

By: Capelo

H.B. No. 2997

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of contact lens dispensing.

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

SECTION 1. Section 353.002, Occupations Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Business hours" means the hours between 9 a.m. and 6 p.m. on every day other than a Sunday or a federal holiday.

SECTION 2. Subchapter A, Chapter 353, Occupations Code, is amended by adding Sections 353.005, 353.006, and 353.007 to read as follows:

Sec. 353.005. EXEMPTION FROM OTHER LAWS. A permit holder under this chapter who is not licensed under Subtitle B or Chapter 351 is exempt from the requirements of those laws as long as the permit holder is in compliance with this chapter.

Sec. 353.006. DIGITAL SIGNATURE. (a) In this section, "digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(b) A written electronic communication sent from or received in this state in connection with a transaction governed by this chapter is considered signed if a digital signature is transmitted with the communication.

(c) This section does not preclude any symbol from being valid as a signature under other applicable law.

1 (d) The use of a digital signature under this chapter is
2 subject to criminal laws relating to fraud and computer crimes,
3 including Chapters 32 and 33, Penal Code.

4 Sec. 353.007. RULEMAKING. (a) The board may adopt rules to
5 give effect to the requirements of this chapter.

6 (b) The board shall adopt rules governing the prompt release
7 or confirmation of a patient's valid prescription.

8 SECTION 3. Section 353.051, Occupations Code, is amended to
9 read as follows:

10 Sec. 353.051. CONTACT LENS DISPENSER. Contact lenses may
11 be dispensed only by:

12 (1) a physician, optometrist, therapeutic
13 optometrist, or pharmacist;

14 (2) an employee of a physician, optometrist,
15 therapeutic optometrist, or pharmacist who performs contact lens
16 dispensing services only under the direct supervision and control
17 of the physician, optometrist, therapeutic optometrist, or
18 pharmacist; ~~or~~

19 (3) an optician who holds a contact lens dispensing
20 permit issued under this subchapter; or

21 (4) a business entity that holds a contact lens
22 dispensing permit issued under this subchapter.

23 SECTION 4. Section 353.101, Occupations Code, is amended to
24 read as follows:

25 Sec. 353.101. PROHIBITED SELLING OR DISPENSING. A person,
26 other than the prescribing physician, optometrist, or therapeutic
27 optometrist, may not fill a contact lens prescription or sell or

1 dispense contact lenses to a consumer in this state unless the
2 person:

3 (1) receives a valid [an original] contact lens
4 prescription; or

5 (2) confirms the validity of the prescription as
6 required by this chapter [that has not expired and that conforms to
7 the requirements of this chapter].

8 SECTION 5. Section 353.102, Occupations Code, is amended to
9 read as follows:

10 Sec. 353.102. ACCURACY REQUIRED. A person who dispenses
11 contact lenses under this chapter from a contact lens prescription
12 shall fill the prescription accurately [~~subject to Section~~
13 ~~353.103~~].

14 SECTION 6. Section 353.103, Occupations Code, is amended to
15 read as follows:

16 Sec. 353.103. [~~AUTHORIZED MODIFICATION OF~~] PRESCRIPTION
17 RECORDS. (a) A [~~If a patient presents a contact lens prescription~~
18 ~~to be filled, but requests that fewer than the total number of~~
19 ~~lenses authorized by the prescription be dispensed, the person~~
20 ~~dispensing the lenses shall note on the prescription:~~

21 [~~(1) the number of lenses dispensed,~~

22 [~~(2) the number of lenses that remain eligible to be~~
23 ~~dispensed under the prescription, and~~

24 [~~(3) the name, address, telephone number, and license~~
25 ~~or permit number of the person dispensing the lenses.~~

26 [~~(b) A notation under Subsection (a) is a permanent~~
27 ~~modification of the prescription. Except as provided by this~~

1 ~~subsection, a contact lens prescription may not be modified.~~

2 ~~[(c) Subject to Subsection (d), the]~~ person dispensing
3 contact ~~[the]~~ lenses shall:

4 (1) maintain a copy ~~[photocopy]~~ of the ~~[original~~
5 ~~signed]~~ prescription or confirmation record for each order until
6 the fifth anniversary of the date the prescription was filled~~[, as~~
7 ~~modified, in the person's records as if the copy were the original~~
8 ~~prescription]~~; and

9 (2) return any ~~[the]~~ original prescription received by
10 the person to the patient ~~[so that the patient may have the~~
11 ~~additional lenses dispensed elsewhere]~~.

12 ~~(b) [(d) When a prescription has been completely filled,~~
13 ~~the person dispensing the lenses shall retain the original~~
14 ~~prescription in the person's records until the fifth anniversary of~~
15 ~~the date the prescription is completely filled.~~

16 ~~[(e)]~~ The board by rule may permit a contact lens
17 prescription required to be maintained under this chapter to be
18 scanned into a computer and the original paper prescription
19 destroyed.

20 SECTION 7. Section 353.104, Occupations Code, is amended to
21 read as follows:

22 Sec. 353.104. PRESCRIPTION ~~[EMERGENCY]~~ REFILL. (a) If a
23 patient orders contact lenses from a person authorized to dispense
24 lenses under this chapter, the patient's ~~[needs an emergency refill~~
25 ~~of the patient's contact lens prescription, a]~~ physician,
26 optometrist, or therapeutic optometrist shall, on request, release
27 or confirm the patient's valid prescription ~~[may telephone or fax~~

1 ~~the prescription]~~ to the [~~a person]~~ authorized [~~to dispense]~~
2 contact lens dispenser within eight business hours [~~lenses under~~
3 ~~Section 353.051]~~.

4 (b) The person filling the prescription shall maintain a
5 copy of the prescription or confirmation [~~fax or telephone]~~ record
6 [~~as if the record were an original signed prescription]~~.

7 (c) The prescription or confirmation [~~fax or telephone]~~
8 record must include the name, address, telephone number, and
9 license number, if known, of the physician, optometrist, or
10 therapeutic optometrist.

11 SECTION 8. Section 353.152, Occupations Code, is amended to
12 read as follows:

13 Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

14 A contact lens prescription must [~~be written and must]~~ contain:

15 (1) the patient's name;
16 (2) the date the prescription was issued;
17 (3) the manufacturer of the contact lens to be
18 dispensed, if warranted by the patient's ocular health [~~needed~~];

19 (4) the expiration date of the prescription;
20 (5) the [~~original~~] signature of, or documentation of
21 the oral approval of, the physician, optometrist, or therapeutic
22 optometrist;

23 (6) [~~if the prescription is for disposable contact~~
24 ~~lenses, the total number of lenses authorized to be issued under the~~
25 ~~prescription and the recommended lens replacement interval,~~

26 [~~(7)~~] if the prescription is issued by an optometrist
27 or therapeutic optometrist, specification information required by

1 Texas Optometry Board rule; and

2 (7) [~~(8)~~] if the prescription is issued by a
3 physician, specification information required by Texas State Board
4 of Medical Examiners rule.

5 SECTION 9. Subchapter D, Chapter 353, Occupations Code, is
6 amended by adding Sections 353.1521 and 353.1522 to read as
7 follows:

8 Sec. 353.1521. PRESCRIPTION CONFIRMATION. (a) If a
9 patient presents a contact lens prescription to be filled, the
10 person filling the prescription shall:

11 (1) contact the prescribing physician, optometrist,
12 or therapeutic optometrist, by telephone or in another manner, to
13 confirm the validity of the prescription; and

14 (2) maintain the prescription record as required by
15 Section 353.103.

16 (b) On request by the patient or an authorized contact lens
17 dispenser acting for the patient, the prescribing physician,
18 optometrist, or therapeutic optometrist shall confirm the validity
19 of the patient's prescription to a person authorized to dispense
20 contact lenses under Section 353.051 within eight business hours.

21 (c) The prescription is considered confirmed for purposes
22 of Subsection (b) on the occurrence of one of the following:

23 (1) the person filling the prescription receives a
24 copy of the original prescription;

25 (2) the person issuing the prescription or that
26 person's agent confirms the prescription by communicating with the
27 person filling the prescription; or

1 (3) the person issuing the prescription fails to
2 communicate with the person filling the prescription within eight
3 business hours.

4 Sec. 353.1522. DISCRETIONARY DECLARATION THAT PRESCRIPTION
5 IS INVALID. (a) A physician, optometrist, or therapeutic
6 optometrist may declare that a prescription is invalid if the
7 expiration date of the prescription has passed.

8 (b) A physician, optometrist, or therapeutic optometrist
9 who declares under Subsection (a) that a prescription is invalid
10 must make the declaration promptly.

11 SECTION 10. Section 353.155, Occupations Code, is amended
12 to read as follows:

13 Sec. 353.155. EXTENSION OF PRESCRIPTION. (a) A physician,
14 optometrist, or therapeutic optometrist may extend the expiration
15 date for a contact lens prescription without completing another eye
16 examination.

17 (b) On request by a patient or an agent of the patient, a
18 prescribing physician, optometrist, or therapeutic optometrist
19 shall authorize at least once a two-month extension of the
20 patient's contact lens prescription.

21 (c) The physician, optometrist, or therapeutic optometrist
22 may extend the prescription in accordance with Section 353.104.

23 SECTION 11. Section 353.156, Occupations Code, is amended
24 to read as follows:

25 Sec. 353.156. PATIENT ACCESS TO PRESCRIPTION; TIMING. (a)
26 A physician, optometrist, or therapeutic optometrist who performs
27 an eye examination and fits a patient for contact lenses shall~~on~~

1 ~~request,~~] prepare and give a contact lens prescription to the
2 patient.

3 (b) The [~~If the patient requests the contact lens~~
4 ~~prescription during an initial or annual eye examination, the~~
5 physician, optometrist, or therapeutic optometrist who issues a
6 contact lens prescription shall prepare and give the prescription
7 to the patient at the time the physician, optometrist, or
8 therapeutic optometrist determines the parameters of the
9 prescription. The physician, optometrist, or therapeutic
10 optometrist may require a follow-up examination only if warranted
11 by the patient's ocular health to determine the parameters of the
12 prescription.

13 (c) On [~~receipt of a prescription~~] request from a patient or
14 the patient's representative [~~who did not request or receive an~~
15 ~~original contact lens prescription during an initial or annual eye~~
16 ~~examination~~], the physician, optometrist, or therapeutic
17 optometrist shall provide the patient with the prescription at any
18 time during which the prescription is valid. If the patient
19 requests more than one prescription while the prescription is
20 valid, the physician, optometrist, or therapeutic optometrist
21 shall provide [~~to deliver~~] the prescription to the patient [~~or to~~
22 ~~another person, the physician, optometrist, or therapeutic~~
23 ~~optometrist may charge to the patient the cost of delivery].~~

24 SECTION 12. Sections 353.157(b) and (c), Occupations Code,
25 are amended to read as follows:

26 (b) Notwithstanding Section 353.156, a physician,
27 optometrist, or therapeutic optometrist may refuse to give a

1 contact lens prescription to a patient only if the prescription has
2 expired[-

3 [~~(1) the patient's ocular health presents a~~
4 ~~contraindication for contact lenses,~~

5 [~~(2) refusal is warranted due to potential harm to the~~
6 ~~patient's ocular health,~~

7 [~~(3) the patient has a medical condition indicating~~
8 ~~that:~~

9 [~~(A) the patient's ocular health would be damaged~~
10 ~~if the prescription were released to the patient, or~~

11 [~~(B) further monitoring of the patient is needed,~~

12 [~~(4) the patient has not paid for the examination and~~
13 ~~fitting or has not paid other financial obligations to the~~
14 ~~physician, optometrist, or therapeutic optometrist if the patient~~
15 ~~would have been required to make an immediate or similar payment if~~
16 ~~the examination revealed that ophthalmic goods were not required,~~
17 ~~or~~

18 [~~(5) the request is made after the first anniversary~~
19 ~~of the date of the patient's last eye examination].~~

20 (c) A [~~If a~~] physician, optometrist, or therapeutic
21 optometrist who refuses to release or confirm a [~~give a patient the~~
22 patient's contact lens prescription shall [~~for a reason permitted~~
23 ~~under Subsection (b), the physician, optometrist, or therapeutic~~
24 ~~optometrist must:~~

25 [~~(1)~~] give the patient or an authorized contact lens
26 dispenser acting for the patient a written [~~verbal~~] explanation of
27 the reason for the refusal [~~action at the time of the action, and~~

1 ~~[(2) maintain in the patient's records a written~~
2 ~~explanation of the reason].~~

3 SECTION 13. Section 353.158, Occupations Code, is amended
4 to read as follows:

5 Sec. 353.158. PROHIBITED ACTION BY PHYSICIAN, OPTOMETRIST,
6 OR THERAPEUTIC OPTOMETRIST. A physician, optometrist, or
7 therapeutic optometrist may not:

8 (1) charge a patient a fee in addition to the
9 examination fee and fitting fee as a condition for giving a contact
10 lens prescription to the patient; ~~[or]~~

11 (2) condition the availability to a patient of an eye
12 examination, a fitting for contact lenses, the issuance of a
13 contact lens prescription, or a combination of those services on a
14 requirement that the patient agree to purchase contact lenses or
15 other ophthalmic goods from the physician, optometrist, or
16 therapeutic optometrist or from a specific ophthalmic dispenser;

17 (3) fill a prescription that the physician,
18 optometrist, or therapeutic optometrist has refused to release to a
19 patient, unless the refusal is based on the patient's ocular health
20 as permitted under Section 353.156(b); or

21 (4) fail to respond within eight business hours to a
22 request by the patient or an authorized contact lens dispenser
23 acting for the patient to release or confirm the patient's contact
24 lens prescription.

25 SECTION 14. Section 353.204(b), Occupations Code, is
26 amended to read as follows:

27 (b) Except as otherwise provided by this section, the board

1 has the exclusive responsibility [~~is responsible~~] for enforcing
2 this chapter and for enforcing Subtitle B and Chapter 351 with
3 respect to any alleged violation by a business entity that holds a
4 permit under Section 353.052.

5 SECTION 15. Subchapter E, Chapter 353, Occupations Code, is
6 amended by adding Section 353.2041 to read as follows:

7 Sec. 353.2041. DEFENSE TO ENFORCEMENT OR OTHER ACTION. It
8 is a defense to any action against a permit holder under this
9 chapter that the permit holder was prevented from complying with a
10 provision of this chapter as a result of the refusal by a physician,
11 optometrist, or therapeutic optometrist, in violation of this
12 chapter, to promptly release or confirm a prescription.

13 SECTION 16. (a) This Act takes effect September 1, 2003.

14 (b) A change in law made by this Act with respect to the
15 requirements applicable to the release or confirmation of a contact
16 lens prescription applies only to a request for release or
17 confirmation made on or after the effective date of this Act.

18 (c) The Texas Board of Health shall adopt rules under
19 Section 353.007(b), Occupations Code, as added by this Act, not
20 later than January 1, 2004.