

1-1 By: Solomons (Senate Sponsor - Shapleigh) H.B. No. 1025
1-2 (In the Senate - Received from the House April 7, 2005;
1-3 April 11, 2005, read first time and referred to Committee on
1-4 Government Organization; April 27, 2005, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; April 27, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the powers and duties of the Texas Optometry Board and
1-9 to contact lens prescriptions and the dispensing of contact lenses.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 ARTICLE 1. TEXAS OPTOMETRY BOARD

1-12 SECTION 1.001. Section 351.004, Occupations Code, is
1-13 amended to read as follows:

1-14 Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board
1-15 is subject to Chapter 325, Government Code (Texas Sunset Act).
1-16 Unless continued in existence as provided by that chapter, the
1-17 board is abolished and this chapter expires September 1, 2017
1-18 [~~September 1, 2005~~].

1-19 SECTION 1.002. The heading to Section 351.053, Occupations
1-20 Code, is amended to read as follows:

1-21 Sec. 351.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS;
1-22 CONFLICTS OF INTEREST.

1-23 SECTION 1.003. Section 351.053, Occupations Code, is
1-24 amended by adding Subsections (c) and (d) to read as follows:

1-25 (c) A person may not be a member of the board and may not be a
1-26 board employee employed in a "bona fide executive, administrative,
1-27 or professional capacity," as that phrase is used for purposes of
1-28 establishing an exemption to the overtime provisions of the federal
1-29 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

1-30 (1) the person is an officer, employee, or paid
1-31 consultant of a Texas trade association in the field of health care;
1-32 or

1-33 (2) the person's spouse is an officer, manager, or paid
1-34 consultant of a Texas trade association in the field of health care.

1-35 (d) In this section, "Texas trade association" means a
1-36 cooperative and voluntarily joined statewide association of
1-37 business or professional competitors in this state designed to
1-38 assist its members and its industry or profession in dealing with
1-39 mutual business or professional problems and in promoting their
1-40 common interest.

1-41 SECTION 1.004. Section 351.055, Occupations Code, is
1-42 amended to read as follows:

1-43 Sec. 351.055. OFFICERS. (a) The governor shall designate a
1-44 member of the board as the presiding officer of the board to serve
1-45 in that capacity at the pleasure of the governor.

1-46 (b) The board shall elect [a presiding officer,] an
1-47 assistant presiding officer[7] and a secretary-treasurer every two
1-48 years.

1-49 SECTION 1.005. Sections 351.056(a) and (d), Occupations
1-50 Code, are amended to read as follows:

1-51 (a) It is a ground for removal from the board that a member:

1-52 (1) does not have at the time of taking office
1-53 [appointment] the qualifications required by Sections 351.051 and
1-54 351.052;

1-55 (2) does not maintain during service on the board the
1-56 qualifications required by Sections 351.051 and[7] 351.052[~~and~~
1-57 ~~351.053~~]; [~~or~~]

1-58 (3) is ineligible for membership under Section 351.051
1-59 or 351.053;

1-60 (4) cannot, because of illness or disability,
1-61 discharge the member's duties for a substantial part of the member's
1-62 term; or

1-63 (5) without an excuse approved by a majority vote of
1-64 the board, is absent from more than [fails to attend at least] half

of the regularly scheduled board meetings that the member is eligible to attend during [held in] a calendar year[, excluding meetings held while the person was not a member].

(d) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists. [The attorney general shall investigate a complaint to the attorney general that a board member no longer has the qualifications required by Sections 351.051, 351.052, and 351.053. If the attorney general determines that there is reason to believe the complaint is valid, the attorney general shall institute suit in a Travis County district court to have the member removed from office.]

SECTION 1.006. Subchapter B, Chapter 351, Occupations Code, is amended by adding Section 351.0585 to read as follows:

Sec. 351.0585. CERTAIN REPORTS REQUIRED AT REGULAR MEETINGS. The board shall receive a report regarding complaints at each board meeting.

SECTION 1.007. Sections 351.059(b), (c), and (d), Occupations Code, are amended to read as follows:

(b) A person who is appointed to and qualifies for office as [Before] a board member may not vote, deliberate, or be counted as a member in attendance at a board meeting until [assume] the person completes a [member's duties and be confirmed by the senate, the member must complete at least one course of the] training program that complies with this section [established under Subsection (a)].

(c) The training program [established under Subsection (a)] must provide the person with information [to a participant] regarding:

(1) the legislation that created the board and the legislation that created the Contact Lens Prescription Act [this chapter];

(2) the board's programs, [operated by the board, (3) the role and] functions, [of the board, (4) the] rules, and [of the board with an emphasis on the rules that relate to disciplinary and investigatory authority, (5) the current] budget;

(3) [for the board, (6)] the results of the most recent formal audit of the board;

(4) [(7)] the requirements of laws relating to open meetings, public information, administrative procedures, and conflicts-of-interest [Chapters 551, 552, 2001, and 2002, Government Code]; and

(5) [(8) the requirements of the conflict of interest laws and other laws relating to public officials, and

[(9)] any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(d) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. [If another state agency or entity is authorized to establish training requirements, the board shall allow that training instead of developing its own program, and each member shall comply with those training requirements.]

SECTION 1.008. Section 351.105, Occupations Code, is amended to read as follows:

Sec. 351.105. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [define] the policy-making [respective] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

3-1 SECTION 1.009. Subchapter D, Chapter 351, Occupations Code,
3-2 is amended by adding Section 351.1575 to read as follows:

3-3 Sec. 351.1575. INSPECTION OF PREMISES AND REVIEW OF RECORDS
3-4 AUTHORIZED. (a) The board, at any time and without notice during
3-5 regular business hours, may:

3-6 (1) enter and inspect a facility operated by a person
3-7 engaged in any activity regulated under this chapter; and

3-8 (2) to the extent allowed by federal law, inspect and
3-9 review any record, including a patient record, maintained by a
3-10 person engaged in any activity regulated under this chapter.

3-11 (b) The board may enter and inspect a facility or inspect
3-12 and review any record under Subsection (a) as necessary to:

3-13 (1) ensure compliance with this chapter; or

3-14 (2) investigate a complaint made to the board.

3-15 SECTION 1.010. Subchapter D, Chapter 351, Occupations Code,
3-16 is amended by adding Sections 351.168 and 351.169 to read as
3-17 follows:

3-18 Sec. 351.168. TECHNOLOGICAL SOLUTIONS POLICY REQUIRED. The
3-19 board shall implement a policy requiring the board to use
3-20 appropriate technological solutions to improve the board's ability
3-21 to perform its functions. The policy must ensure that the public is
3-22 able to interact with the board on the Internet.

3-23 Sec. 351.169. ALTERNATIVE RULEMAKING AND DISPUTE
3-24 RESOLUTION. (a) The board shall develop and implement a policy to
3-25 encourage the use of:

3-26 (1) negotiated rulemaking procedures under Chapter
3-27 2008, Government Code, for the adoption of board rules; and

3-28 (2) appropriate alternative dispute resolution
3-29 procedures under Chapter 2009, Government Code, to assist in the
3-30 resolution of internal and external disputes under the board's
3-31 jurisdiction.

3-32 (b) The board's procedures relating to alternative dispute
3-33 resolution must conform, to the extent possible, to any model
3-34 guidelines issued by the State Office of Administrative Hearings
3-35 for the use of alternative dispute resolution by state agencies.

3-36 (c) The board shall designate a trained person to:

3-37 (1) coordinate the implementation of the policy
3-38 adopted under Subsection (a);

3-39 (2) serve as a resource for any training needed to
3-40 implement the procedures for negotiated rulemaking or alternative
3-41 dispute resolution; and

3-42 (3) collect data concerning the effectiveness of those
3-43 procedures, as implemented by the board.

3-44 SECTION 1.011. Section 351.203, Occupations Code, is
3-45 amended by adding Subsection (c) to read as follows:

3-46 (c) The board shall make information available describing
3-47 the procedures established by the board relating to complaint
3-48 investigation and resolution.

3-49 SECTION 1.012. Subchapter E, Chapter 351, Occupations Code,
3-50 is amended by adding Sections 351.2035 and 351.2036 to read as
3-51 follows:

3-52 Sec. 351.2035. COMPLAINTS RESULTING FROM INSPECTIONS.
3-53 (a) The board shall handle as a complaint any violation of this
3-54 chapter or a rule adopted by the board that is discovered during an
3-55 inspection conducted under Section 351.1575(b)(1).

3-56 (b) The board shall investigate and dispose of a complaint
3-57 described by Subsection (a) in the same manner that the board
3-58 investigates and disposes of other complaints made under this
3-59 chapter.

3-60 Sec. 351.2036. PROCEDURE FOR PROCESSING COMPLAINTS.

3-61 (a) The board may delegate to board staff the authority to dismiss
3-62 or enter into an agreed settlement of a complaint that does not
3-63 directly relate to patient care and the investigation or
3-64 disposition of which does not require expertise in optometry or
3-65 therapeutic optometry. The disposition determined by board staff
3-66 must be approved by the board at a public meeting.

3-67 (b) A complaint delegated under this section shall be
3-68 referred to an informal settlement conference under Section 351.507
3-69 if:

4-1 (1) the board staff determines that the complaint
 4-2 should not be dismissed or settled; or

4-3 (2) the board staff is unable to reach an agreed
 4-4 settlement.

4-5 (c) A complaint that is directly related to patient care or
 4-6 the investigation or disposition of which requires expertise in
 4-7 optometry or therapeutic optometry shall be reviewed by two board
 4-8 members who are optometrists or therapeutic optometrists who shall:

4-9 (1) dismiss the complaint if both board members agree
 4-10 that the complaint should be dismissed; or

4-11 (2) refer the complaint to an informal settlement
 4-12 conference under Section 351.507.

4-13 SECTION 1.013. Section 351.204, Occupations Code, is
 4-14 amended to read as follows:

4-15 Sec. 351.204. RECORDS OF COMPLAINTS. (a) The board shall
 4-16 maintain a system to act promptly and efficiently on ~~[keep an~~
 4-17 ~~information file about]~~ each complaint filed with the board. The
 4-18 board shall maintain information concerning ~~[information file must~~
 4-19 ~~be kept current and contain a record for each complaint of]:~~

4-20 (1) parties [each person contacted in relation] to the
 4-21 complaint;

4-22 (2) the subject matter [a summary of findings made at
 4-23 each step] of the complaint [process];

4-24 (3) a summary of the results of the review or
 4-25 investigation [an explanation of the legal basis and reason for any
 4-26 dismissal] of the complaint;

4-27 (4) the disposition of the complaint [schedule
 4-28 required under Section 351.205 and a notation of any change in the
 4-29 schedule]; and

4-30 (5) other relevant information.

4-31 (b) The board shall periodically notify parties to the
 4-32 complaint of the status of the complaint until the board finally
 4-33 disposes of the complaint. [If a written complaint is filed with
 4-34 the board that the board has authority to resolve, the board, at
 4-35 least quarterly and until final disposition of the complaint, shall
 4-36 notify the parties to the complaint of the status of the complaint
 4-37 unless notice would jeopardize an undercover investigation.]

4-38 SECTION 1.014. Section 351.205, Occupations Code, is
 4-39 amended by adding Subsection (a-1) to read as follows:

4-40 (a-1) The board shall adopt rules that prescribe a method
 4-41 for prioritizing complaints for purposes of complaint
 4-42 investigation and disposition. The rules adopted under this
 4-43 subsection must:

4-44 (1) place the highest priority on complaints that
 4-45 allege conduct that:

4-46 (A) violates the standard of professional care
 4-47 and judgment of an optometrist or therapeutic optometrist, as
 4-48 applicable;

4-49 (B) involves professional misconduct; or

4-50 (C) potentially threatens public health or
 4-51 safety; and

4-52 (2) place a lower priority on complaints that are not
 4-53 described by Subdivision (1).

4-54 SECTION 1.015. Section 351.256(a), Occupations Code, is
 4-55 amended to read as follows:

4-56 (a) The examination must consist of written~~[, oral,]~~ or
 4-57 practical tests in subjects regularly taught in recognized
 4-58 accredited colleges of optometry, including:

4-59 (1) practical, theoretical, and physiological optics;

4-60 (2) theoretical and practical optometry; and

4-61 (3) the anatomy, physiology, and pathology of the eye
 4-62 as applied to optometry.

4-63 SECTION 1.016. Section 351.304(b), Occupations Code, is
 4-64 amended to read as follows:

4-65 (b) A person whose license has been expired for 90 days or
 4-66 less may renew the license by paying to the board a [the required]
 4-67 renewal fee [and a fee] that is equal to the sum of one and one-half
 4-68 times the annual renewal [half of the license examination] fee set
 4-69 by the board under Section 351.152 and the additional fee required

5-1 by Section 351.153. If a person's license has been expired for more
 5-2 than 90 days but less than one year, the person may renew the
 5-3 license by paying to the board a renewal fee [~~all unpaid renewal~~
 5-4 ~~fees and a fee~~] that is equal to the sum of two times the annual
 5-5 renewal [~~license examination~~] fee set by the board under Section
 5-6 351.152 and the additional fee required by Section 351.153.

5-7 SECTION 1.017. Section 351.306(b), Occupations Code, is
 5-8 amended to read as follows:

5-9 (b) The person must pay to the board a fee that is equal to
 5-10 the amount of the [~~license examination~~] fee set by the board under
 5-11 Section 351.153(a).

5-12 SECTION 1.018. Section 351.501, Occupations Code, is
 5-13 amended by adding Subsection (c) to read as follows:

5-14 (c) Notwithstanding Subsection (a), the board may not, as
 5-15 part of a disciplinary action, order a license holder to acquire a
 5-16 license or certificate of a different or higher class or type than
 5-17 the license holder holds at the time of the disciplinary action.

5-18 SECTION 1.019. Subchapter K, Chapter 351, Occupations Code,
 5-19 is amended by adding Section 351.5015 to read as follows:

5-20 Sec. 351.5015. TEMPORARY SUSPENSION OR RESTRICTION OF
 5-21 LICENSE. (a) The board shall appoint a three-member disciplinary
 5-22 panel consisting of board members to determine whether a license
 5-23 issued to a person under this chapter should be temporarily
 5-24 suspended or restricted.

5-25 (b) If the disciplinary panel determines from the evidence
 5-26 presented to the panel that a license holder would, by the person's
 5-27 continuation in the practice of optometry or therapeutic optometry,
 5-28 constitute a continuing threat to the public welfare, the
 5-29 disciplinary panel shall temporarily suspend or restrict the
 5-30 license holder's license.

5-31 (c) The disciplinary panel may temporarily suspend or
 5-32 restrict a license under this section without notice or hearing if:

5-33 (1) the board immediately provides notice of the
 5-34 suspension or restriction to the license holder; and

5-35 (2) a hearing before the disciplinary panel concerning
 5-36 the temporary suspension or restriction is scheduled for the
 5-37 earliest possible date following the suspension or restriction.

5-38 (d) Notwithstanding Chapter 551, Government Code, the
 5-39 disciplinary panel may hold a meeting by telephone conference call
 5-40 if immediate action is required and convening of the panel at one
 5-41 location is inconvenient for any member of the disciplinary panel.

5-42 (e) After the hearing described by Subsection (c)(2), if the
 5-43 disciplinary panel affirms the temporary suspension or restriction
 5-44 of the license holder's license, the board shall schedule an
 5-45 informal settlement conference that meets the requirements of
 5-46 Section 2001.054(c), Government Code, to be held as soon as
 5-47 practicable, unless the license holder waives the informal
 5-48 settlement conference or an informal settlement conference has
 5-49 already been held with regard to the issues that are the basis for
 5-50 the temporary suspension or restriction.

5-51 (f) If the license holder is unable to show compliance at
 5-52 the informal settlement conference regarding the issues that are
 5-53 the basis for the temporary suspension or restriction, a board
 5-54 representative shall file a charge under Section 351.503 as soon as
 5-55 practicable.

5-56 (g) If after the hearing described by Subsection (c)(2) the
 5-57 disciplinary panel does not temporarily suspend or restrict the
 5-58 license holder's license, the facts that were the basis for the
 5-59 temporary suspension or restriction may not be the sole basis for
 5-60 another proceeding to temporarily suspend or restrict the license
 5-61 holder's license. The board may use those same facts in a
 5-62 subsequent investigation to obtain new information that may be the
 5-63 basis for the temporary suspension or restriction of the license
 5-64 holder's license. For purposes of this subsection, facts that are
 5-65 the basis for the temporary suspension or restriction of a license
 5-66 holder's license include facts presented to the disciplinary panel
 5-67 and facts presented by the board or a representative of the board at
 5-68 the time evidence was presented to the disciplinary panel.

5-69 SECTION 1.020. Section 351.507, Occupations Code, is

6-1 amended to read as follows:

6-2 Sec. 351.507. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT
6-3 CONFERENCE AND REFUNDS. (a) The board by rule shall adopt
6-4 procedures governing:

6-5 (1) informal disposition of a contested case under
6-6 Section 2001.056, Government Code; and

6-7 (2) an informal proceeding held in compliance with
6-8 Section 2001.054, Government Code.

6-9 (b) The board by rule shall establish procedures by which a
6-10 panel of board members may conduct an informal settlement
6-11 conference to resolve a complaint against a person licensed under
6-12 this chapter.

6-13 (c) Procedures established under Subsection (b) must:

6-14 (1) require that at least one board member who
6-15 represents the public be included in the panel conducting the
6-16 conference;

6-17 (2) require that the two board members who reviewed
6-18 and investigated a complaint under Section 351.2036(c) be included
6-19 in the panel conducting the conference;

6-20 (3) require the panel conducting the conference to use
6-21 the standardized penalty schedule adopted by the board under
6-22 Section 351.552(c) to determine the appropriate disciplinary
6-23 action, if any, to recommend to the board;

6-24 (4) require a complaint settlement recommended by the
6-25 panel to be approved by the board; and

6-26 (5) require the panel conducting the conference to:

6-27 (A) recommend settlement of the complaint to the
6-28 board; or

6-29 (B) refer the complaint to the State Office of
6-30 Administrative Hearings for a formal hearing and notify the board
6-31 of the referral.

6-32 (d) The board may order a person licensed under this chapter
6-33 to issue a refund to a patient as provided in an agreement resulting
6-34 from an informal settlement conference instead of or in addition to
6-35 assessing an administrative penalty against the person under
6-36 Subchapter L. The amount of a refund ordered under this subsection
6-37 may not exceed the amount the patient paid to the license holder for
6-38 an examination. The board may not require payment of other damages
6-39 or estimate harm in a restitution order.

6-40 (e) Rules adopted under this section must:

6-41 (1) provide the complainant and the license holder
6-42 with an opportunity to be heard; and

6-43 (2) require the presence of the attorney general to
6-44 advise the board or the board's employees.

6-45 SECTION 1.021. Subchapter K, Chapter 351, Occupations Code,
6-46 is amended by adding Section 351.508 to read as follows:

6-47 Sec. 351.508. RECUSAL REQUIRED. A member of the board who
6-48 reviews and investigates a complaint under Section 351.2036(c) or
6-49 participates in an informal settlement conference under Section
6-50 351.507 may not vote on any disciplinary action following the
6-51 informal settlement conference concerning the complaint and shall
6-52 recuse himself or herself from voting on any disciplinary action
6-53 following the informal settlement conference concerning the
6-54 complaint.

6-55 SECTION 1.022. Section 351.552, Occupations Code, is
6-56 amended by adding Subsection (c) to read as follows:

6-57 (c) The board by rule shall develop and publish a
6-58 standardized penalty schedule based on the criteria listed in
6-59 Subsection (b).

6-60 SECTION 1.023. Subchapter M, Chapter 351, Occupations Code,
6-61 is amended by adding Section 351.608 to read as follows:

6-62 Sec. 351.608. CEASE AND DESIST ORDER. (a) If it appears to
6-63 the board that a person is engaging in an act or practice that
6-64 constitutes the practice of optometry or therapeutic optometry
6-65 without a license or certificate under this chapter, the board,
6-66 after notice and opportunity for a hearing, may issue a cease and
6-67 desist order prohibiting the person from engaging in the activity.

6-68 (b) Notwithstanding Section 351.551, the board may impose
6-69 an administrative penalty under Subchapter L against a person who

7-1 violates an order issued under this section.

7-2 ARTICLE 2. CONTACT LENS PRESCRIPTION ACT

7-3 SECTION 2.001. Section 353.002, Occupations Code, is
7-4 amended by amending Subdivisions (1) and (2) and adding Subdivision
7-5 (2-a) to read as follows:

7-6 (1) "Board" means the executive commissioner of the
7-7 Health and Human Services Commission or the Department of State
7-8 Health Services, as consistent with the respective duties of the
7-9 executive commissioner or department under the laws of this state
7-10 [Texas Board of Health].

7-11 (2) "Department" means the Department of State Health
7-12 Services or the Health and Human Services Commission, as consistent
7-13 with the respective duties of those agencies under the laws of this
7-14 state [Texas Department of Health].

7-15 (2-a) "Direct communication" includes communication
7-16 by telephone, facsimile, or electronic mail.

7-17 SECTION 2.002. Section 353.004(a), Occupations Code, is
7-18 amended to read as follows:

7-19 (a) The board and the Texas Optometry Board shall prepare
7-20 and provide to the public and appropriate state agencies
7-21 information regarding the release and verification of contact lens
7-22 prescriptions.

7-23 SECTION 2.003. Subchapter A, Chapter 353, Occupations Code,
7-24 is amended by adding Section 353.005 to read as follows:

7-25 Sec. 353.005. RULES. (a) The executive commissioner of
7-26 the Health and Human Services Commission shall adopt rules,
7-27 including rules that require a person dispensing contact lenses to
7-28 maintain certain information when verifying a prescription under
7-29 Section 353.1015, as necessary to:

7-30 (1) govern and implement verification procedures
7-31 under Section 353.1015; and

7-32 (2) enter into interagency and other agreements to
7-33 implement and enforce this chapter.

7-34 (b) The executive commissioner of the Health and Human
7-35 Services Commission and the Texas Optometry Board shall each adopt
7-36 rules relating to contact lens prescriptions and the dispensing of
7-37 contact lenses, including rules that allow for interagency
7-38 agreements, as necessary to implement and enforce this chapter.

7-39 (c) In implementing rules under Subsection (b), the
7-40 executive commissioner of the Health and Human Services Commission
7-41 and the Texas Optometry Board:

7-42 (1) shall cooperate with one another as necessary to
7-43 adopt rules that are consistent with the rules adopted by the other
7-44 agency; and

7-45 (2) may consult with the Texas State Board of Medical
7-46 Examiners and the Texas State Board of Pharmacy.

7-47 SECTION 2.004. Section 353.101, Occupations Code, is
7-48 amended to read as follows:

7-49 Sec. 353.101. PROHIBITED SELLING OR DISPENSING. (a) A
7-50 person, other than the prescribing physician, optometrist, or
7-51 therapeutic optometrist, may not fill a contact lens prescription
7-52 or sell or dispense contact lenses to a consumer in this state
7-53 unless the person:

7-54 (1) receives from the prescribing physician,
7-55 optometrist, or therapeutic optometrist or the consumer, directly
7-56 or by facsimile, a [an original] contact lens prescription that has
7-57 not expired and that conforms to the requirements of this chapter;
7-58 or

7-59 (2) verifies by direct communication a contact lens
7-60 prescription to be filled.

7-61 (b) A person receiving a direct communication under
7-62 Subsection (a)(2) shall maintain a record of the communication.

7-63 SECTION 2.005. Subchapter C, Chapter 353, Occupations Code,
7-64 is amended by adding Section 353.1015 to read as follows:

7-65 Sec. 353.1015. VERIFICATION PROCEDURE. (a) When seeking
7-66 verification of a contact lens prescription, a person dispensing
7-67 contact lenses shall provide the prescribing physician,
7-68 optometrist, or therapeutic optometrist with the following
7-69 information:

8-1 (1) the patient's full name and address;
 8-2 (2) contact lens power, manufacturer, base curve or
 8-3 appropriate designation, and diameter, as appropriate;
 8-4 (3) quantity of lenses ordered;
 8-5 (4) the date on which the patient requests lenses to be
 8-6 dispensed;
 8-7 (5) the date and time of the verification request; and
 8-8 (6) the name, telephone number, and facsimile number
 8-9 of a person at the contact lens dispenser's company with whom to
 8-10 discuss the verification.

8-11 (b) A prescription is considered verified under this
 8-12 section if:

8-13 (1) the prescribing physician, optometrist, or
 8-14 therapeutic optometrist by a direct communication confirms that the
 8-15 prescription is accurate;

8-16 (2) the prescribing physician, optometrist, or
 8-17 therapeutic optometrist informs the person dispensing the contact
 8-18 lenses that the prescription is inaccurate and provides the correct
 8-19 prescription information; or

8-20 (3) the prescribing physician, optometrist, or
 8-21 therapeutic optometrist fails to communicate with the person
 8-22 dispensing the contact lenses not later than the eighth business
 8-23 hour after the prescribing physician, optometrist, or therapeutic
 8-24 optometrist receives from the person dispensing the contact lenses
 8-25 the request for verification or within another similar period
 8-26 specified by rule.

8-27 (c) If a prescribing physician, optometrist, or therapeutic
 8-28 optometrist timely informs the person dispensing the contact lenses
 8-29 that the prescription is inaccurate or invalid, the person may not
 8-30 dispense the contact lenses.

8-31 (d) If a prescribing physician, optometrist, or therapeutic
 8-32 optometrist notifies the person dispensing the contact lenses that
 8-33 the prescription is inaccurate or invalid, the prescribing
 8-34 physician, optometrist, or therapeutic optometrist shall:

8-35 (1) specify the basis for the inaccuracy or invalidity
 8-36 of the prescription; and

8-37 (2) correct the prescription.

8-38 SECTION 2.006. Sections 353.103 and 353.104, Occupations
 8-39 Code, are amended to read as follows:

8-40 Sec. 353.103. AUTHORIZED MODIFICATION OF PRESCRIPTION.

8-41 (a) If a patient presents a contact lens prescription to be filled
 8-42 or asks a permit holder to verify a contact lens prescription under
 8-43 Section 353.1015, but requests that fewer than the total number of
 8-44 lenses authorized by the prescription be dispensed, the person
 8-45 dispensing the lenses shall note on the prescription or
 8-46 verification:

8-47 (1) the number of lenses dispensed;

8-48 (2) the number of lenses that remain eligible to be
 8-49 dispensed under the prescription; and

8-50 (3) the name, address, telephone number, and license
 8-51 or permit number of the person dispensing the lenses.

8-52 (b) A notation under Subsection (a) is a permanent
 8-53 modification of the prescription. Except as provided by this
 8-54 subsection, a contact lens prescription may not be modified.

8-55 (c) The [Subject to Subsection (d), the] person dispensing
 8-56 the lenses shall:

8-57 (1) maintain a photocopy of the [original signed]
 8-58 prescription or verification, as modified, in the person's records
 8-59 as if the copy were the [original] prescription to be filled; and

8-60 (2) return a [the original] prescription to the
 8-61 patient so that the patient may have the additional lenses
 8-62 dispensed elsewhere.

8-63 ~~[(d) When a prescription has been completely filled, the~~
 8-64 ~~person dispensing the lenses shall retain the original prescription~~
 8-65 ~~in the person's records until the fifth anniversary of the date the~~
 8-66 ~~prescription is completely filled.~~

8-67 ~~[(e) The board by rule may permit a contact lens~~
 8-68 ~~prescription required to be maintained under this chapter to be~~
 8-69 ~~scanned into a computer and the original paper prescription~~

9-1 ~~destroyed.]~~

9-2 Sec. 353.104. EMERGENCY REFILL. (a) If a patient needs an
9-3 emergency refill of the patient's contact lens prescription, a
9-4 physician, optometrist, or therapeutic optometrist may telephone
9-5 or fax the prescription to a person authorized to dispense contact
9-6 lenses under Section 353.051 or may verify a prescription under
9-7 Section 353.1015.

9-8 (b) A ~~[The person filling the prescription shall maintain a~~
9-9 ~~copy of the fax or telephone record as if the record were an~~
9-10 ~~original signed prescription.~~

9-11 ~~[(c) The]~~ fax or telephone record received under Subsection
9-12 (a) must include the name, address, telephone number, and license
9-13 number of the physician, optometrist, or therapeutic optometrist.

9-14 SECTION 2.007. Subchapter C, Chapter 353, Occupations Code,
9-15 is amended by adding Section 353.105 to read as follows:

9-16 Sec. 353.105. ALTERATION OF PRESCRIPTION PROHIBITED.

9-17 (a) Except as provided by Subsection (b) and Section 353.103, a
9-18 person dispensing contact lenses may not alter a contact lens
9-19 prescription.

9-20 (b) A person dispensing contact lenses may fill a contact
9-21 lens prescription that requires a contact lens manufactured by a
9-22 particular company with another lens manufactured by that company
9-23 if the lens required by the prescription and the lens with which the
9-24 prescription is filled are the same lens but are sold by the company
9-25 under multiple labels to different contact lens dispensers.

9-26 SECTION 2.008. Section 353.151(a), Occupations Code, is
9-27 amended to read as follows:

9-28 (a) If a physician's directions, instructions, or orders
9-29 are to be performed or a physician's prescription is to be filled by
9-30 an optician who is independent of the physician's office, the
9-31 directions, instructions, orders, or prescription must be:

- 9-32 (1) in writing or verified under Section 353.1015;
9-33 (2) of a scope and content and communicated to the
9-34 optician in a form and manner that, in the professional judgment of
9-35 the physician, best serves the health, safety, and welfare of the
9-36 physician's patient; and
9-37 (3) in a form and detail consistent with the optician's
9-38 skill and knowledge.

9-39 SECTION 2.009. Section 353.152, Occupations Code, is
9-40 amended to read as follows:

9-41 Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

9-42 (a) A contact lens prescription must ~~[be written and must]~~
9-43 contain, at a minimum:

- 9-44 (1) the patient's name;
9-45 (2) the date the prescription was issued;
9-46 (3) the manufacturer of the contact lens to be
9-47 dispensed, if needed;
9-48 (4) the expiration date of the prescription;
9-49 (5) the ~~[original]~~ signature of the physician,
9-50 optometrist, or therapeutic optometrist or a verification of the
9-51 prescription described by Section 353.1015;

9-52 (6) ~~[if the prescription is for disposable contact~~
9-53 ~~lenses, the total number of lenses authorized to be issued under the~~
9-54 ~~prescription and the recommended lens replacement interval,~~

9-55 ~~[(7)]~~ if the prescription is issued by an optometrist,
9-56 specification information required by Texas Optometry Board rule;
9-57 and

9-58 (7) ~~[(8)]~~ if the prescription is issued by a
9-59 physician, specification information required by Texas State Board
9-60 of Medical Examiners rule.

9-61 (b) The Texas Optometry Board and the Texas State Board of
9-62 Medical Examiners may adopt rules regarding the contents of a
9-63 prescription for contact lenses.

9-64 SECTION 2.010. Section 353.156, Occupations Code, is
9-65 amended to read as follows:

9-66 Sec. 353.156. PATIENT ACCESS TO PRESCRIPTION; TIMING.

9-67 (a) A physician, optometrist, or therapeutic optometrist who
9-68 performs an eye examination and fits a patient for contact lenses
9-69 shall:

10-1 (1) [~~on request,~~] prepare and give a contact lens
 10-2 prescription to the patient; and
 10-3 (2) as directed by any person designated to act on
 10-4 behalf of the patient, provide the prescription or verify the
 10-5 prescription as provided by Section 353.1015.

10-6 (b) If the [~~patient requests the~~] contact lens prescription
 10-7 results from [during] an initial or annual eye examination, the
 10-8 physician, optometrist, or therapeutic optometrist shall prepare
 10-9 and give the prescription to the patient at the time the physician,
 10-10 optometrist, or therapeutic optometrist determines the parameters
 10-11 of the prescription.

10-12 (c) On receipt of a prescription request from a patient who
 10-13 did not [~~request or~~] receive an original contact lens prescription
 10-14 during an initial or annual eye examination, the physician,
 10-15 optometrist, or therapeutic optometrist shall provide the patient
 10-16 with the prescription at any time during which the prescription is
 10-17 valid. Except as provided by Section 353.158(1), if [if] the
 10-18 patient requests the physician, optometrist, or therapeutic
 10-19 optometrist to deliver the prescription to the patient or to
 10-20 another person, the physician, optometrist, or therapeutic
 10-21 optometrist may charge to the patient the cost of delivery.

10-22 SECTION 2.011. Section 353.158, Occupations Code, is
 10-23 amended to read as follows:

10-24 Sec. 353.158. PROHIBITED ACTION BY PHYSICIAN, OPTOMETRIST,
 10-25 OR THERAPEUTIC OPTOMETRIST. A physician, optometrist, or
 10-26 therapeutic optometrist may not:

10-27 (1) charge a patient a fee in addition to or as part of
 10-28 the examination fee and fitting fee as a condition for issuing or
 10-29 verifying [giving] a contact lens prescription [to the patient]; or

10-30 (2) condition the availability to a patient of an eye
 10-31 examination, a fitting for contact lenses, the issuance or
 10-32 verification of a contact lens prescription, or a combination of
 10-33 those services on a requirement that the patient agree to purchase
 10-34 contact lenses or other ophthalmic goods from the physician,
 10-35 optometrist, or therapeutic optometrist or from a specific
 10-36 ophthalmic dispenser.

10-37 ARTICLE 3. EFFECTIVE DATE; TRANSITION

10-38 SECTION 3.001. The executive commissioner of the Health and
 10-39 Human Services Commission, the Texas Optometry Board, the Texas
 10-40 State Board of Medical Examiners, and the Texas State Board of
 10-41 Pharmacy shall adopt the rules required by this Act not later than
 10-42 March 1, 2006.

10-43 SECTION 3.002. The Texas Optometry Board shall have the
 10-44 procedure for processing complaints under Section 351.2036,
 10-45 Occupations Code, as added by this Act, and the informal settlement
 10-46 conference under Section 351.507, Occupations Code, as amended by
 10-47 this Act, fully operational not later than September 1, 2006.

10-48 SECTION 3.003. The changes in law made by Sections 351.053,
 10-49 351.056, and 351.059, Occupations Code, as amended by this Act,
 10-50 regarding the prohibitions on or qualifications of members of the
 10-51 Texas Optometry Board do not affect the entitlement of a member
 10-52 serving on the board immediately before September 1, 2005, to
 10-53 continue to serve and function as a member of the board for the
 10-54 remainder of the member's term. The changes in law made by those
 10-55 sections apply only to a member appointed on or after September 1,
 10-56 2005.

10-57 SECTION 3.004. The changes in law made by this Act related
 10-58 to the filing or investigation of a complaint under Chapter 351,
 10-59 Occupations Code, as amended by this Act, apply only to a complaint
 10-60 filed with the Texas Optometry Board on or after the effective date
 10-61 of this Act. A complaint filed before the effective date of this
 10-62 Act is governed by the law as it existed immediately before that
 10-63 date, and the former law is continued in effect for that purpose.

10-64 SECTION 3.005. The change in law made by this Act with
 10-65 respect to conduct that is grounds for imposition of a disciplinary
 10-66 sanction, including a refund, temporary license suspension, or
 10-67 cease and desist order, applies only to conduct that occurs on or
 10-68 after the effective date of this Act. Conduct that occurs before
 10-69 the effective date of this Act is governed by the law in effect on

11-1 the date the conduct occurred, and the former law is continued in
11-2 effect for that purpose.

11-3 SECTION 3.006. Sections 351.501(c) and 351.508,
11-4 Occupations Code, as added by this Act, apply only to a disciplinary
11-5 hearing that commences on or after the effective date of this Act. A
11-6 disciplinary hearing that commences before the effective date of
11-7 this Act is governed by the law in effect at the time the
11-8 disciplinary hearing commences, and that law is continued in effect
11-9 for that purpose.

11-10 SECTION 3.007. The Texas Optometry Board shall appoint the
11-11 three-member panel required under Section 351.5015, Occupations
11-12 Code, as added by this Act, not later than March 1, 2006.

11-13 SECTION 3.008. The changes in law made by this Act to
11-14 Chapter 353, Occupations Code, relating to the presentation and
11-15 verification of a contact lens prescription apply only to a
11-16 prescription that is presented or verified on or after March 1,
11-17 2006. A contact lens prescription that is presented or verified
11-18 before March 1, 2006, is governed by the law in effect at the time
11-19 the prescription is presented or verified, and that law is
11-20 continued in effect for that purpose.

11-21 SECTION 3.009. The executive commissioner of the Health and
11-22 Human Services Commission and the Department of State Health
11-23 Services shall have the procedure for contact lens prescription
11-24 verification under Section 353.1015, Occupations Code, as added by
11-25 this Act, fully operational not later than March 1, 2006.

11-26 SECTION 3.010. This Act takes effect September 1, 2005.

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