

BILL ANALYSIS

Senate Research Center
79R9071 KCR-D

H.B. 1025
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Government Organization
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Optometry Board (board) has regulated the state's optometry profession since its creation in 1921. The board licenses optometrists, therapeutic optometrists, and glaucoma specialists. In fiscal year 2004, the board licensed 3,384 optometrists of whom 1,358 are also dually licensed as therapeutic optometrists and glaucoma specialists. The board enforces the Texas Optometry Act and key provisions of the state's Contact Lens Prescription Act. The board also regulates separations between optometry practices and retail optical dispensing and investigates and resolves complaints involving licensed optometrists. The board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. As a result of its review of the board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications.

H.B. 1025 continues the board until September 1, 2017, and makes the recommended statutory modifications.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Optometry Board in SECTION 1.014 (Section 351.205, Occupations Code), SECTION 1.020 (Section 351.507, Occupations Code), SECTION 1.022 (Section 351.552, Occupations Code), SECTION 2.003 (Section 353.005, Occupations Code), and SECTION 2.009 (Section 353.152, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2.003 (Section 353.005, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Medical Examiners in SECTION 2.009 (Section 353.152(b), Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS OPTOMETRY BOARD

SECTION 1.001. Amends Section 351.004, Occupations Code, to provide that the chapter expires on September 1, 2017, rather than September 1, 2005.

SECTION 1.002. Amends the heading to Section 351.053, Occupations Code, to read as follows:

Sec. 351.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS; CONFLICTS OF INTEREST.

SECTION 1.003. Amends Section 351.053, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Prohibits a person from being a member of the Texas Optometry Board (board) and from being a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) under certain circumstances.

(d) Defines "Texas trade association."

SECTION 1.004. Amends Section 351.055, Occupations Code, as follows:

Sec. 351.055. OFFICERS. (a) Requires the governor to designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) Creates this subsection out of existing text. Deletes the requirement that the board elect a presiding officer.

SECTION 1.005. Amends Sections 351.056(a) and (d), Occupations Code, as follows:

(a) Sets forth certain grounds for removal of a member from the board.

(d) Sets forth the procedure for removal in the event that potential ground for removal exists. Deletes text requiring the attorney general to take certain actions regarding complaints made to the attorney general.

SECTION 1.006. Amends Subchapter B, Chapter 351, Occupations Code, by adding Section 351.0585, as follows:

Sec. 351.0585. CERTAIN REPORTS REQUIRED AT REGULAR MEETINGS. Requires the board to receive a report regarding complaints at each board meeting.

SECTION 1.007. Amends Sections 351.059(b), (c), and (d), Occupations Code, as follows:

(b) Prohibits a person who is appointed to and qualifies for office as a board member from voting, deliberating, or being counted as a member in attendance at a board meeting until the person completes a training program that complies with this section. Deletes existing text relating to former confirmation procedures.

(c) Requires that the training program provide the person with information regarding certain topics.

(d) Provides that a person appointed to the board is entitled to reimbursement for travel expenses incurred in attending a training program under this section, regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes existing text relating to training requirements established by other state agencies.

SECTION 1.008. Amends Section 351.105, Occupations Code, to specify that the board is required to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 1.009. Amends Subchapter D, Chapter 351, Occupations Code, by adding Section 351.1575, as follows:

Sec. 351.1575. INSPECTION OF PREMISES AND REVIEW OF RECORDS AUTHORIZED. (a) Authorizes the board to take certain inspection actions at any time and without notice during regular business hours.

(b) Authorizes the board to enter and inspect a facility or inspect and review any record under Subsection (a) as necessary to ensure compliance with this chapter or investigate a complaint made to the board.

SECTION 1.010. Amends Subchapter D, Chapter 351, Occupations Code, by adding Sections 351.168 and 351.169, as follows:

Sec. 351.168. **TECHNOLOGICAL SOLUTIONS POLICY REQUIRED.** Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 351.169. **ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.** (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures.

(b) Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to coordinate implementation of, provide training for, and collect effectiveness data on said procedures.

SECTION 1.011. Amends Section 351.203, Occupations Code, by adding Subsection (c), to require the board to make information available describing the procedures established by the board relating to complaint investigation and resolution.

SECTION 1.012. Amends Subchapter E, Chapter 351, Occupations Code, by adding Sections 351.2035 and 351.2036, as follows:

Sec. 351.2035. **COMPLAINTS RESULTING FROM INSPECTIONS.** (a) Requires the board to handle as a complaint any violation of this chapter or a rule adopted by the board that is discovered during an inspection conducted under Section 351.1575(b)(1).

(b) Requires the board to investigate and dispose of a complaint described by Subsection (a) in the same manner that the board investigates and disposes of other complaints made under this chapter.

Sec. 351.2036. **PROCEDURE FOR PROCESSING COMPLAINTS.** (a) Authorizes the board to delegate to board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not directly relate to patient care and the investigation or disposition of which does not require expertise in optometry or therapeutic optometry. Requires the disposition determined by board staff to be approved by the board at a public meeting.

(b) Requires certain complaints delegated under this section to be referred to an informal settlement conference under Section 351.507.

(c) Requires a complaint that is directly related to patient care or the investigation or disposition of which requires expertise in optometry or therapeutic optometry to be reviewed by two board members who are optometrists or therapeutic optometrists who are required to take certain actions.

SECTION 1.013. Amends Section 351.204, Occupations Code, as follows:

Sec. 351.204. **RECORDS OF COMPLAINTS.** (a) Requires the board to maintain a system to act promptly and efficiently on, rather than keep an information file about, each complaint filed with the board. Requires the board to maintain information concerning certain relevant information relating to the complaint. Makes conforming and nonsubstantive changes.

(b) Requires the board to periodically notify parties to the complaint of the status of the complaint until the board finally disposes of the complaint. Deletes existing text relating to former notification policies.

SECTION 1.014. Amends Section 351.205, Occupations Code, by adding Subsection (a-1), to require the board to adopt rules that prescribe a method of prioritizing complaints for purposes of complaint investigation and disposition. Sets forth requirements for said rules.

SECTION 1.015. Amends Section 351.256(a), Occupations Code, to remove the requirement of an oral test from the licensing examination.

SECTION 1.016. Amends Section 351.304(b), Occupations Code, to authorize a person whose license has been expired for 90 days or less to renew the license by paying to the board a, rather than the required, renewal fee that is equal to the sum of one and one-half times the annual renewal fee, rather than a fee that is equal to half of the license examination, set by the board under Section 351.152 (Membership Eligibility) and the additional fee required by Section 351.153 (Membership and Employee Restrictions). Authorizes a person whose license has been expired for more than 90 days but less than a year to renew the license by paying to the board a renewal fee, rather than all unpaid renewal fees and a fee, that is equal to the sum of two times the annual renewal, rather than license examination, fee set by the board under Section 351.152 and the additional fee required by Section 351.153.

SECTION 1.017. Amends Section 351.306(b), Occupations Code, to make a conforming change.

SECTION 1.018. Amends Section 351.501, Occupations Code, by adding Subsection (c), to prohibit the board, as part of a disciplinary action, from ordering a license holder to acquire a license or certificate of a different or higher class or type than the license holder holds at the time of the disciplinary action, notwithstanding Subsection (a) (disciplinary action by board).

SECTION 1.019. Amends Subchapter K, Chapter 351, Occupations Code, by adding Section 351.5015, as follows:

Sec. 351.5015. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE. (a) Requires the board to appoint a three-member disciplinary panel (panel) consisting of board members to determine whether a license issued to a person under this chapter should be temporarily suspended or restricted.

(b) Requires the panel to suspend or restrict the license holder's license if the panel finds that there is sufficient evidence to do so.

(c) Authorizes the panel to temporarily suspend or restrict a license under this section without notice or hearing under certain circumstances.

(d) Authorizes the panel to hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the panel, notwithstanding Chapter 551 (Open Meetings), Government Code.

(e) Sets forth guidelines for holding an informal settlement conference with a license holder whose license has been temporarily suspended or restricted.

(f) Requires a board representative to file a charge under Section 351.503 as soon as practicable if the license holder is unable to show compliance at the informal settlement conference regarding the issues that are the basis for the temporary suspension or restriction.

(g) Sets forth guidelines and prohibitions for the board's subsequent use of facts that were the basis for a hearing regarding the suspension or restriction of a license-holder's license if, upon first hearing, the license-holder's license was not suspended or restricted.

SECTION 1.020. Amends Section 351.507, Occupations Code, as follows:

Sec. 351.507. New heading: INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE AND REFUNDS. (a) No changes made to this subsection.

(b) Requires the board, by rule, to establish procedures by which a panel of board members are authorized to conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Sets forth requirements for procedures established under Subsection (b).

(d) Authorizes the board to order a person licensed under this chapter to issue a refund to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty against the person under Subchapter L (Administrative Penalty). Prohibits the amount of a refund ordered under this section from exceeding the amount the patient paid to the license holder for an examination. Prohibits the board from requiring payment of other damages or estimating harm in a restitution order.

(e) Redesignated from existing Subsection (b).

SECTION 1.021. Amends Subchapter K, Chapter 351, Occupations Code, by adding Section 351.508, as follows:

Sec. 351.508. RECUSAL REQUIRED. Prohibits a member of the board who reviews and investigates a complaint under Section 351.2036(c) or participates in an informal settlement conference under Section 351.507 from voting on any disciplinary action following the informal settlement conference concerning the complaint and requires the member to recuse himself or herself from voting on any disciplinary action following the informal settlement conference concerning the complaint.

SECTION 1.022. Amends Section 351.552, Occupations Code, by adding Subsection (c), to require the board, by rule, to develop and publish a standardized penalty schedule based on the criteria listed in Subsection (b).

SECTION 1.023. Amends Subchapter M, Chapter 351, Occupations Code, by adding Section 351.608, as follows:

Sec. 351.608. CEASE AND DESIST ORDER. (a) Authorizes the board to issue a cease and desist order prohibiting a person without a license or certificate from engaging in an activity that constitutes the practice of optometry or therapeutic optometry.

(b) Authorizes the board to impose an administrative penalty under Subchapter L against a person who violates an order issued under this section, notwithstanding Section 351.551 (Imposition of Penalty).

ARTICLE 2. CONTACT LENS PRESCRIPTION ACT

SECTION 2.001. Amends Section 353.002, Occupations Code, by amending Subdivisions (1) and (2), and adding Subdivision (2-a), to redefine "board" and "department" and to define "direct communication."

SECTION 2.002. Amends Section 353.004(a), Occupations Code, to require the executive commissioner of the Health and Human Services Commission (HHSC) or the Department of State Health Services, as appropriate, as well as the Texas Optometry Board, to prepare and provide to the public and appropriate state agencies information regarding the release and verification of contact lens prescriptions.

SECTION 2.003. Amends Subchapter A, Chapter 353, Occupations Code, by adding Section 353.005, as follows:

Sec. 353.005. RULES. (a) Requires the executive commissioner of HHSC to adopt certain rules necessary to enforce this chapter.

(b) Requires the executive commissioner of HHSC and the Texas Optometry Board to each adopt rules relating to contact lens prescriptions and the dispensing of contact lenses, including rules that allow for interagency agreements, as necessary to implement and enforce this chapter.

(c) Sets forth guidelines for the implementation of rules under Subsection (b) by the executive commissioner of HHSC and the Texas Optometry Board.

SECTION 2.004. Amends Section 353.101, Occupations Code, as follows:

Sec. 353.101. PROHIBITED SELLING OR DISPENSING. (a) Creates this section from existing text. Prohibits a person, other than the prescribing physician, optometrist or therapeutic optometrist from filling a contact lens prescription or selling or dispensing contact lenses to a consumer in this state unless the person receives certain communication.

(b) Requires a person receiving a direct communication to maintain a record of the communication.

SECTION 2.005. Amends Subchapter C, Chapter 353, Occupations Code, by adding Section 353.1015, as follows:

Sec. 353.1015. VERIFICATION PROCEDURE. (a) Requires a person dispensing contact lenses to provide the prescribing physician, optometrist, or therapeutic optometrist with certain information when seeking verification of a contact lens prescription.

(b) Provides that a prescription is considered verified under this section if certain communications are exchanged.

(c) Prohibits a person from dispensing a contact lens prescription if a prescribing physician, optometrist, or therapeutic optometrist timely informs the person that the prescription is inaccurate or invalid.

(d) Requires a prescribing physician, optometrist, or therapeutic optometrist to take certain corrective actions if the prescribing professional notifies the person dispensing the contact lenses that the prescription is inaccurate or invalid.

SECTION 2.006. Amends Sections 353.103 and 353.104, Occupations Code, as follows:

Sec. 353.103. AUTHORIZED MODIFICATION OF PRESCRIPTION. Deletes existing Subsections (d) and (e) relating to retaining original or scanned copies of a contact lens prescription. Makes conforming and nonsubstantive changes.

Sec. 353.104. EMERGENCY REFILL. Makes conforming changes.

SECTION 2.007. Amends Subchapter C, Chapter 353, Occupations Code, by adding Section 353.105, as follows:

Sec. 353.105. ALTERATION OF PRESCRIPTION PROHIBITED. (a) Prohibits a person dispensing contact lenses from altering a contact lens prescription, except as provided by Subsection (b) and Section 353.103 (Authorized Modification of Prescription).

(b) Authorizes a person dispensing contact lenses to fill a contact lens prescription that requires a contact lens manufactured by a particular company with another lens manufactured by that company if the lens required by the

prescription and the lens with which the prescription is filled are the same lens but are sold by the company under multiple labels to different contact lens dispensers.

SECTION 2.008. Amends Section 353.151(a), Occupations Code, to make a conforming change.

SECTION 2.009. Amends Section 353.152, Occupations Code, as follows:

Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION. (a) Requires a contact lens prescription to contain certain information. Removes existing requirements that the prescription must be written and must contain the number of lenses to be issued as well as a recommended lens replacement interval. Makes conforming changes.

(b) Authorizes the Texas Optometry Board and the Texas State Board of Medical Examiners to adopt rules regarding the contents of a prescription for contact lenses.

SECTION 2.010. Amends Section 353.156, Occupations Code, to require a physician, optometrist, or therapeutic optometrist who performs an eye examination and fits a patient for contact lenses, as directed by any person designated to act on behalf of the patient, to provide the prescription or verify the prescription as provided by Section 353.1015. Makes conforming and nonsubstantive changes.

SECTION 2.011. Amends Section 353.158, Occupations Code, to make conforming changes.

ARTICLE 3. EFFECTIVE DATE; TRANSITION

SECTION 3.001. Requires the executive commissioner of the Health and Human Services Commission, the Texas Optometry Board, the Texas State Board of Medical Examiners, and the Texas State Board of Pharmacy to adopt the rules required by this Act not later than March 1, 2006.

SECTION 3.002. Requires the Texas Optometry Board to have the procedure for processing complaints under Section 351.2036, Occupations Code, as added by this Act, and the informal settlement conference under Section 351.507, Occupations Code, as amended by this Act, fully operational not later than September 1, 2006.

SECTION 3.003. Makes application of Sections 351.053, 351.056, and 351.059, Occupations Code, as amended by this Act, prospective.

SECTION 3.004. Makes application of Chapter 351, Occupations Code, as amended by this Act, prospective.

SECTION 3.005. Makes application of laws relating to disciplinary actions as changed by this Act prospective.

SECTION 3.006. Makes application of Sections 351.501(c) and 351.508, Occupations Code, as added by this Act, prospective.

SECTION 3.007. Requires the Texas Optometry Board to appoint the three-member panel required under Section 351.5015, Occupations Code, as added by this Act, not later than March 1, 2006.

SECTION 3.008. Makes application of Chapter 353, Occupations Code, as amended by this Act, prospective to March 1, 2006.

SECTION 3.009. Requires the executive commissioner of the Health and Human Services Commission and the Department of State Health Services to have the procedure for contact lens prescription verification under Section 353.1015, Occupations Code, as added by this Act, fully operational not later than March 1, 2006.

SECTION 3.010. Effective date: September 1, 2005.