

## **BILL ANALYSIS**

Senate Research Center  
76R15167 MCK-F

C.S.S.B. 1889  
By: Nelson  
Health Services  
5/10/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, pharmacy technicians working in Texas are not required to be certified. The Texas Board of Pharmacy is considering rules which would set minimum standards and require certification of pharmacy technicians. There have been instances where untrained children are filling prescriptions, labeling medication bottles, and dispensing drugs without the appropriate oversight of a pharmacist. C.S.S.B. 1889 would regulate pharmacy technicians and the reporting of professional liability claims regarding the practice of pharmacy.

### **PURPOSE**

As proposed, C.S.S.B. 1889 regulates pharmacy technicians and the reporting of professional liability claims regarding the practice of pharmacy.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas State Board of Pharmacy in SECTIONS 2 and 5 (Sections 20A(c), 20B(a), and 42(c), Article 4542a-1, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 17, Article 4542a-1, V.T.C.S. (Texas Pharmacy Act), by amending Subsections (a) and (o), as follows:

(a) Provides that the Texas State Board of Pharmacy (board) is responsible for the regulation of the practice of pharmacy in this state, including the regulation of the training, qualifications, and employment of pharmacy technicians. Makes conforming changes.

(o) Requires the board to determine and issue standards for recognition and approval of training programs for pharmacy technicians, and to maintain a list of board-approved training programs that meet the standards under Subdivision (3) of this subsection. Makes conforming changes and nonsubstantive changes.

SECTION 2. Amends Article 4542a-1, V.T.C.S., by adding Sections 20A and 20B, as follows:

Sec. 20A. **QUALIFICATIONS FOR AND SUPERVISION OF PHARMACY TECHNICIANS; RULES.** Requires the board to require that a pharmacy technician have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate, and have passed a board-approved pharmacy technician certification examination; and provide that the ratio of pharmacist technicians to supervising pharmacists not exceed two-to-one. Authorizes the board to allow a technician in a county with a population of less than 50,000 to petition the board for a special exemption from the technician certification requirement. Authorizes the board to adopt rules that permit a pharmacy technician to perform only nonjudgmental technical duties under the direct supervision of a pharmacist.

Sec. 20B. **PHARMACY TECHNICIAN REGISTRATION REQUIRED.** Requires a pharmacy technician to register with the board annually or biennially, as determined by board rule, on a form prescribed by the board. Authorizes the board to refuse to issue or renew a registration or to suspend or revoke any registration issued by the board if the board determines that the applicant or registrant has committed certain violations. Provides that a certified copy of the record of a state taking action described by Subsection (b)(8) of this section is conclusive evidence of the

action taken by the state. Authorizes the board to adopt a system in which the registrations of pharmacy technicians expire on various dates during the year. Authorizes the board to adopt fees as necessary for the registration of pharmacy technicians.

SECTION 3. Amends Section 27, Article 4542a-1, V.T.C.S., to provide that the Health Care Quality Improvement Act of 1986 (Pub. L. No. 99-660) applies to a professional review action taken by a professional review body in this state on or after September 1, 1999. Makes a conforming change.

SECTION 4. Amends Section 28(b), Article 4542a-1, V.T.C.S., to authorize a person whose pharmacy technician registration in this state has been canceled, revoked, or restricted under this Act, to petition the board for reinstatement or removal of restriction of the license, after 12 months from the effective date of the cancellation, revocation, or restriction. Provides that a person petitioning for reinstatement has the burden of proof.

SECTION 5. Amends Article 4542a-1, V.T.C.S., by adding Section 42, as follows:

Sec. 42. DUTY OF PROFESSIONAL LIABILITY INSURER TO REPORT. (a) Requires every insurer or other entity providing pharmacist's professional liability insurance, pharmacy technician professional and supplemental liability insurance, or druggist's professional liability insurance covering a pharmacist, pharmacy technician, or pharmacy license holder in this state to submit to the board the information described in Subsections (b) and (c) of this section at the time prescribed. Requires the information to be provided with respect to a notice of claim letter or complaint filed against an insured in a court, if the notice or complaint seeks damages relating to the insured's conduct in providing or failing to provide appropriate service within the scope of pharmaceutical care or services, and with respect to settlement of a claim or lawsuit made on behalf of the insured. Provides that the duty to report information under Subsections (b) and (c) of this section is the responsibility of the pharmacist, pharmacy technician, or pharmacy license holder, if a pharmacist, pharmacy technician, or a pharmacy licensed in this state does not carry or is not covered by pharmacist's professional liability insurance, pharmacy technician professional and supplemental liability insurance, or druggist's professional liability insurance and is insured by a nonadmitted carrier or other entity providing pharmacy professional liability insurance that does not report under this Act.

(b) Sets forth information required to be furnished to the board no later than the 30th day after receipt by the insurer of the notice of claim letter or complaint from the insured.

(c) Authorizes the board to adopt rules for reporting additional information as the board may require, in consultation with the Texas Department of Insurance (TDI). Requires other claim reports required under state and federal law to be considered in determining the information to be reported, the form of the report, and frequency of reporting under the rules. Authorizes the board to require additional information including the date of any judgment, dismissal, or settlement, whether an appeal has been taken and by which party, and the amount of any settlement or judgment against the insured.

(d) Provides that an insurer reporting under this section, its agents or employees, or the board or its employees or representatives is not liable for damages in a suit brought by any person or entity for reporting as required by this section or for any other action taken under this section.

(e) Prohibits information submitted to the board under this section and the fact that the information has been submitted to the board from being offered in evidence or used in any manner in the trial of a suit described in this section.

(f) Requires the board to review the information relating to a pharmacist, pharmacy technician, or pharmacy license holder against whom at least three professional liability claims have been reported within a five-year period in the same manner as if a complaint against the pharmacist, pharmacist technician, or pharmacy license holder had been made under Section 17A of this Act.

(g) Authorizes TDI to impose on any insurer subject to this Act sanctions authorized by Section 7, Article 1.10, Insurance Code, if the insurer fails to report information as required by this section.

SECTION 6. (a) Effective date: September 1, 1999, except as provided by Subsection (b) of this section.

(b) Effective date for Section 20B, Article 4542a-1, V.T.C.S.: January 1, 2001.

SECTION 7. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Relating clause.

Amends the relating clause to relating to the regulation of pharmacy technicians and the reporting of professional liability claims regarding the practice of pharmacy.

SECTION 1.

Adds Subsection (a), for Section 20B, Article 4542a-1, V.T.C.S. to provide that the board is responsible for the regulation of the practice of pharmacy in this state, including the regulation of the training, qualifications, and employment of pharmacy technicians. Makes conforming changes.

Amends Subsection (o), Article 4542a-1, V.T.C.S., to require the board to maintain a list of board-approved training programs that meet the standards under Subdivision (3) of this subsection. Reinstates previously deleted text prohibiting the board from adopting rules or regulation establishing ratios of pharmacists to pharmacy technicians in Class C pharmacies. Makes a conforming change.

SECTION 2.

Amends Section 20A, Article 4542a-1, V.T.C.S., to require the board to require that a pharmacy technician have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate, and have passed a board-approved pharmacy technician certification examination; and provide that the ratio of pharmacist technicians to supervising pharmacists not exceed two-to-one. Deletes text regarding a General Educational Development certificate, and national pharmacy technician certification program of the Pharmacy Technician Certification Board, and support personnel.

Adds Subsection (b), Article 4542a-1, V.T.C.S., to authorize the board to allow a technician in a county with a population of less than 50,000 to petition the board for a special exemption from the technician certification requirement.

Adds Subsection (c), Article 4542a-1, V.T.C.S., to authorize the board to adopt rules that permit a pharmacy technician to perform only nonjudgmental technical duties under the direct supervision of a pharmacist.

Adds Section 20B, Article 4542a-1, V.T.C.S., regarding required pharmacy technician registration.

SECTION 3.

Adds Section 27, Article 4542a-1, V.T.C.S., to provide that the Health Care Quality Improvement Act of 1986 (Pub. L. No. 99-660) applies to a professional review action taken by a professional review body in this state on or after September 1, 1999. Makes a conforming change. Redesignates the effective date of September 1, 1999 to SECTION 6.

Deletes text requiring the rule of the Texas State Board of Pharmacy requiring that technicians pass the national pharmacy technician certification program, as provided by Subdivision (2), Section 20A (Article 4542a-1, V.T.C.S. (Texas Pharmacy Act)), as added by this Act, to be effective September 1, 1999.

SECTION 4.

Adds Section 28(b), Article 4542a-1, V.T.C.S., to authorize a person whose pharmacy technician

registration in this state has been canceled, revoked, or restricted under this Act, to petition the board for reinstatement or removal of restriction of the license, after 12 months from the effective date of the cancellation, revocation, or restriction. Provides that a person petitioning for reinstatement has the burden of proof. Redesignates the emergency clause to SECTION 7.

SECTION 5.

Adds SECTION 5, regarding the duty of a professional liability insurer to report.

SECTION 6.

Adds the effective date of September 1, 1999, except as provided by Subsection (b) of this section.

Adds the effective date of January 1, 2001 for Section 20B, Article 4542a-1, V.T.C.S.

SECTION 7.

Adds the emergency clause.