

RULE ANALYSIS

Introduction: THESE AMENDMENTS ARE SUBMITTED TO THE BOARD FOR CONSIDERATION AS ADOPTED RULES

Short Title: Fees

Rule Numbers: §§291.6, 295.5, 297.4

Statutory Authority: Texas Pharmacy Act, Chapter 551-566 and 568-569, Occupations Code:

- (1) Section 551.002 specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy;
- (2) Section 554.051 gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and

Purpose: The proposed amendments, if adopted, will increase fees to raise additional revenue to meet revenue projections.

The Board reviewed and voted to propose the amendments during the May 8, 2012, meeting. The proposed amendments were published in the June 22, 2012, issue of the *Texas Register* at 37 TexReg 4522, 37 TexReg 4525, and 37 TexReg 4526.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2012.

TRD-201202897

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 22, 2012

For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy proposes amendments to §291.6, concerning Pharmacy License Fees. The proposed amendments to §291.6, if adopted, raise pharmacy license fees to generate additional revenue needed to make revenue projections.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments to §291.6 are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2013 = \$39,060

FY2014 = \$43,200

FY2015 = \$43,200

FY2016 = \$43,200

FY2017 = \$43,200

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §291.6 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of \$12 for an initial license and an increase of \$12 for the renewal of a license.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective

control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for an initial license shall be ~~\$381~~ [\$374] for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) (No change.)

(B) ~~\$12~~ [\$10] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) (No change.)

(b) (No change.)

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacy license shall be ~~\$381~~ [\$374] for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) (No change.)

(B) ~~\$12~~ [\$10] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2012.

TRD-201202898

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 22, 2012

For further information, please call: (512) 305-8028



SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

22 TAC §291.93

The Texas State Board of Pharmacy proposes amendments to §291.93, concerning Operational Standards. The proposed amendments, if adopted, clarify the requirements for mailing medication from Class D (Clinic) pharmacies and increase the number of temporary locations that a Class D pharmacy may operate simultaneously from three to six.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

~~{(D) a recall if there is probable or confirmed harm to a patient.}~~

~~{(2) If the pharmacy identifies a suspicion of, probable, or confirmed harm to a patient, the pharmacy shall immediately notify and provide information as required by the board to the following:}~~

~~{(A) the Texas Department of State Health Services, Drugs and Medical Devices Group, if the preparation is distributed for office use; and}~~

~~{(B) the board.}~~

~~(4) [(3)] The board may require a pharmacy to initiate [institute] recall if there is potential for [probable] or confirmed harm to a patient.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2012.

TRD-201202900

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 22, 2012

For further information, please call: (512) 305-8028



CHAPTER 295. PHARMACISTS

22 TAC §295.5, §295.8

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees, and §295.8, concerning Continuing Education Requirements. The proposed amendments to §295.5, if adopted, will raise pharmacist license fees to generate additional revenue needed to make revenue projections. The proposed amendments to §295.8, if adopted, will allow pharmacists to receive continuing education credit for programs approved by other state boards of pharmacy.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments to §295.8 are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Dodson has determined that, for the first five-year period the amendments to §295.5 are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2013 = \$132,750

FY2014 = \$146,210

FY2015 = \$146,210

FY2016 = \$146,210

FY2017 = \$146,210

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §295.8 will be in effect, the public benefit anticipated as a result of enforcing the rule will be to allow more opportunities for pharmacists to accumulate continuing education credit from programs approved by other state boards

of pharmacy. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §295.5 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of \$10 for an initial license and an increase of \$10 for the renewal of a license.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

- (a) (No change.)
- (b) Initial License Fee.

(1) The fee for the initial license shall be \$215 [~~\$200~~] for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

- (A) (No change.)
 - (B) \$5 [~~\$10~~] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and
 - (C) (No change.)
- (3) (No change.)
 - (c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacist license shall be \$215 [~~\$200~~] for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

- (A) (No change.)
 - (B) \$5 [~~\$10~~] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and
 - (C) (No change.)
- (d) - (e) (No change.)

§295.8. Continuing Education Requirements.

- (a) - (d) (No change.)
- (e) Approved Programs.

(1) - (11) (No change.)

(12) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(A) Pharmacists shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy.

(B) Proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(i) name of the participant;

(ii) title and date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) a dated certifying signature of the provider; and

(vi) documentation that the program is approved by the other state board of pharmacy.

(13) [(12)] Upon demonstrated need the board may establish criteria to approve programs presented by non-ACPE approved providers.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2012.

TRD-201202901

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 22, 2012

For further information, please call: (512) 305-8028



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy proposes amendments to §297.4, concerning Fees. The proposed amendments to §297.4, if adopted, will raise pharmacy technician and pharmacy technician trainee fees to generate additional revenue needed to make revenue projections.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2013 = \$195,250

FY2014 = \$213,000

FY2015 = \$213,000

FY2016 = \$213,000

FY2017 = \$213,000

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §297.4 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of \$10 for an initial/renewal registration for pharmacy technicians and an increase of \$5 for an initial/renewal registration for pharmacy technician trainees.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be \$47 [\$42] and is composed of the following fees:

(1) \$40 [\$35] for processing the application and issuance of the pharmacy technician trainee registration as authorized by the Act, §568.005;

(2) - (3) (No change.)

(b) Pharmacy technician.

(1) (No change.)

(2) Initial Registration Fee. The fee for initial registration shall be \$75 [\$65] for a two year registration and is composed of the following fees:

(A) \$68 [\$56] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$2 [\$4] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) (No change.)

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$72 [\$62] and is composed of the following:

(A) \$68 [\$56] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$2 [\$4] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) (No change.)

(1) - (11) (No change.)

(12) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(A) Pharmacists shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy.

(B) Proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(i) name of the participant;

(ii) title and date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) a dated certifying signature of the provider; and

(vi) documentation that the program is approved by the other state board of pharmacy.

(13) [(12)] Upon demonstrated need the board may establish criteria to approve programs presented by non-ACPE approved providers.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2012.

TRD-201202901

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 22, 2012

For further information, please call: (512) 305-8028



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy proposes amendments to §297.4, concerning Fees. The proposed amendments to §297.4, if adopted, will raise pharmacy technician and pharmacy technician trainee fees to generate additional revenue needed to make revenue projections.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2013 = \$195,250

FY2014 = \$213,000

FY2015 = \$213,000

FY2016 = \$213,000

FY2017 = \$213,000

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §297.4 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of \$10 for an initial/renewal registration for pharmacy technicians and an increase of \$5 for an initial/renewal registration for pharmacy technician trainees.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., July 31, 2012.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be \$47 [\$42] and is composed of the following fees:

(1) \$40 [\$35] for processing the application and issuance of the pharmacy technician trainee registration as authorized by the Act, §568.005;

(2) - (3) (No change.)

(b) Pharmacy technician.

(1) (No change.)

(2) Initial Registration Fee. The fee for initial registration shall be \$75 [\$65] for a two year registration and is composed of the following fees:

(A) \$68 [\$56] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$2 [\$4] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) (No change.)

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$72 [\$62] and is composed of the following:

(A) \$68 [\$56] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$2 [\$4] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2012.

TRD-201202902

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 22, 2012

For further information, please call: (512) 305-8028



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (Board) proposes amendments to 22 TAC §§851.104, 851.152, and 851.156, concerning the licensure and regulation of Professional Geoscientists.

BACKGROUND AND PURPOSE

The Board proposes amendments to clarify the section on Dishonest Practice; to clarify the application requirements for Geoscience Firms; and to specify and clarify the requirements regarding use of the Professional Geoscientist seal.

SECTION BY SECTION SUMMARY

Amendments to §851.104 are proposed to strike the words "or agency" to provide clarification to the rule.

Amendments to §851.152 are proposed to clarify application requirements for Geoscience Firms. The amendment will specifically add the words "sole proprietor" in addition to the current term "business entity" when referring to geoscience firms; it adds the terms "non-exempt public" when referring to the practice of geoscience in Texas; it replaces the word "supervision" with the words "responsible charge"; it adds the words "Texas Office of the Secretary of State" when referring to the filing of "assumed name certificates"; it clarifies subsection (i) to remove the words "preliminary documents", and adds wording to specify that Geoscience Firms are responsible for ensuring that documents released by their firm are sealed in accordance with 22 TAC §851.156.

Amendments to §851.156 are proposed to clarify the requirements regarding usage of a Professional Geoscientist's seal. It replaces the word "original" with the word "separable"; adds the words "maps, drawings, cross sections or other figures representing geoscientific work"; and removes the words "plans or drawings" and "if the plans or drawings are intended to be or are removed from the report".

FISCAL NOTE

Charles Horton, Executive Director, has determined that for the first five-year period the sections are in effect there will be no

fiscal impact for state or local government as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that there may be little to no anticipated economic costs to small businesses or micro-businesses required to comply with proposed §§851.104, 851.152, and 851.156. There will be no anticipated economic cost to persons who are required to comply with the proposed sections. Consequently, an economic impact statement or regulatory flexibility analysis is not required.

There is no anticipated negative impact on local government.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. Sealing requirements will be clarified. The public benefit anticipated as a result of enforcing or administering the sections is that the Board will be able to more effectively regulate the public practice of geoscience in Texas, all of which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Board has determined that these proposals are not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Mr. Horton has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing either in person or by courier to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to chorton@tbpg.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §851.104

The amendments are proposed under the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.153 which provides that

TEXAS STATE BOARD OF PHARMACY

FEES EFFECTIVE OCTOBER 2012

| <u>Transaction Description</u> | <u>Initial</u> | <u>Renewal</u> |
|--------------------------------|----------------|----------------|
| PHARMACIST FEE | | |
| Application Fee | variable | 215.00 |
| Texas OnLine | 5.00 | 5.00 |
| Office of Patient Protection | 5.00 | 2.00 |
| PRN Surcharge | 11.00 | 11.00 |
| | | <u>233.00</u> |
| Delinquent Penalty | | 107.50 |
| PHARMACY FEE | | |
| Application Fee | 381.00 | 381.00 |
| Texas OnLine | 12.00 | 12.00 |
| Office of Patient Protection | 5.00 | 2.00 |
| PRN Surcharge | 13.00 | 13.00 |
| | <u>411.00</u> | <u>408.00</u> |
| Delinquent Penalty | | 190.50 |
| TECHNICIAN FEE | | |
| Application Fee | 67.00 | 67.00 |
| Texas OnLine | 3.00 | 2.00 |
| Office of Patient Protection | 5.00 | 2.00 |
| | <u>75.00</u> | <u>71.00</u> |
| Delinquent Penalty | | 67.00 |
| TECHNICIAN TRAINEE FEE | | |
| Application Fee | 40.00 | |
| Texas OnLine | 2.00 | |
| Office of Patient Protection | 5.00 | |
| | <u>47.00</u> | |