

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 998 (Delegate Elliott, *et al.*)
 Health and Government Operations

State Board of Pharmacy - Registration of Pharmacy Technicians

This bill: (1) allows the State Board of Pharmacy to register pharmacy technicians; (2) allows pharmacists to delegate certain tasks to the technicians; (3) sets requirements for a charge pharmacist; (4) adds to and modifies the reasons for which the board can take disciplinary action against a pharmacist; (5) repeals the requirement that an affirmative vote by the majority of the board is necessary to take action against an applicant or licensee; (6) allows an action to be maintained in the State's or board's name to enjoin the unauthorized operation of a pharmacy or the distribution of drugs without a permit; and (7) modifies certain definitions, such as the definition of compounding.

The bill takes effect October 1, 2005.

Fiscal Summary

State Effect: No effect in FY 2005. Special fund revenues could increase by \$237,500 in FY 2006. Future year revenues assume new applicants, biennial renewals, and all registrants renew. Special fund expenditures could increase by \$42,300 in FY 2006. Future year expenditures reflect annualization and inflation.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SF Revenue	\$237,500	\$38,000	\$275,500	\$66,500	\$304,000
SF Expenditure	42,300	51,100	54,200	57,500	61,000
Net Effect	\$195,200	(\$13,100)	\$221,300	\$9,000	\$243,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Pharmacy Technicians

An individual must be registered and approved as a pharmacy technician by the board before the individual may perform delegated pharmacy acts. This does not apply to: (1) a pharmacy student working under a licensed pharmacist's direct supervision provided that the student completes the required form and meets the board's requirements; or (2) an individual who engages in a board-approved pharmacy technician certification program under a licensed pharmacist's or registered pharmacy technician's direct supervision.

To qualify for registration, an applicant must: be of good moral character; be at least 18; be a high school graduate or have attained a high school equivalency, unless otherwise authorized; have received certification through a board examination or a board-approved technician training program; have completed 160 hours of work experience in the prescription area of a pharmacy within the three months immediately before applying for registration; and have completed a State and national criminal background investigation.

Applicants must pay an application fee. Registrations may not be renewed for longer than two years.

Subject to a hearing, the board may deny a pharmacy technician's registration to any applicant, reprimand a registered technician, place a registration on probation, suspend or revoke a registration if the applicant or registrant commits a number of violations, including:

- fraudulently or deceptively obtaining, attempting to obtain, or using a registration;
- performing delegated pharmacy acts while under the influence of alcohol or any narcotic or controlled dangerous substance or other drug in excess of therapeutic amounts;
- being convicted of or pleading guilty or *nolo contendere* to a felony or to a crime involving moral turpitude; or
- violating any provision of this bill or any board regulations.

After a hearing, if the board finds grounds for taking any action against an applicant or registrant, the board may impose a maximum \$10,000 penalty instead of or in addition to reprimanding the registered technician, placing the registered technician on probation, or suspending or revoking the registration. The board must adopt regulations to set standards for imposing penalties. Penalties collected by the board must be paid into the State general fund.

Anyone who works as an unregistered pharmacy technician is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine and/or one year imprisonment. Such a person is also subject to a maximum \$50,000 civil fine assessed by the board. The civil fine must be paid into the State Board of Pharmacy Fund.

A licensed pharmacist may delegate pharmacy acts to a registered pharmacy technician provided that: (1) the acts are performed under a licensed pharmacist's supervision; (2) the acts are not required to be performed by a licensed pharmacist; (3) the licensed pharmacist is competent to perform the delegated acts; (4) the technician has the education, training, and experience to perform the acts; and (5) board regulations permit the delegation of the acts.

Charge Pharmacist

The bill requires a charge pharmacist to be physically present in the pharmacy to manage the pharmacy and maintain control over its operations. The charge pharmacist must ensure the pharmacy complies with State and federal laws.

Disciplinary Actions

The bill adds to and modifies the reasons for which the board may deny a pharmacist license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a pharmacist license as follows:

- delegating pharmacy acts to an unauthorized individual;
- agreeing with an authorized prescriber or registered pharmacy technician to prepare or dispense a secret formula prescription;
- pleading guilty or *nolo contendere* to, or being found guilty of, a felony or crime involving moral turpitude, regardless of whether an adjudication of guilt or sentencing or imposition of sentence is withheld or any appeal or other proceeding is pending regarding the matter;
- violating a provision of the Maryland Pharmacy Act;

- delegating pharmacy acts to a registered pharmacy technician that the licensed pharmacist is not competent to perform;
- delegating pharmacy acts to a registered pharmacy technician who does not have the education, training, or experience to perform the delegated acts;
- participating in an activity that is grounds for board action; or
- violating a law relating to the charge pharmacist.

Current Law: The board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee commits any of a list of violations, including:

- fraudulently or deceptively using a license;
- providing professional services while under the influence of alcohol or any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication;
- dispensing any drug, device, or diagnostic for which a prescription is required without a prescription from an authorized prescriber; or
- being professionally, physically, or mentally incompetent.

A person who violates any provision of the following sections of the Maryland Pharmacy Act is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine and/or one year imprisonment: permit distribution; practicing pharmacy without a license; operating a pharmacy without a permit; and misrepresenting oneself as licensed. Each day of a violation is a separate offense.

Any person who practices pharmacy without a license or operates a pharmacy without a permit is subject to a maximum \$50,000 civil fine to be assessed by the board and deposited into the State Board of Pharmacy Fund.

An action may be maintained in the name of the State or the board to enjoin the unauthorized practice of pharmacy or conduct that is a ground for disciplinary action by the board.

Background: There are 1,375 individuals in Maryland already certified by the Pharmacy Technician Certification Board, a nongovernmental entity, who are likely to qualify for registration under this bill, according to the board. The board estimates that a total of 2,500 individuals will apply for registration in the first year. In future years, the board assumes 400 new applicants in the second and third years of the program and 300 new applicants in the fourth and fifth years of the program.

State Revenues: No effect in fiscal 2005. Special fund revenues could increase by \$237,500 in fiscal 2006 reflecting 2,500 pharmacy technicians registering, each paying a \$95 fee. Future years reflect 400 new applicants in fiscal 2007 and 2008, 300 new applicants in fiscal 2009 and 2010, biennial renewals, all registrants renewing, and a \$95 renewal fee.

State Expenditures: No effect in fiscal 2005. Special fund expenditures could increase by an estimated \$42,294 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one administrative specialist to maintain the pharmacy technician program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$35,822
Operating Expenses	<u>6,472</u>
Total FY 2006 State Expenditures	\$42,294

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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