

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
 Revised

Senate Bill 371

(Senator Hollinger)

Education, Health, and Environmental Affairs

Health and Government Operations

State Board of Pharmacy - Registration of Pharmacy Technicians

This bill: (1) requires the State Board of Pharmacy to register pharmacy technicians beginning January 1, 2007; (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: 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 \$41,700 in FY 2007. The FY 2007 budget includes \$72,644 in special fund expenditures to fulfill the bill’s requirements. Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provision.

(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
GF Expenditure	-	-	-	-	-
SF Expenditure	41,700	50,100	53,100	56,300	59,700
Net Effect	\$45,800	(\$36,100)	\$48,400	(\$31,800)	\$52,300

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

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provision.

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 performed by a pharmacy student; a pharmacy activity performed by an applicant for a license to practice pharmacy according to board regulations; or the performance of other board prohibited functions.

To qualify for registration, an applicant must be currently certified by a national pharmacy technician certification program and submit a request for a State criminal history records check or 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-approved examination; (5) have completed a pharmacy technician training program approved by the board that includes 160 hours of work experience and is no longer than six months; and (6) have submitted a request for a State criminal background investigation. An application may not be approved until the investigation is completed. The board must adopt standards for approving examinations. The board must approve any examination that meets the standards, including employer-based pharmacy technician examinations, nationally recognized pharmacy technician examinations, and examinations for certification as a pharmacy technician.

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 completed the board-approved training program, 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, 2006; (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, 2006; (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. The board may waive any registration requirement for an individual who is registered as or who has worked as a pharmacy technician in another state.

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 registrations and other services. The fees charged must be set to approximate the cost of registering pharmacy technicians. Uncodified language in the bill requires the board to review its fees and expenditures for the registration of pharmacy technicians and report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by January 1, 2009 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 under the supervision of a licensed pharmacist. The pharmacy technician registration requirement does not apply to: • a pharmacy student performing delegated pharmacy acts under a licensed pharmacist's direct supervision according to board regulations; • a pharmacy technician trainee under a licensed pharmacist's direct supervision provided the individual does not perform delegated pharmacy acts for more than six months; • or an applicant for a license to practice pharmacy under the direct supervision of a licensed pharmacist provided that the applicant does not perform delegated pharmacy acts for more than 10 months.

The registration of a pharmacy technician permanently expires on the date the registered pharmacy technician's employment terminates with the pharmacy permit holder that attested that the technician worked in the pharmacy area. This does not apply to a technician who: • notifies the board of the termination date at the time of termination; • resumes working as a pharmacy technician within one year of the termination date; and • notifies the board of the date the technician begins employment after the termination date.

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 guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine or one year imprisonment, or both. Such an individual also 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, or pharmacy technician trainee provided that the delegated pharmacy acts: (1) are directly 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.

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. The Department of Legislative Services (DLS) 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. General fund revenues could further increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

State Expenditures: The fiscal 2007 budget for the State Board of Pharmacy includes \$72,644 in special fund expenditures to fulfill the bill’s requirements: \$49,276 for an existing contractual administrative specialist, who would become a permanent employee, and \$23,368 for a contractual secretary. These expenditures are not contingent on the enactment of this bill. The Department of Health and Mental Hygiene advises that the contractual administrative specialist is an existing employee performing other board tasks. Additionally, the board advises that it would need to hire a contractual compliance investigator at a cost of \$28,126 in fiscal 2008.

As shown in **Exhibit 1**, DLS advises special fund expenditures could increase by \$41,694 in fiscal 2007 (\$30,950 less than the amount proposed in the fiscal 2007 budget), which accounts for a 90-day start-up delay. 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	\$34,991
Operating Expenses	<u>6,703</u>
Total FY 2007 State Expenditures	\$41,694

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

further advises the board would not need to hire a contractual compliance investigator in fiscal 2008 to fulfill the bill's requirements.

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. 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	\$45,806	\$9,687	\$58,092	\$26,301
Revenues: New and Renewing Certificates	87,500	14,000	101,500	24,500	112,000
Total Revenues Available	87,500	59,806	111,187	82,592	138,301
Expenditures	41,694	50,119	53,095	56,291	59,725
Year-end Balance (Loss)	45,806	9,687	58,092	26,301	78,576

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction facilities. The number of people convicted of this proposed crime is expected to be minimal.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2007.

Additional Information

Prior Introductions: A similar bill, HB 618 of 2005, was amended and passed in the House then amended and passed in the Senate. A conference committee was not

appointed to reconcile the differences. Another similar bill, HB 998 of 2004, had a hearing in the Health and Government Operations Committee, but no further action was taken.

Cross File: HB 492 (Delegate Rudolph, *et al.*) – Health and Government Operations.

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

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