

BILL ANALYSIS

C.S.H.B. 1025
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Optometry 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 Texas Optometry Board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in C.S.H.B. 1025 including improving patients' access to their contact lens prescriptions, improving the way the Board reviews complaints and enhancing the Board's enforcement authority.

RULEMAKING AUTHORITY

Rulemaking authority is expressly delegated to the Texas Optometry Board in SECTION 1.014, SECTION 1.020, SECTION 1.022, SECTION 2.003, SECTION 2.005, SECTION 2.009, and SECTION 3.001.

Rulemaking authority is expressly delegated to the Health and Human Services Commission in SECTION 2.003, SECTION 2.005, SECTION 3.001, and SECTION 3.009.

Rulemaking authority is expressly delegated to the Texas State Board of Medical Examiners in SECTION 2.003, SECTION 2.005, SECTION 2.009, and SECTION 3.001.

Rulemaking authority is expressly delegated to the Texas State Board of Pharmacy in SECTION 2.003 and SECTION 3.001.

In addition, under general rulemaking authority already granted to policy making bodies, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

C.S.H.B. 1025 amends the Occupations Code relating to the continuation and functions of the Texas Optometry Board and includes a process for filling contact lens prescriptions that reflects the approach of the Federal Fairness to Contact Lens Consumers Act. The bill also incorporates several standard occupational licensing model and across-the-board recommendations of the Sunset Commission.

Continuation of the Board

C.S.H.B. 1025 continues the Texas Optometry Board until September 1, 2017.

Contact Lens Prescription Release and Verification

C.S.H.B. 1025 requires optometrists to provide patients their prescription without the patient having to request the prescription. The bill eliminates requirements for an original written contact lens prescription for selling contact lenses and instead allows for verification of the prescription between a contact lens seller (dispenser) and the prescribing optometrist or

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physician, and conforms the state's Contact Lens Prescription Act with key provisions of the federal Fairness to Contact Lens Consumers Act relating to verification of prescriptions. The bill specifies that if a prescriber does not respond to a verification request from a dispenser within eight business hours, the prescription is considered verified. It also includes provisions for dealing with invalid and inaccurate prescriptions, and prohibits a dispenser from altering a prescription. The bill authorizes a dispenser to substitute only the identical contact lens sold by the manufacturer under different labels. The bill eliminates requirements for the number of contact lenses to be on the prescription, however it authorizes the Optometry Board and the Board of Medical Examiners to set contents of prescriptions in rule. The bill also establishes a process for the Optometry Board to work with the Health and Human Services Commission (HHSC) to develop rules for prescription verification by March 1, 2006. The bill requires HHSC and the Department of State Health Services to have these procedures in place by March 1, 2006. In addition the bill allows the Board to consult with the Texas State Board of Medical Examiners and the Texas State Board of Pharmacy when developing rules for verification procedures.

Complaint Investigations and Enforcement Process

C.S.H.B. 1025 requires the Board to investigate complaints according to risk, placing highest priority on complaints that allege violations of standard of care or potentially threaten public health and safety. The bill authorizes staff to review complaints that do not require professional expertise, and to dismiss or recommend enforcement actions for these cases. At least two optometrist Board members would be required to review complaints requiring professional expertise, and to determine whether the complaint should be dismissed or referred to an informal settlement conference (ISC). The bill requires one public member to be included on ISC panels, which would recommend settlement of a complaint to the full Board, or refer the complaint to the State Office of Administrative Hearings for a formal hearing. The bill requires that Board members who review and investigate complaints or conduct an ISC recuse themselves from voting on disciplinary action concerning that case. The bill updates standard Sunset across-the-board language requiring the Board to maintain information on complaints, and to notify the parties about the status of complaints.

Enforcement Tools

C.S.H.B. 1025 includes several provisions that strengthen the Boards ability to take enforcement actions against optometrists who violate Board rules and statutes. The bill prohibits the Board from requiring additional practice authority as part of a sanction. The bill authorizes the Board to temporarily suspend a license if it determines continued practice by an optometrist threatens the public welfare. The bill authorizes the Board to issue cease-and-desist orders to prevent the unlicensed practice of optometry. The bill authorizes the Board to conduct inspections of optometrists' offices and requires the Board to open formal complaints for any violations found during inspections. The bill provides for refunds to patients through the ISC process for violations of the Board's rules or statutes, limiting refunds to the amount the complainant paid for the eye exam.

License Renewals

C.S.H.B. 1025 requires the renewal fee for optometrists who are delinquent in renewing their licenses to be based on the Board's normal renewal rate, not the examination fee. For licenses expired for 90 days the renewal fee would be equal to 12 times the normal renewal fee, while for licenses expired for more than 90 days the fee would be equal to twice the normal renewal fee.

Conflict of Interest and Board Member Provisions

C.S.H.B. 1025 updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill adds standard Sunset language authorizing the Governor to designate the Board's presiding officer. The bill updates standard Sunset language requiring members of the Board to complete training before assuming their duties, and requiring the Board to separate its policymaking duties from the agency's management functions. The bill also updates standard Sunset language specifying the grounds for removing a Board member.

Administrative Process

C.S.H.B. 1025 adds standard Sunset across-the-board language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public.

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Conforming Changes

C.S.H.B. 1025 makes conforming changes throughout the bill relating to release and verification of contact lens prescriptions.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1.012 of the substitute simplifies language contained in the original bill authorizing Board staff to review complaints that do not require professional expertise and to dismiss or recommend enforcement actions for these cases.

SECTION 1.019 of the substitute corrects a drafting error. The original bill made reference to Section 351.2035, Occupations Code. The substitute refers to Section 351.503, Occupations Code, which is the correct statutory section.

SECTION 1.020 of the substitute clarifies that refunds in enforcement actions are limited to the amount the consumer paid for the eye exam.

SECTION 1.021 of the substitute prohibits a Board member from voting on any disciplinary action if the Board member participated in an informal settlement conference on the complaint.

SECTION 2.006 of the substitute removes the requirement to return a verification of a contact lens prescription to the patient.

SECTION 2.009 of the substitute clarifies the board is authorized to add to the contents of a contact lens prescription by rule.

SECTION 2.010 of the substitute clarifies that a prescribing optometrist or physician must verify a contact lens prescription as provided under the verification procedures contained in Section 353.1015, Occupations Code.

SECTIONS 3.008 and 3.009 of the substitute correct conflicting implementation dates contained in the original bill by making the changes to the Contact Lens Prescription Act effective on March 1, 2006, and by making March 1, 2006, the deadline for all the relevant agencies to promulgate rules and procedures necessitated by the changes made to that Act.