

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5-30-09

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 1924 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Kel Seliger
Sen. Seliger

Sen. Nelson

Porter N. Nichols

Sen. Nichols

Sen. Aresti

Retired Van de Putte
On the part of the Senate
Sen. Van de Putte

Rep. Heflin

Rep. Hopson II

Rep. Hopson

Rep. Gonzalez - Toureilles

Rep. Chisum

Rep. Swinford
On the part of the House
Rep. Swinford

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 1924

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the performance of pharmacy services in certain rural
3 areas.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter C, Chapter 562, Occupations Code, is
6 amended by adding Section 562.1011 to read as follows:

7 Sec. 562.1011. OPERATION OF CLASS C PHARMACY IN CERTAIN
8 RURAL HOSPITALS. (a) In this section:

9 (1) "Nurse" has the meaning assigned by Section
10 301.002. The term includes a nurse who is also registered as a
11 pharmacy technician.

12 (2) "Rural hospital" means a licensed hospital with 75
13 beds or fewer that:

14 (A) is located in a county with a population of
15 50,000 or less; or

16 (B) has been designated by the Centers for
17 Medicare and Medicaid Services as a critical access hospital, rural
18 referral center, or sole community hospital.

19 (b) If a practitioner orders a prescription drug or device
20 for a patient in a rural hospital when the hospital pharmacist is
21 not on duty or when the institutional pharmacy is closed, a nurse or
22 practitioner may withdraw the drug or device from the pharmacy in
23 sufficient quantity to fill the order.

24 (c) The hospital pharmacist shall verify the withdrawal of a

1 drug or device under Subsection (b) and perform a drug regimen
2 review not later than the seventh day after the date of the
3 withdrawal.

4 (d) In a rural hospital that uses a floor stock method of
5 drug distribution, a nurse or practitioner may withdraw a
6 prescription drug or device from the institutional pharmacy in the
7 original manufacturer's container or a prepackaged container.

8 (e) The hospital pharmacist shall verify the withdrawal of a
9 drug or device under Subsection (d) and perform a drug regimen
10 review not later than the seventh day after the date of the
11 withdrawal.

12 (f) A rural hospital may allow a pharmacy technician to
13 perform the duties specified in Subsection (g) if:

14 (1) the pharmacy technician is registered and meets
15 the training requirements specified by the board;

16 (2) a pharmacist is accessible at all times to respond
17 to any questions and needs of the pharmacy technician or other
18 hospital employees, by telephone, answering or paging service,
19 e-mail, or any other system that makes a pharmacist accessible; and

20 (3) a nurse or practitioner or a pharmacist by remote
21 access verifies the accuracy of the actions of the pharmacy
22 technician.

23 (g) If the requirements of Subsection (f) are met, the
24 pharmacy technician may, during the hours that the institutional
25 pharmacy in the hospital is open, perform the following duties in
26 the pharmacy without the direct supervision of a pharmacist:

27 (1) enter medication order and drug distribution

1 information into a data processing system;

2 (2) prepare, package, or label a prescription drug
3 according to a medication order if a licensed nurse or practitioner
4 verifies the accuracy of the order before administration of the
5 drug to the patient;

6 (3) fill a medication cart used in the rural hospital;

7 (4) distribute routine orders for stock supplies to
8 patient care areas;

9 (5) access and restock automated medication supply
10 cabinets; and

11 (6) perform any other duty specified by the board by
12 rule.

13 (h) The pharmacist-in-charge of an institutional pharmacy
14 in a rural hospital shall develop and implement policies and
15 procedures for the operation of the pharmacy when a pharmacist is
16 not on-site.

17 (i) On or after September 1, 2011, the board may establish,
18 by rule, a requirement for prospective and retrospective drug use
19 review by a pharmacist for each new drug order. A drug use review is
20 not required when a delay in administration of the drug would harm
21 the patient in an urgent or emergency situation, including sudden
22 changes in a patient's clinical status.

23 (j) Rural hospitals may establish standing orders and
24 protocols, to be developed jointly by the pharmacist and medical
25 staff, that may include additional exceptions to instances in which
26 prospective drug use review is required.

27 (k) This section does not restrict or prohibit the board

1 from adopting a rule related to authorizing the withdrawal of a drug
2 or device by a nurse or practitioner from, or the supervision of a
3 pharmacy technician in, an institutional pharmacy not located in a
4 rural hospital. As part of the rulemaking process, the board shall
5 consider the effect that a proposed rule, if adopted, would have on
6 access to pharmacy services in hospitals that are not rural
7 hospitals.

8 (1) The board shall adopt rules to implement this section,
9 including rules specifying:

10 (1) the records that must be maintained under this
11 section;

12 (2) the requirements for policies and procedures for
13 operation of a pharmacy when a pharmacist is not on-site; and

14 (3) the training requirements for pharmacy
15 technicians.

16 SECTION 2. Chapter 568, Occupations Code, is amended by
17 adding Section 568.008 to read as follows:

18 Sec. 568.008. TECHNICIANS IN HOSPITALS WITH CLINICAL
19 PHARMACY PROGRAM. (a) In this section, "clinical pharmacy program"
20 means a program that provides pharmaceutical care services as
21 specified by board rule.

22 (b) A Class C pharmacy that has an ongoing clinical pharmacy
23 program may allow a pharmacy technician to verify the accuracy of
24 work performed by another pharmacy technician relating to the
25 filling of floor stock and unit dose distribution systems for a
26 patient admitted to the hospital if the patient's orders have
27 previously been reviewed and approved by a pharmacist.

1 (c) The pharmacist-in-charge of the clinical pharmacy
2 program shall adopt policies and procedures for the verification
3 process authorized by this section.

4 (d) A hospital must notify the board before implementing the
5 verification process authorized by this section.

6 (e) The board shall adopt rules to implement this section,
7 including rules specifying:

8 (1) the duties that may be verified by another
9 pharmacy technician;

10 (2) the records that must be maintained for the
11 verification process; and

12 (3) the training requirements for pharmacy
13 technicians who verify the accuracy of the work of other pharmacy
14 technicians.

15 SECTION 3. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2009.

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HOUSE VERSION

SECTION 1. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.1011 to read as follows:

Sec. 562.1011. OPERATION OF CLASS C PHARMACY IN CERTAIN RURAL HOSPITALS. (a)

In this section:

(1) "Nurse" has the meaning assigned by Section 301.002. The term includes a nurse who is also registered as a pharmacy technician.

(2) "Rural hospital" means a licensed hospital with 100 beds or fewer that:

(A) is located in a county with a population of 50,000 or less; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(b) If a practitioner orders a prescription drug or device for a patient in a rural hospital when the hospital pharmacist is not on duty or when the institutional pharmacy is closed, a nurse or practitioner may withdraw the drug or device from the pharmacy in sufficient quantity to fill the order.

(c) At the time the nurse or practitioner withdraws a drug or device from an institutional pharmacy under Subsection (b), the nurse or practitioner shall make a record of the withdrawal that contains:

(1) the name of the patient;

(2) the name of the device or drug;

(3) the dosage of the drug, strength of the drug, and

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SECTION 1. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.1011 to read as follows:

Sec. 562.1011. OPERATION OF CLASS C PHARMACY IN CERTAIN RURAL HOSPITALS. (a)

In this section:

(1) "Nurse" has the meaning assigned by Section 301.002. The term includes a nurse who is also registered as a pharmacy technician.

(2) "Rural hospital" means a licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(b) If a practitioner orders a prescription drug or device for a patient in a rural hospital when the hospital pharmacist is not on duty or when the institutional pharmacy is closed, a nurse or practitioner may withdraw the drug or device from the pharmacy in sufficient quantity to fill the order.

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SECTION 1. Same as Senate version.

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dosage form;

(4) the quantity withdrawn;

(5) the time and date of the withdrawal; and

(6) the signature of the person making the withdrawal.

(d) The original medication order or a copy of the order may substitute for the record of withdrawal if the medication order contains all of the information required by Subsection (c).

(e) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (b) and perform a drug regimen review not later than the seventh day after the date of the withdrawal.

(f) In a rural hospital that uses a floor stock method of drug distribution, a nurse or practitioner may withdraw a prescription drug or device from the institutional pharmacy in the original manufacturer's container or a prepackaged container.

(g) At the time a nurse or practitioner withdraws a drug or device from an institutional pharmacy under Subsection (f), the nurse or practitioner shall make a record of the withdrawal that contains:

(1) the name of the drug or device;

(2) the strength of the drug and dosage form;

(3) the quantity of the drug or device withdrawn;

(4) the location of the floor stock;

(5) the time and date of the withdrawal; and

(6) the signature of the person making the withdrawal.

(h) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (f) and perform a

(c) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (b) and perform a drug regimen review not later than the seventh day after the date of the withdrawal.

(d) In a rural hospital that uses a floor stock method of drug distribution, a nurse or practitioner may withdraw a prescription drug or device from the institutional pharmacy in the original manufacturer's container or a prepackaged container.

(e) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (d) and perform a

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drug regimen review not later than the seventh day after the date of the withdrawal.

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drug regimen review not later than the seventh day after the date of the withdrawal.

(f) A rural hospital may allow a pharmacy technician to perform the duties specified in Subsection (g) if:

(1) the pharmacy technician is registered and meets the training requirements specified by the board;

(2) a pharmacist is accessible at all times to respond to any questions and needs of the pharmacy technician or other hospital employees, by telephone, answering or paging service, e-mail, or any other system that makes a pharmacist accessible; and

(3) a nurse or practitioner or a pharmacist by remote access verifies the accuracy of the actions of the pharmacy technician.

(g) If the requirements of Subsection (f) are met, the pharmacy technician may, during the hours that the institutional pharmacy in the hospital is open, perform the following duties in the pharmacy without the direct supervision of a pharmacist:

(1) enter medication order and drug distribution information into a data processing system;

(2) prepare, package, or label a prescription drug according to a medication order if a licensed nurse or practitioner verifies the accuracy of the order before administration of the drug to the patient;

(3) fill a medication cart used in the rural hospital;

(4) distribute routine orders for stock supplies to patient care areas;

(5) access and restock automated medication supply

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cabinets; and

(6) perform any other duty specified by the board by rule.

(h) The pharmacist-in-charge of an institutional pharmacy in a rural hospital shall develop and implement policies and procedures for the operation of the pharmacy when a pharmacist is not on-site.

(i) On or after September 1, 2011, the board may establish, by rule, a requirement for prospective and retrospective drug use review by a pharmacist for each new drug order. A drug use review is not required when a delay in administration of the drug would harm the patient in an urgent or emergency situation, including sudden changes in a patient's clinical status.

(j) Rural hospitals may establish standing orders and protocols, to be developed jointly by the pharmacist and medical staff, that may include additional exceptions to instances in which prospective drug use review is required.

(k) This section does not restrict or prohibit the board from adopting a rule related to authorizing the withdrawal of a drug or device by a nurse or practitioner from, or the supervision of a pharmacy technician in, an institutional pharmacy not located in a rural hospital. As part of the rulemaking process, the board shall consider the effect that a proposed rule, if adopted, would have on access to pharmacy services in hospitals that are not rural hospitals.

(l) The board shall adopt rules to implement this section.

(i) This section does not restrict or prohibit the board from adopting a rule governing the withdrawal of a drug or device by a nurse or practitioner from an institutional pharmacy not located in a rural hospital.

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including rules specifying:

(1) the records that must be maintained under this section;

(2) the requirements for policies and procedures for operation of a pharmacy when a pharmacist is not on-site; and

(3) the training requirements for pharmacy technicians.

(j) This section expires January 1, 2012.

No equivalent provision.

SECTION 2. Chapter 568, Occupations Code, is amended by adding Section 568.008 to read as follows:

Sec. 568.008. TECHNICIANS IN HOSPITALS WITH CLINICAL PHARMACY PROGRAM. (a) In this section, "clinical pharmacy program" means a program that provides pharmaceutical care services as specified by board rule.

(b) A Class C pharmacy that has an ongoing clinical pharmacy program may allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist.

(c) The pharmacist-in-charge of the clinical pharmacy program shall adopt policies and procedures for the verification process authorized by this section.

(d) A hospital must notify the board before implementing the verification process authorized by this section.

SECTION 2. Same as Senate version.

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(e) The board shall adopt rules to implement this section, including rules specifying:

(1) the duties that may be verified by another pharmacy technician;

(2) the records that must be maintained for the verification process; and

(3) the training requirements for pharmacy technicians who verify the accuracy of the work of other pharmacy technicians.

No equivalent provision.

SECTION __. Section 556.053, Occupations Code, is amended to read as follows:

Same as House version.

Sec. 556.053. EXTENT OF INSPECTION; CONFIDENTIALITY. (a) Except as otherwise provided in an inspection warrant, the person authorized to represent the board may:

(1) inspect and copy documents, including records or reports, required to be kept or made under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under one of those laws;

(2) inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, prescription drugs or devices, components used in compounding, finished and unfinished products, or records; or

(3) perform an inventory of any stock of prescription

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drugs or devices, components used in compounding, or finished and unfinished products in a facility and obtain samples of those substances.

(b) Reports, records, formulas, and test results of samples of products compounded by pharmacies obtained by the board may be provided to the pharmacy that compounded the product but otherwise are confidential and do not constitute public information for purposes of Chapter 552, Government Code. The board may create, use, or disclose statistical information from the test results of samples of compounded products.

(c) The board may disclose information confidential under Subsection (b):

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction; or

(3) under a court order.

(d) The board shall require a pharmacy to recall a compounded product and may release the results of the tests of the samples of the compounded product if the board determines that:

(1) the test results indicate a patient safety problem that may involve potential harm to a patient; and

(2) the release of the test results is necessary to protect the public.

(e) The board shall release the test results described by Subsection (d) if a pharmacy is unable to or does not recall the compounded product within 48 hours after the

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board's request under that subsection.

~~No equivalent provision.~~

SECTION __. Section 568.003, Occupations Code, is amended to read as follows:

Same as House version.

Sec. 568.003. GROUND FOR DISCIPLINARY ACTION. (a) The board may take disciplinary action under Section 568.0035 if the board determines that the applicant or registrant has:

- (1) violated this subtitle or a rule adopted under this subtitle;
- (2) engaged in gross immorality, as that term is defined by the rules of the board;
- (3) engaged in any fraud, deceit, or misrepresentation, as those terms are defined by the rules of the board, in seeking a registration to act as a pharmacy technician;
- (4) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:
 - (A) a misdemeanor:
 - (i) involving moral turpitude; or
 - (ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or
 - (B) a felony;
- (5) developed an incapacity that prevents the applicant or registrant from practicing as a pharmacy technician or pharmacy technician trainee with reasonable skill, competence, and safety to the public ~~[a drug or alcohol dependency]~~;

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- (6) violated:
- (A) Chapter 481 or 483, Health and Safety Code, or rules relating to those chapters;
 - (B) Sections 485.031-485.035, Health and Safety Code; or
 - (C) a rule adopted under Section 485.011, Health and Safety Code;
- (7) violated the pharmacy or drug laws or rules of this state, another state, or the United States; ~~[or]~~
- (8) performed duties in a pharmacy that only a pharmacist may perform, as defined by the rules of the board;
- (9) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;
- (10) engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy;
- (11) violated a disciplinary order;
- (12) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; or
- (13) been disciplined by a pharmacy or other health regulatory board of this state or another state ~~[had a registration as a pharmacy technician issued by another state revoked, surrendered, or suspended]~~ for conduct substantially equivalent to conduct described by this subsection ~~[Subdivisions (1)-(6)].~~
- (b) A certified copy of the record of a state taking action described by Subsection (a)(13) ~~[(a)(8)]~~ is conclusive evidence of the action taken by the state.

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No equivalent provision.

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SECTION __. Section 568.0035, Occupations Code, is amended to read as follows:
Sec. 568.0035. **DISCIPLINE AUTHORIZED; EFFECT ON TRAINEE.** (a) On a determination that a ground for discipline exists under Section 568.003, the board may:

- (1) suspend the person's registration;
- (2) revoke the person's registration;
- (3) restrict the person's registration to prohibit the person from performing certain acts or from practicing as a pharmacy technician in a particular manner for a term and under conditions determined by the board;
- (4) impose an administrative penalty under Chapter 566;
- (5) refuse to issue or renew the person's registration;
- (6) place the offender's registration on probation and supervision by the board for a period determined by the board and impose a requirement that the registrant:
 - (A) report regularly to the board on matters that are the basis of the probation;
 - (B) limit practice to the areas prescribed by the board;
 - (C) continue or review professional education until the registrant attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or
 - (D) pay the board a probation fee to defray the costs of monitoring the registrant during the period of probation;
- (7) reprimand the person;
- (8) retire the person's registration as provided by board rule; or
- (9) impose more than one of the sanctions listed in this section.

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Same as House version.

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No equivalent provision.

(b) A disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician.

SECTION __. Chapter 568, Occupations Code, is amended by adding Section 568.0036 to read as follows:
Sec. 568.0036. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION. (a) This section applies to a pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant.
(b) In enforcing Section 568.003(a)(5), the board, on probable cause, may request a person subject to this section to submit to a mental or physical examination by a physician or other health care professional designated by the board.
(c) If the person refuses to submit to the examination, the board shall:
(1) issue an order requiring the person to show cause why the person will not submit to the examination; and
(2) schedule a hearing on the order not later than the 30th day after the date notice of the order is served on the person under Subsection (d).
(d) The person shall be notified by either personal service or certified mail, return receipt requested.
(e) At the hearing, the person and the person's counsel may present testimony or other evidence to show why the person should not be required to submit to the examination.

Same as House version.

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(f) After the hearing, the board shall, by order:
(1) require the person to submit to the examination; or
(2) withdraw the request for examination.

No equivalent provision.

SECTION __. The changes in law made by this Act apply only to conduct occurring on or after the effective date of this Act. Conduct occurring before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Same as House version.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

SECTION 3. Same as House version.

SECTION 3. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

**TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives**

FROM: John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1924 by Heflin (Relating to the performance of pharmacy services in certain rural areas.),
Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would authorize a nurse, pharmacy technician, or practitioner working in a rural hospital to withdraw a drug or device order prescribed by a practitioner when the hospital's pharmacist is not on duty or when the institutional pharmacy is closed. The bill would authorize the Texas State Board of Pharmacy to establish the record requirements to be made at the time the nurse, pharmacy technician or practitioner withdraws a drug or device, to adopt rules specifying the duties that may be verified by another pharmacy technician, and to adopt training requirements for pharmacy technicians regarding these provisions. The bill would not restrict or prohibit the Texas State Board of Pharmacy from adopting a rule governing the withdrawal of a drug or device by a nurse or practitioner from an institutional pharmacy not located in a rural hospital.

Based on the analysis of the Texas State Board of Pharmacy, duties and responsibilities associated with implementing the provisions of the bill could be absorbed within current resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

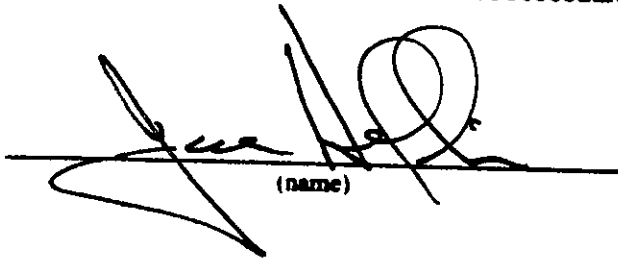
Source Agencies: 515 Board of Pharmacy, 405 Department of Public Safety

LBB Staff: JOB, SD, ES, CL

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 1924 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

5-30-09
(date)