

## **BILL ANALYSIS**

C.S.H.B. 2766  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that misuse and abuse of many controlled substance prescription medications continues to be a growing problem in Texas and that electronically prescribing such medications may help combat the problem. C.S.H.B. 2766 seeks to address this issue by, among other things, prohibiting a person from dispensing or administering a controlled substance without an electronic prescription, with certain exceptions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTIONS 3, 4, 7, and 11 of this bill and to each regulatory agency that issues a license, certification, or registration to a prescriber in SECTION 7 of this bill.

### **ANALYSIS**

C.S.H.B. 2766 amends the Health and Safety Code to prohibit a person from dispensing or administering a controlled substance without an electronic prescription, with certain exceptions. The bill retains exceptions for oral or telephonically communicated prescriptions in an emergency as defined by rule of the Texas State Board of Pharmacy (TSBP), a medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled, and certain prescriptions issued by a practitioner in another state. The bill limits the authority of a practitioner to designate an agent to communicate a prescription by telephone to doing so in an emergency and repeals certain provisions relating to that authority.

C.S.H.B. 2766 establishes that a prescription for a controlled substance is not required to be issued electronically and may be issued in writing for specified practitioners, drugs, and circumstances. The bill requires a practitioner to use a written prescription to submit such a prescription, except in an emergency, in which case the practitioner may submit an oral or telephonically communicated prescription. The bill establishes that a dispensing pharmacist who receives a controlled substance prescription in a manner other than electronically is not required to verify that the prescription is exempt from the requirement that it be submitted electronically. The bill authorizes the pharmacist to dispense a controlled substance pursuant to an otherwise valid written, oral, or telephonically communicated prescription consistent with applicable requirements.

C.S.H.B. 2766 specifies the information that a written prescription must include for Schedule II controlled substances and for other controlled substances and requires a written prescription for a Schedule II controlled substance to be on an official prescription form. The bill requires the

TSBP by rule to authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number on the official prescription form. The bill includes certain existing provisions relating to official prescription forms, but the bill makes the requirement for the TSBP to issue official prescription forms to a practitioner for a fee applicable only on request of a practitioner and makes the prohibition against recording more than one controlled substance on an official prescription form applicable only to a Schedule II prescription. The bill requires a prescribing practitioner, in the case of an emergency oral or telephonically communicated prescription, to give the dispensing pharmacy the information needed to complete the official prescription form if the pharmacy is not required to use the electronic prescription record and sets out certain requirements for a dispensing pharmacist receiving such an oral or telephonically communicated prescription.

C.S.H.B. 2766 authorizes the appropriate regulatory agency that issued the license, certification, or registration to a prescriber to grant a prescriber a waiver from the electronic prescribing requirement. The bill requires the TSBP to convene an interagency workgroup that includes representatives of each applicable regulatory agency and imposes certain duties on the workgroup relating to the development of waiver procedures. The bill requires the TSBP to adopt rules establishing the eligibility for a waiver and requires each applicable regulatory agency to adopt rules for the granting of waivers consistent with the TSBP rules. The bill authorizes the issuance of a waiver to a prescriber for a period of one year and authorizes the prescriber, on expiration of the waiver, to reapply for the waiver if the circumstances that necessitated the waiver continue.

C.S.H.B. 2766 requires electronic delivery of the prescription that a physician authorizing an emergency oral or telephonically communicated prescription is required to provide to the dispensing pharmacist not later than the seventh day after the emergency prescription. The bill replaces provisions specifying certain conditions under which the partial filling of a prescription for a Schedule II controlled substance is permissible with the specification that such partial filling is permissible in accordance with federal law. The bill repeals provisions authorizing a pharmacist to dispense a Schedule II controlled substance pursuant to a facsimile copy of an official prescription under certain circumstances.

C.S.H.B. 2766 includes the bill's provisions relating to written, oral, and telephonically communicated prescriptions and relating to waivers from electronic prescribing among the provisions of the Texas Controlled Substances Act for which director of the Department of Public Safety does not have rulemaking authority and includes those bill provisions among the provisions of the act for which the TSBP has rulemaking authority.

C.S.H.B. 2766 clarifies the violations that constitute an offense involving the distribution, delivery, administration, or dispensation of a controlled substance to reflect the provisions added by the bill. The bill expands the conduct that constitutes a fraud offense under the Texas Controlled Substances Act to include knowingly possessing, obtaining, or attempting to possess or obtain a controlled substance or an increased quantity of a controlled substance through the use of a fraudulent electronic prescription.

C.S.H.B. 2766 amends the Government Code to clarify that information collected under the bill's provisions relating to written, oral, and telephonically communicated prescriptions is excepted from the public availability requirement of state public information law.

C.S.H.B. 2766 amends the Occupations Code to include the bill's provisions relating to written, oral, and telephonically communicated prescriptions and relating to waivers from electronic prescribing among the provisions of the Texas Controlled Substances Act for which the TSBP has rulemaking authority. The bill includes failure to comply with those provisions among the grounds on which the TSBP may discipline an applicant for or the holder of a nonresident pharmacy license.

C.S.H.B. 2766 repeals the following provisions of the Health and Safety Code:

- Section 481.073
- Sections 481.074(o) and (p)
- Sections 481.075(b), (c), (d), (f), (k), and (l)

**EFFECTIVE DATE**

January 1, 2021.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2766 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision establishing that a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued before January 1, 2021.

The substitute changes the effective date of the bill.