Association of Business; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Justin Hudman, Texas Pharmacy Association)

Against — None

On — Steven Ogle, Sunset Advisory Commission; Gay Dodson, Texas State Board of Pharmacy; (*Registered, but did not testify:* Allison Benz, Texas State Board of Pharmacy)

BACKGROUND: The Texas State Board of Pharmacy was created in 1907 to examine and certify pharmacists. Its mission is to protect public health, safety, and welfare by fostering the provision of quality pharmaceutical care.

Functions. Since its establishment, the board's responsibilities have expanded beyond licensing pharmacists to include registering pharmacy technicians, interns, and trainees, overseeing pharmacy standards and operations, and investigating and resolving complaints against practitioners licensed or registered with the board.

Governing structure. The board is composed of 11 governor-appointed members who serve staggered six-year terms. Seven members are licensed pharmacists, one member is a registered pharmacy technician, and the remaining three members are public representatives. The governor selects

from these members a board president, and the members elect a vice-president and treasurer.

Funding. In fiscal year 2015, the board spent \$6.7 million. Its main expenditures were enforcement of standards and policies, licensing costs, and peer assistance. The board transferred \$4.2 million generated in excess of the agency's appropriation to the General Revenue Fund in fiscal 2015.

Staffing. The board employed 88 staff members in fiscal 2015, with 67 working in its main office and 21 working throughout the state conducting investigations and inspections.

The board's last Sunset review was in 2005 during the 79th regular session, when SB 410 by Whitmire extended the existence of the board by 12 years. This bill also took several measures to alter registration practices, including:

- authorizing the board to enforce certain disciplinary measures;
- establishing an online registry of licensed pharmacies and pharmacists; and
- imposing a registration requirement on pharmacy technician trainees.

The board will be discontinued on September 1, 2017, if not continued in statute.

DIGEST:

CSHB 2561 would continue the Texas State Board of Pharmacy until September 1, 2029.

The bill also would take multiple measures related to statewide monitoring and regulation of controlled substances, including:

- requiring pharmacists to review a patient's prescription history before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol;

- requiring prescription drug wholesale distributors to submit to the board the information they must already report to the Federal Drug Enforcement Administration;
- shortening the time frame in which pharmacists are required to submit electronic prescription records to the board from seven days after dispensing to one day after dispensing;
- requiring the board to identify prescriber and patient behaviors that suggest drug diversion or abuse; and
- authorizing the board to notify a dispenser or a prescriber whose prescription records suggest potential prescription drug abuse or diversion.

The bill would remove the "good moral character" requirement for licensure as a pharmacist or registration as a technician or trainee.

The bill also would require the board to develop a policy encouraging negotiated rulemaking and alternative dispute resolution in conformity with the Sunset Advisory Commission's across-the-board policies and would modify board member training curriculum in conformity with such policies.

The bill would create a graduated schedule of late renewal fees for pharmacy technicians and implement this schedule as soon as practicable. Technicians renewing their registration late would be charged:

- one and a half times the normal fee if the registration had been expired for 90 days or less; or
- twice the normal fee if the registration had been expired for more than 90 days, but no more than one year.

Technicians whose registration had been expired for more than one year would not be permitted to automatically renew their registration.

The bill would require the board to adopt rules concerning continuing education requirements for registered pharmacy technicians. These rules would have to include the hours, methods, approval, reporting, and

records of continuing education requirements, as well as board audits.

The bill also would allow the board to refuse renewal of a license to practice pharmacy or registration as a pharmacy technician when an applicant was in violation of a board order.

The bill would authorize the board to designate duties to its executive director.

The bill's training requirements would apply to all board members, and members appointed before the effective date would be required to complete only the training on subjects added by the bill. Any board members who had failed to complete the training by December 1, 2017, could not vote, deliberate, or be counted in attendance at a board meeting.

The bill would take effect on September 1, 2017, and would apply only to renewal applications filed on or after that date. Pharmacists would have to comply with the bill's prescription reporting and monitoring requirements by January 1, 2018.

**SUPPORTERS
SAY:**

CSHB 2561 would continue an effective program critical to public health and safety. The Texas State Board of Pharmacy increases the quality of pharmaceutical care in the state by conducting transparent and efficient regulation practices.

The bill would allow pharmacists to better combat the growing threat of prescription drug abuse by requiring them to adhere more closely to the Prescription Monitoring Program (PMP). By narrowing the time frame in which pharmacists must enter prescription information into the PMP database from one week to one day and requiring pharmacists to consult the database before dispensing certain substances, the bill would reduce the ability of people misusing drugs to receive prescriptions from multiple doctors.

The bill would reduce the potential for subjectivity in the licensing process by removing the requirement that pharmacists and technicians be

of "good moral character" to be licensed or registered. State law already establishes hiring guidelines, and this vague requirement could be applied disproportionately or misused to deny a license.

The bill would allow technician renewal late penalties to accomplish their intended purpose by adopting a graduated late renewal fee structure. Late renewal fees are not intended to be overly burdensome but to encourage timely renewal. By mirroring the graduated fee structure currently used for pharmacists, the bill would provide greater incentive for technicians to renew their registration as soon as possible.

The bill also would streamline the board's rulemaking, dispute settlement, and continuing education processes by bringing them into conformity with the Sunset Advisory Commission's across-the-board policies.

The bill's PMP consultation requirement would not significantly burden pharmacists. Pharmacists have the authority to delegate this responsibility to technicians, and the software allows quick access to prescription history and warning signs of prescription drug abuse. Doctors have their own methods to identify abuse, but pharmacists have a corresponding responsibility to ethically dispense medicine, and only they can identify fraud in the prescription-filling stage.

**OPPONENTS
SAY:**

CSHB 2561 could interfere with the ability of pharmacists to fill prescriptions quickly and efficiently. Requiring pharmacists to consult the PMP database each time they dispensed one of the controlled substances listed by the bill would be burdensome and could interfere with professional judgment by encouraging pharmacists to dispute the prescriptions and decisions of doctors.

NOTES:

A companion bill, SB 306 by V. Taylor, was referred to the Senate Health and Human Services Committee on March 6.