



OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: S.B. 229 of the 132nd G.A.

Status: As Passed by the Senate

Sponsor: Sen. Eklund

Local Impact Statement Procedure Required: No

Subject: State Board of Pharmacy and regulation of controlled substances

State & Local Fiscal Highlights

- The bill is expected to have a minimal at most annual effect on the workload and related revenue-generating activities of the State Board of Pharmacy.
- The Office of the Attorney General will likely incur a minimal at most annual increase in administrative costs and gain in revenue to perform required background checks.
- Violations of the bill's general prohibition against pharmacy interns dispensing drugs are expected to be relatively infrequent, which suggests that there will be little, if any, discernible ongoing annual effect on the revenues and expenditures of county and municipal criminal justice systems with jurisdiction over such violations.
- Certain units of state and local government will expend additional time and effort to comply with the bill's Public Records Law exclusion related to various types of information concerning a Pharmacy Board employee. The annual cost of such compliance is expected to be minimal, and handled utilizing existing staff and appropriated resources.

Detailed Fiscal Analysis

Controlled substance schedules

The bill removes the current controlled substance schedules from the Revised Code and requires the State Board of Pharmacy (hereinafter the Board) to adopt rules incorporating the five schedules of controlled substances under the federal drug abuse control law. When the federal schedules change, the Board is required to incorporate those changes into its next update. The Board may also add additional substances to the schedule following certain guidelines. The bill adapts other Revised Code provisions to conform to the above change including the prohibitions against rape and sexual imposition, and steroid warning posting requirements for middle schools, high schools, state-operated colleges and universities, and privately owned athletic facilities.

Rule adoption will likely create additional work for the Board, but the additional workload is not expected to create a need for additional staffing or appropriated resources. The change should, therefore, not lead to additional expenses for the Board.

Under current law, the Governor may adopt emergency rules and amendments at the request of an agency. The emergency rule becomes invalid at the end of the 120th day. The bill specifies that such an emergency rule or amendment adding a controlled substance to a controlled substance schedule becomes invalid at the end of the 180th day. The Board may adopt a nonemergency rule which mirrors the emergency rule following standard procedures, but may not use emergency rule procedures to continue emergency rules.

Pharmacy interns

The bill prohibits pharmacy interns from dispensing drugs with exceptions for naloxone and when the Governor declares an emergency. A first-time violation of this prohibition is a third degree misdemeanor, the penalty for which is a fine of up to \$500, a potential jail stay of up to 60 days, or both. Subsequent violations are a second degree misdemeanor, the penalty for which is a fine of up to \$750, a potential jail stay of up to 90 days, or both.

Presumably, once the bill's prohibition is enacted, pharmacy interns generally will comply with the prohibition and violations will be relatively infrequent. This suggests that there will be little, if any, discernible ongoing annual effect on the revenues and expenditures of county and municipal criminal justice systems.

Office-based opioid treatment facility licensure exemptions

Regarding office-based opioid treatment facilities, the bill (1) exempts certain facilities from licensure by the Board, and (2) specifies conditions for licensure exemption for facilities licensed or certified by the Ohio Department of Mental Health and Addiction Services. These provisions are not expected to have any discernible ongoing effect on the workload and related revenue-generating activities of either the Board or the Department.

Employment at office-based opioid treatment facilities

The bill (1) requires that each person seeking employment with a licensed office-based opioid treatment facility submit to a criminal records check, (2) narrows the disqualification from employment at a licensed office-based opioid treatment facility under current law, and (3) authorizes the Board to waive the disqualification under certain circumstances.

The bill includes those seeking employment at an office-based opioid treatment facility to the pool of those individuals required to seek a criminal background check, which will increase both the workload for those administering the check and the fees collected. The base fees of the state-only and Federal Bureau of Investigation (FBI) background checks are \$22 and \$24, respectively. The \$22 state-only background check fee and \$2 of the \$24 FBI background check fee are credited to the Attorney General's

General Reimbursement Fund (Fund 1060). The remaining \$22 of the FBI background check fee is sent to the FBI.

The provisions to narrow the terms for employment disqualification and to allow the Board to waive those terms under certain circumstances are not expected to have a fiscal effect on the state or any of its political subdivisions.

Public records exclusion

The bill excludes from the Public Records Law various residential, familial, and other personal information about Board employees as well as medical directors or members of a cooperating physician advisory board of an emergency medical service organization.¹ It is uncertain whether a given state or local government agency will experience an increase in workload related to ensuring that exempted information is not disclosed, as the volume of requests for these records varies by office. Presumably, any increase in administrative work, including additional time and effort to comply with the exemption, will be minimal and handled utilizing existing staff and resources.

Lawful prescriptions, 14-day prescription deadline, and record retention

Regarding prescriptions, the bill (1) specifies that the authority to possess a controlled substance through a prescription applies only if the prescription is for a legitimate medical purpose, is not altered or forged, and was not obtained through deception or theft, (2) establishes additional exemptions to the existing law that generally prohibits an opioid analgesic from being dispensed or sold if the drug is to be used on an outpatient basis and more than 14 days have elapsed since the prescription was issued, and (3) allows for the prescribing and dispensing of schedule II controlled substances via electronic prescriptions in addition to written prescriptions as under current law. Additionally, the bill extends from three to five years the period for which certain records concerning the sale, receipt, administration, dispensation, or usage of controlled substances must be retained. The fiscal effect of these provisions on the state and its political subdivisions is expected to be minimal at most annually.

Licensing

The Board is required to adopt rules with respect to the licensing of a manufacturer of dangerous drugs, outsourcing facility, third-party logistics provider, repackager of dangerous drugs, or wholesale distributor of dangerous drugs which define who may serve as a responsible person on the license, specify who is required to submit background checks, and specify any other requirements or qualifications that an

¹ The same type of information concerning peace officers, parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, community-based correctional facility employees, youth services employees, firefighters, emergency medical technicians, Bureau of Criminal Identification and Investigation investigators, and federal law enforcement officers, as well as their spouses, former spouses, and children, is currently excluded from the Public Records Law.

applicant must meet to receive a license. These rule-making and enforcement duties are not expected to create any discernible ongoing costs for the Board of Pharmacy.