

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 618 (Delegate Rudolph, *et al.*)
 Health and Government Operations Education, Health, and Environmental Affairs

State Board of Pharmacy - Registration of Pharmacy Technicians

This bill: (1) requires the State Board of Pharmacy to register pharmacy technicians; (2) allows pharmacists to delegate certain tasks to the technicians; (3) adds to and modifies the reasons for which the board can take disciplinary action against a pharmacist; (4) makes technical changes to pharmacist drug or device labeling requirements; and (5) adds certain definitions, such as “delegated pharmacy act” and “pharmacy student.”

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: No effect in FY 2006. Special fund revenues could increase by \$87,500 in FY 2007 to reflect the registration of pharmacy technicians. This estimate does not include any potential civil fines paid into the special fund. Special fund expenditures could increase by \$52,600 in FY 2007. Potential minimal increase in general fund revenue due to the bill’s penalty provision. No effect on general fund expenditures.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
SF Revenue	87,500	14,000	101,500	24,500	112,000
SF Expenditure	52,600	49,000	52,000	55,200	58,700
Net Effect	\$34,900	(\$35,000)	\$49,500	(\$30,700)	\$53,300

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

Local Effect: None.

Small Business Effect: None.

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. A delegated pharmacy act does not include an act within the parameters of a therapy management contract; the administration of an influenza vaccination; the delegation of a pharmacy act by a registered pharmacy technician, pharmacy student, or pharmacy technician trainee; a pharmacy activity of a pharmacy student; or the performance of other board prohibited functions.

To qualify for registration, an applicant must: (1) be of good moral character; (2) be at least 17; (3) be a high school graduate or have attained a high school equivalency, be enrolled in good standing at a high school, or meet other requirements set by the bill; (4) have successfully passed a board examination and completed a pharmacy technician training program approved by the board within six months immediately before registration, or have completed 160 hours of work experience in the prescription area of a pharmacy that possesses a valid pharmacy permit within a six-month period immediately before registration; and (5) have submitted a request for a State criminal background investigation. An application may not be approved until the investigation is completed.

If an applicant is not a high school graduate or has not attained a high school equivalency and has not passed the board examination and the training program or work experience, the applicant is considered qualified for registration if: (1) the applicant worked in the pharmacy area of a pharmacy operated by the same pharmacy permit holder since January 1, 2003; (2) the pharmacy permit holder for whom the applicant works attests in writing that the applicant has worked in the pharmacy area continuously since January 1, 2003; (3) a pharmacist who supervised the applicant for at least six months attests in writing that the individual has performed competently; and (4) the applicant otherwise meets the board's requirements.

An individual who is at least 16 years and 6 months old may begin fulfilling the pharmacy technician registration requirements. If a licensee shows good cause, the board may grant the licensee an extension for completing the work experience required for a pharmacy technician.

An applicant must pay an application fee. A registration may not be renewed for longer than two years. The board may set reasonable fees for the issuance and renewal of certificates and other services. The fees charged must be set to approximate the cost of certifying pharmacy technicians. Uncodified language in the bill requires the board to review its fees and expenditures for certifying pharmacy technicians and report to the

Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by January 1, 2008 on the reasonableness of the fees to cover the expenditures.

The statutory requirement that an individual must be licensed by the board before he or she may practice in Maryland does not apply to a pharmacy student participating in an experiential learning program of a college or school of pharmacy.

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, or suspend or revoke a registration if the applicant or registrant commits a number of violations including:

- performing an act restricted to a licensed pharmacist;
- 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 or without valid medical indication;
- 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 penalty of up to \$2,500 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. Any such penalty collected by the board must be paid into the State's general fund.

Anyone who works as an unregistered pharmacy technician is subject to a civil fine of up to \$50,000 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, pharmacy student participating in an experiential learning program, or pharmacy technician trainee provided that the delegated pharmacy acts: (1) are supervised by a licensed pharmacist; (2) are not required to be performed by a licensed pharmacist; (3) are within the delegating licensed pharmacist's education, training, experience, and area of practice; and (4) are appropriate to the registered pharmacy technician's, pharmacy student's, or pharmacy trainee's education, training, and experience. The board must adopt regulations establishing requirements for pharmacy students to perform delegated pharmacy acts.

Disciplinary Actions Against Pharmacists

To reflect the registration of pharmacy technicians and authority to delegate pharmacy acts, 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:

- aiding an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist or a registered pharmacy technician;
- delegating pharmacy acts to an unauthorized individual;
- agreeing with an authorized prescriber or registered pharmacy technician to prepare or dispense a secret formula prescription;
- delegating pharmacy acts to a registered pharmacy technician, pharmacy student, or a pharmacy technician trainee outside the scope of the licensed pharmacist's education, training, experience, and area of practice; and
- delegating pharmacy acts that are inappropriate for a registered pharmacy technician, pharmacy student, or a pharmacy technician trainee who does not have the education, training, or experience to perform the delegated acts.

Current Law: Generally, an individual must be licensed by the board before the individual may practice pharmacy in Maryland. This does not apply to an individual while engaging in a professional experience program under the direct supervision of a licensed pharmacist. 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.

Any person who practices pharmacy without a license or operates a pharmacy without a permit is subject to a civil fine of up to \$50,000 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 1,735 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 would apply for registration in the first year. In future years, the board assumes the following number of pharmacy technician registrations: 400 new registrations in fiscal 2008, 2,500 renewing and 400 new registrations in fiscal 2009, 400 renewing and 300 new registrations in fiscal 2010, and 2,900 renewing and 300 new registrations in fiscal 2011.

State Revenues: As shown in **Exhibit 1**, special fund revenues could increase by \$87,500 in fiscal 2007 as an estimated 2,500 individuals become registered pharmacy technicians. Legislative Services assumes a \$35 fee for new and renewing certifications because the bill requires the fee charged to approximate the cost of certifying pharmacy technicians. This fee may be adjusted depending on the number of certificates issued once the program is operational. Future years assume biennial registration renewal, all registration holders renewing, 400 new registrations issued each year in fiscal 2008 and 2009, and 300 new registrations issued in fiscal 2010 and 2011.

Further, special fund revenues could potentially increase significantly beginning in fiscal 2007 depending on the number of individuals convicted of the misdemeanor of working as an unregistered pharmacy technician and upon whom a civil fine is imposed.

General fund revenues could potentially increase minimally depending on the number of individuals upon whom the board imposes a monetary penalty.

State Expenditures: No effect in fiscal 2006. As shown in **Exhibit 1**, special fund expenditures could increase by an estimated \$52,644 in fiscal 2007, which accounts for the bill's July 1, 2006 effective date and reflects a full year's costs. This estimate reflects the cost of hiring one administrative specialist to manage the registration program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$45,629
Operating Expenses	<u>7,015</u>
Total FY 2007 State Expenditures	\$52,644

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.

Exhibit 1 shows that if the board charged a \$35 fee for new and renewing certificates, the board special fund revenues would exceed expenditures for every fiscal year beginning in fiscal 2007, except for fiscal 2008. Although there would be a \$114 deficit in fiscal 2008, Legislative Services believes that the small amount could be absorbed by the

board. A program fund balance in future years may be necessary to absorb unanticipated costs. Alternatively, the certification fee may be reduced or increased depending on whether the actual number of individuals applying for and renewing pharmacy technician certificates matches the board's expectations.

Exhibit 1
Pharmacy Technician Certificate Revenues and Expenditures Assuming a \$35 Fee

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Beginning Fund Balance	\$0	\$34,856	(\$114)	\$49,428	\$18,748
Revenues: New and Renewing Certificates	87,500	14,000	101,500	24,500	112,000
Total Revenues Available	87,500	48,856	101,386	73,928	130,748
Expenditures	52,644	48,970	51,958	55,180	58,657
Year-end Balance (Loss)	34,856	(114)	49,428	18,748	72,091

No effect on general fund expenditures.

Additional Information

Prior Introductions: A similar bill, HB 998 of 2004, had a hearing in the Health and Government Operations Committee, but no further action was taken.

Cross File: None.

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

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