

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 203** DATE: **November 18, 2008**
STATUS: **As Passed by the Senate** SPONSOR: **Sen. Grendell**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Pharmacy technicians**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
Occupational Licensing and Regulatory Fund (Fund 04K9)	
Revenues	Potential gain in fine revenues, annual magnitude uncertain
Expenditures	No effect, if as expected, State Board of Pharmacy absorbs investigative costs
General Revenue Fund (GRF)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 0402)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -
General Reimbursement Fund (Fund 0106) – Attorney General	
Revenues	Gain in criminal records check fees, annual magnitude uncertain
Expenditures	Increase to conduct additional criminal records checks, annual magnitude uncertain, but likely offset by collection of related criminal records check fees

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Fund 04K9 revenues.** The bill provides that any fines collected by a court in relation to two newly created criminal prohibitions be distributed to the State Board of Pharmacy, if the Board has established written internal protocols for their use. These fines, the annual magnitude of which is uncertain, would most likely be deposited to the credit of the Occupational Licensing and Regulatory Fund (Fund 04K9).
- **Court cost revenues.** If collected, state court costs imposed for a violation of one of the bill's criminal prohibitions will be deposited in the state treasury and credited to the GRF and the Victims of Crime/Reparations Fund (Fund 0402). Assuming that such violations will be relatively infrequent, then it seems unlikely that the state's potential gain in annual court cost revenues would exceed negligible. For the purposes of this fiscal analysis, a "negligible" amount of revenue means an estimated gain of less than \$1,000 for either state fund per year.
- **Attorney General.** The Attorney General's Bureau of Criminal Identification and Investigation (BCII) would be required to conduct criminal records checks on certain pharmacy technicians. BCII charges a fee

of \$46 to process a combined state and federal background check, with the fee being deposited in the General Reimbursement Fund (Fund 0106). The number of background checks that will be requested and performed annually is uncertain. Thus, the annual magnitude of the revenue to be generated and the expenditures to be incurred is uncertain, though presumably the revenue generated will offset any expenditures incurred.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties and Municipalities	
Revenues	Potential, minimal at most, annual gain in court costs and fines
Expenditures	Potential, minimal at most, annual increase in criminal justice system operating costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Local criminal justice revenues and expenditures.** LSC fiscal staff assumes, for the purposes of this fiscal analysis, that new criminal cases and related convictions generated by a violation of the bill's prohibitions will be relatively infrequent. Assuming that were true, to the degree that any county or municipality is noticeably affected by violations of the bill's prohibitions, such a jurisdiction seems unlikely to incur additional operating costs, or generate additional court cost and fine revenues, in excess of minimal. For the purposes of this fiscal analysis, "minimal" means a potential expenditure increase and related revenue gain estimated at no more than \$5,000 for any county or municipality per year.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Defines "qualified pharmacy technician" and provides certain standards for those professionals.
- Prohibits anyone not a pharmacist, pharmacy intern, or qualified pharmacy technician from performing certain activities including compounding drugs, packaging and labeling drugs, and preparing or mixing any intravenous drugs to be injected into a human being and makes such an offense ("unauthorized pharmacy-related drug conduct") a misdemeanor of the second degree on the first offense, a misdemeanor of the first degree on the second offense, and a felony of the fifth degree on a third or subsequent offense.
- Prohibits certain persons from "permitting unauthorized pharmacy conduct" and makes such an offense a misdemeanor of the second degree on the first offense, a misdemeanor of the first degree on the second offense, and a felony of the fifth degree on a third or subsequent offense.
- Requires pharmacy technicians, with certain exceptions, to undergo a criminal background check.
- Provides that any fines collected by a court in relation to the two above-noted criminal prohibitions be distributed to the State Board of Pharmacy, if the Board has established written internal protocols for their use.

State fiscal effects

State Board of Pharmacy

Costs. The State Board of Pharmacy is responsible for administering and enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act (Chapter 4729. of the Revised Code), the Controlled Substances Act (Chapter 3719. of the Revised Code), the Pure Food and Drug Act (Chapter 3715. of the Revised Code), and the Criminal Drug Law (Chapter 2925. of the Revised Code). The Board's activities in that regard can be divided into two primary duties: (1) licensure, and (2) drug law enforcement.

The bill does not require the State Board of Pharmacy to issue a certificate or license to pharmacy technicians. However, as an indirect effect of the bill, the Board may experience an increase in costs associated with the investigation of alleged misconduct associated with the new prohibitions created by the bill: unauthorized pharmacy conduct and permitting unauthorized pharmacy conduct. Staff of the Board has informed LSC fiscal staff that these potential cost increases would be no more than minimal annually and will most likely be absorbed by utilizing existing staff and resources.

Pharmacy Board policy staff estimates that: (1) there are currently between 12,000 and 14,000 registered pharmacists in the state, and (2) the ratio of pharmacy technicians to pharmacists in Ohio is 3:1. Using these estimates, one can calculate the potential size of the pharmacy technician population at between 36,000 and 42,000 individuals.

Fine revenues. The bill provides that any fines collected by a court in relation to the two newly created criminal prohibitions be distributed to the Board of Pharmacy, if the Board has established written internal protocols for their use. These fines would most likely be deposited to the credit of the Occupational Licensing and Regulatory Fund (Fund 04K9).¹ LSC fiscal staff presumes that the Board will draft and implement the necessary internal fiduciary protocols in order to receive such fine revenue, the annual magnitude of which is uncertain.

Office of the Attorney General

The bill requires that a person seeking to be employed as a pharmacy technician undergo a criminal background check. These persons would be subject to both state and national criminal records checks and would be required to pay the appropriate fees.² The Attorney General's Bureau of Criminal Identification and Investigation (BCII) charges \$22 to perform a state criminal records check and charges an additional \$24 to obtain information from the FBI to perform a federal criminal records check. Thus, a request to perform both checks would cost \$46. Presumably, this charge would offset the cost of performing the background checks required by the bill. The revenue would be deposited in the General Reimbursement Fund (Fund 0106). The number of background checks that will be requested and performed annually is uncertain. Thus, the annual magnitude of the revenue to be generated and the expenditures to be incurred is uncertain, though presumably the revenue generated will offset any expenditures incurred.

Court cost revenues

The bill creates two criminal offenses as follows:

- *Unauthorized pharmacy-related drug conduct* – Prohibits anyone not a pharmacist, pharmacy intern, or qualified pharmacy technician from performing certain activities including compounding drugs, packaging and labeling drugs, and preparing or mixing any intravenous drugs to be injected into a human being.
- *Permitting unauthorized pharmacy conduct* – Prohibits certain persons from permitting the conduct described in the previous dot point.

The penalties for the above offenses are a misdemeanor of the second degree on the first offense, a misdemeanor of the first degree on the second offense, and a felony of the fifth degree on a third or subsequent offense. Based on conversations with staff of the State Board of

¹ The State Board of Pharmacy is one of 20-plus independent professional and occupational licensing boards that draw their primary source of funding from the Occupational Licensing and Regulatory Fund (Fund 04K9). The fund is a repository for license fees and other assessments collected by those boards.

² The bill is silent as to who is responsible for paying the fees, but it seems likely that either the applicant or the applicant's employer will pay the necessary fees.

Pharmacy, it seems probable that the number of new criminal cases that could be generated annually as a result of the bill would be relatively small statewide.

If an individual pleads guilty to, or is convicted of, violating either of these prohibitions, the sentencing court could, or would, impose some mix of residential, nonresidential, and financial sanctions, including state court costs totaling \$24 and \$45 for misdemeanors and felonies, respectively. If collected, those moneys are deposited in the state treasury and credited to the GRF and the Victims of Crime/Reparations Fund (Fund 0402). Assuming that such violations will be relatively infrequent, then it seems unlikely that the state's potential gain in annual court cost revenues would exceed negligible. For the purposes of this fiscal analysis, a "negligible" amount of revenue means an estimated gain of less than \$1,000 for either state fund per year.

Local fiscal effects

County and municipal criminal justice systems

As stated previously, LSC fiscal staff assumes for the purposes of this fiscal analysis that new criminal cases and related convictions generated by a violation of the bill's prohibitions will be relatively infrequent. Assuming that were true, to the degree that any county or municipality is noticeably affected by violations of the bill's prohibitions, such a jurisdiction seems unlikely to incur additional operating costs, or generate additional court cost and fine revenues, in excess of minimal. For the purposes of this fiscal analysis, "minimal" means a potential expenditure increase and related revenue gain estimated at no more than \$5,000 for any county or municipality per year.

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