

By: Schwertner, et al.
(Flynn)

S.B. No. 314

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Optometry Board; authorizing a reduction in fees.

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

SECTION 1. Section 351.004, Occupations Code, is amended to read as follows:

Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2029 [2017].

SECTION 2. Section 351.059, Occupations Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) The training program must provide the person with information regarding:

(1) the law governing board operations [~~the legislation that created the board and the legislation that created the Contact Lens Prescription Act~~];

(2) the board's programs, functions, rules, and budget;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and

1 enforcement actions that may implicate federal antitrust law by
2 limiting competition or impacting prices charged by persons engaged
3 in a profession or business the board regulates, including rules,
4 interpretations, and enforcement actions that:

5 (A) regulate the scope of practice of persons in
6 a profession or business the board regulates;

7 (B) restrict advertising by persons in a
8 profession or business the board regulates;

9 (C) affect the price of goods or services
10 provided by persons in a profession or business the board
11 regulates; and

12 (D) restrict participation in a profession or
13 business the board regulates;

14 (5) the results of the most recent formal audit of the
15 board;

16 (6) [~~4~~] the requirements of:

17 (A) laws relating to open meetings, public
18 information, administrative procedures, and disclosure of
19 conflicts-of-interest; and

20 (B) other laws applicable to members of the board
21 in performing their duties; and

22 (7) [~~5~~] any applicable ethics policies adopted by
23 the board or the Texas Ethics Commission.

24 (e) The executive director of the board shall create a
25 training manual that includes the information required by
26 Subsection (c). The executive director shall distribute a copy of
27 the training manual annually to each board member. On receipt of

1 the training manual, each board member shall sign and submit to the
2 executive director a statement acknowledging receipt of the
3 training manual.

4 SECTION 3. Section 351.154(b), Occupations Code, is amended
5 to read as follows:

6 (b) The board shall deposit in the University of Houston
7 development fund 15 percent of each [~~annual~~] renewal fee collected
8 by the board under Section 351.152. The money paid to that fund
9 under this subsection may be used solely for scholarships or
10 improvements in the physical facilities, including library
11 facilities, of the College of Optometry.

12 SECTION 4. Section 351.163(d), Occupations Code, is amended
13 to read as follows:

14 (d) The executive director shall number and record each
15 license or [~~annual~~] renewal certificate issued by the board.

16 SECTION 5. The heading to Section 351.2045, Occupations
17 Code, is amended to read as follows:

18 Sec. 351.2045. CONFIDENTIALITY OF COMPLAINTS, ADVERSE
19 REPORTS, INVESTIGATION FILES, AND OTHER INFORMATION.

20 SECTION 6. Section 351.2045, Occupations Code, is amended
21 by amending Subsection (a) and adding Subsections (c-1) and (f) to
22 read as follows:

23 (a) Each complaint, adverse report, investigation file, and
24 other investigation report and all other investigative information
25 in the possession of or received or gathered by the board or the
26 board's employees or agents relating to a license holder, an
27 application for a license, or a criminal investigation or

1 proceeding is privileged and confidential and is [~~The board's~~
2 ~~investigation files are confidential, privileged, and~~] not subject
3 to discovery, subpoena, or any other means of legal compulsion for
4 release to anyone other than [~~to~~] the board or an employee or agent
5 of the board involved in any disciplinary action relating to a
6 license holder.

7 (c-1) The board's providing of information under Subsection
8 (c) does not constitute a waiver of a privilege or confidentiality
9 under this chapter or any other law.

10 (f) The board shall protect the identity of a complainant to
11 the extent possible.

12 SECTION 7. Subchapter E, Chapter 351, Occupations Code, is
13 amended by adding Section 351.2046 to read as follows:

14 Sec. 351.2046. REQUIREMENTS FOR CERTAIN COMPLAINTS.

15 (a) In this section:

16 (1) "Anonymous complaint" means a complaint that lacks
17 sufficient information to identify the source or the name of the
18 person who filed the complaint.

19 (2) "Insurance agent" means a person licensed under
20 Chapter 4054, Insurance Code.

21 (3) "Insurer" means an insurance company or other
22 entity authorized to engage in the business of insurance under
23 Subtitle C, Title 6, Insurance Code.

24 (4) "Third-party administrator" means a person
25 required to have a certificate of authority under Chapter 4151,
26 Insurance Code.

27 (b) The board may not accept anonymous complaints.

1 (c) Notwithstanding any confidentiality requirements under
2 Chapter 552, Government Code, or this chapter, a complaint filed
3 with the board by an insurance agent, insurer, pharmaceutical
4 company, or third-party administrator against a license holder must
5 include the name and address of the insurance agent, insurer,
6 pharmaceutical company, or third-party administrator filing the
7 complaint.

8 (d) Not later than the 15th day after the date the complaint
9 is filed with the board, the board shall notify the license holder
10 who is the subject of the complaint of the name and address of the
11 insurance agent, insurer, pharmaceutical company, or third-party
12 administrator who filed the complaint, unless the notice would
13 jeopardize an investigation.

14 SECTION 8. Section 351.254(a), Occupations Code, is amended
15 to read as follows:

16 (a) An applicant is eligible to take the licensing
17 examination if the applicant provides to the executive director, on
18 a form provided by the board, information the board considers
19 necessary to enforce this chapter, including satisfactory ~~[sworn]~~
20 evidence that the applicant:

21 (1) has attained the age of majority;

22 (2) ~~[is of good moral character,~~

23 ~~[(3)]~~ has a preliminary education equivalent to one
24 that would permit the applicant to enroll in The University of
25 Texas; and

26 (3) ~~[(4)]~~ has attended and graduated from a reputable
27 college of optometry that meets board requirements.

SECTION 9. Subchapter F, Chapter 351, Occupations Code, is amended by adding Sections 351.2525 and 351.2526 to read as follows:

Sec. 351.2525. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

1 Sec. 351.2526. REVIEW OF NATIONAL PRACTITIONER DATABASE.

2 The board shall establish a process to review at least one national
3 practitioner database to determine whether another state has taken
4 any disciplinary or other legal action against an applicant or
5 license holder before issuing an initial or renewal license under
6 this chapter.

7 SECTION 10. The heading to Section 351.301, Occupations
8 Code, is amended to read as follows:

9 Sec. 351.301. [~~ANNUAL~~] RENEWAL CERTIFICATE.

10 SECTION 11. Section 351.301(a), Occupations Code, is
11 amended to read as follows:

12 (a) A person required by this subchapter to hold a [~~an~~
13 ~~annual~~] renewal certificate may not practice optometry or
14 therapeutic optometry without the certificate.

15 SECTION 12. Section 351.302, Occupations Code, is amended
16 by amending Subsection (a) and adding Subsection (a-1) to read as
17 follows:

18 (a) A license under this chapter is valid for a term of one
19 or two years as determined by board rule.

20 (a-1) The board by rule may adopt a system under which
21 licenses expire on various dates during the year. The board shall
22 adjust the final dates for payment, the dates for notice of
23 nonpayment, and the dates for license cancellation accordingly.

24 SECTION 13. Sections 351.304(a) and (b), Occupations Code,
25 are amended to read as follows:

26 (a) Not later than the date [~~January 1 of each year or as~~
27 ~~otherwise~~] provided under Section 351.302, an optometrist or

1 therapeutic optometrist shall pay to the board a [~~an annual~~]
2 renewal fee for the renewal of a license to practice optometry or
3 therapeutic optometry [~~for the year~~]. A person may renew an
4 unexpired license by paying the required renewal fee to the board
5 before the license expiration date.

6 (b) A person whose license has been expired for 90 days or
7 less may renew the license by paying to the board a renewal fee that
8 is equal to one and one-half times the [~~annual~~] renewal fee set by
9 the board under Section 351.152. If a person's license has been
10 expired for more than 90 days but less than one year, the person may
11 renew the license by paying to the board a renewal fee that is equal
12 to two times the [~~annual~~] renewal fee set by the board under Section
13 351.152.

14 SECTION 14. Subchapter G, Chapter 351, Occupations Code, is
15 amended by adding Section 351.3045 to read as follows:

16 Sec. 351.3045. CRIMINAL HISTORY RECORD INFORMATION
17 REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a
18 license issued under this chapter shall submit a complete and
19 legible set of fingerprints for purposes of performing a criminal
20 history record information check of the applicant as provided by
21 Section 351.2525.

22 (b) The board may administratively suspend or refuse to
23 renew the license of a person who does not comply with the
24 requirement of Subsection (a).

25 (c) A license holder is not required to submit fingerprints
26 under this section for the renewal of the license if the license
27 holder has previously submitted fingerprints under:

1 (1) Section 351.2525 for the initial issuance of the
2 license; or

3 (2) this section as part of a prior license renewal.

4 SECTION 15. Section 351.305, Occupations Code, is amended
5 to read as follows:

6 Sec. 351.305. ISSUANCE OF CERTIFICATE. On receipt of the
7 required fees, the board shall issue a ~~[an annual]~~ renewal
8 certificate containing information from board records that the
9 board considers necessary for the proper enforcement of this
10 chapter, including the license number and the period ~~[year]~~ for
11 which the license is renewed.

12 SECTION 16. Section 351.309, Occupations Code, is amended
13 to read as follows:

14 Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS. A person is
15 exempt from the continuing education requirements of Section
16 351.308 if the person:

17 (1) holds a license but does not practice optometry or
18 therapeutic optometry in this state;

19 (2) served in the regular armed forces of the United
20 States during part of the most recent license term ~~[12 months~~
21 ~~preceding the annual license renewal date]~~;

22 (3) submits proof to the board that the person
23 suffered a serious or disabling illness or physical disability
24 preventing the person from complying with the requirements during
25 the most recent license term ~~[12 months preceding the annual~~
26 ~~license renewal date]~~; or

27 (4) was first licensed during the period ~~[12 months]~~

preceding the ~~[annual]~~ license renewal date.

SECTION 17. Section 351.501, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The ~~[On the vote of five or more members, the]~~ board may refuse to issue a license to an applicant, revoke or suspend a license, place on probation a person whose license has been suspended, impose a fine, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a license holder if the board determines that:

(1) the applicant or license holder is guilty of fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in seeking admission to that practice;

(2) the applicant or license holder is unfit or incompetent by reason of negligence;

(3) the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony;

(4) the applicant or license holder has developed an incapacity that prevents or could prevent the applicant or license holder from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public ~~[+]~~

~~[(A) is a habitual drunkard,~~

~~[(B) is addicted to the use of morphine, cocaine, or other drugs having similar effect,~~

~~[(C) has become insane, or~~

1 [~~(D)~~ has been found by a court to be of unsound
2 mind];

3 (5) the license holder has directly or indirectly
4 employed, hired, procured, or induced a person to practice
5 optometry or therapeutic optometry in this state without a license;

6 (6) the license holder has directly or indirectly
7 aided or abetted an unlicensed person in the practice of optometry
8 or therapeutic optometry;

9 (7) the license holder has placed the holder's license
10 at the disposal or service of, including lending, leasing, or
11 renting to, a person not licensed to practice optometry or
12 therapeutic optometry in this state;

13 (8) the applicant or license holder has wilfully or
14 repeatedly violated this chapter or a board rule adopted under this
15 chapter;

16 (9) the license holder has wilfully or repeatedly
17 represented to a member of the public that the license holder is
18 authorized or competent to cure or treat an eye disease beyond the
19 authorization granted by this chapter;

20 (10) the license holder has had the right to practice
21 optometry or therapeutic optometry suspended or revoked by a
22 federal agency for a cause that the board believes warrants that
23 action;

24 (11) the applicant or license holder has acted to
25 deceive, defraud, or harm the public;

26 (12) the applicant or license holder is guilty of
27 gross incompetence in the practice of optometry or therapeutic

1 optometry;

2 (13) the applicant or license holder has engaged in a
3 pattern of practice or other behavior demonstrating a wilful
4 provision of substandard care;

5 (14) the applicant or license holder has committed an
6 act of sexual abuse, misconduct, or exploitation with a patient or
7 has otherwise unethically or immorally abused the doctor-patient
8 relationship;

9 (15) the applicant or license holder has prescribed,
10 sold, administered, distributed, or given a drug legally classified
11 as a controlled substance or as an addictive or dangerous drug for
12 other than an accepted diagnostic or therapeutic purpose;

13 (16) the applicant or license holder has failed to
14 report to the board the relocation of the applicant's or license
15 holder's office not later than the 30th day after the date of
16 relocation, whether in or out of this state; or

17 (17) the license holder has practiced or attempted to
18 practice optometry while the license holder's license was
19 suspended.

20 (d) The board may refuse to issue a license to an applicant
21 or may revoke or suspend a license or place a license holder on
22 probation for a period determined by the board because of the
23 applicant's or license holder's violation of a law of this state,
24 other than this chapter, or a rule of another licensing board in
25 this state, or of a statute or rule of another state as determined
26 by a review conducted as provided by Section 351.2526, if the
27 violation constitutes a violation of the laws of this state or a

1 board rule.

2 SECTION 18. Subchapter K, Chapter 351, Occupations Code, is
3 amended by adding Section 351.5014 to read as follows:

4 Sec. 351.5014. SUBMISSION TO MENTAL OR PHYSICAL
5 EXAMINATION. (a) In enforcing Section 351.501(a)(4), the board or
6 an authorized agent of the board on probable cause, as determined by
7 the board or agent, shall request an applicant or license holder to
8 submit to a mental or physical examination by a physician or other
9 health care professional designated by the board. The board shall
10 adopt guidelines, in conjunction with persons interested in or
11 affected by this section, to enable the board to evaluate
12 circumstances in which an applicant or license holder may be
13 required to submit to an examination for mental or physical health
14 conditions, alcohol and substance abuse, or professional behavior
15 problems.

16 (b) If the applicant or license holder refuses to submit to
17 the examination under Subsection (a), the board shall issue an
18 order requiring the applicant or license holder to show cause why
19 the applicant or license holder will not submit to the examination.
20 The board shall schedule a hearing on the order not later than the
21 30th day after the date notice is served on the applicant or license
22 holder. The board shall notify the applicant or license holder of
23 the order and hearing by personal service or certified mail, return
24 receipt requested.

25 (c) At the hearing, the applicant or license holder and the
26 applicant's or license holder's attorney are entitled to present
27 testimony or other evidence to show why the applicant or license

1 holder should not be required to submit to the examination. The
2 applicant or license holder has the burden of proof to show why the
3 applicant or license holder should not be required to submit to the
4 examination.

5 (d) After the hearing, the board, as applicable, by order
6 shall require the applicant or license holder to submit to the
7 examination not later than the 60th day after the date of the order
8 or withdraw the request for examination.

9 SECTION 19. Section 351.152(c), Occupations Code, is
10 repealed.

11 SECTION 20. (a) Except as provided by Subsection (b) of
12 this section, Section 351.059, Occupations Code, as amended by this
13 Act, applies to a member of the Texas Optometry Board appointed
14 before, on, or after the effective date of this Act.

15 (b) A member of the Texas Optometry Board who, before the
16 effective date of this Act, completed the training program required
17 by Section 351.059, Occupations Code, as that law existed before
18 the effective date of this Act, is required to complete additional
19 training on the subjects added by this Act to the training program
20 as required by Section 351.059, Occupations Code, as amended by
21 this Act. A board member described by this subsection may not vote,
22 deliberate, or be counted as a member in attendance at a meeting of
23 the board held on or after December 1, 2017, until the member
24 completes the additional training.

25 SECTION 21. (a) As soon as possible after the effective
26 date of this Act, the Texas Optometry Board shall revise the board's
27 rules as necessary to implement Section 351.254(a), Occupations

1 Code, as amended by this Act.

2 (b) Not later than September 1, 2022, the Texas Optometry
3 Board shall obtain criminal history record information on each
4 person who, on the effective date of this Act, holds a license
5 issued under Chapter 351, Occupations Code, and did not undergo a
6 criminal history record information check based on the license
7 holder's fingerprints on initial application for the license. The
8 board may suspend the license of a license holder who does not
9 provide the criminal history record information as required by the
10 board and this subsection.

11 (c) The Texas Optometry Board may establish procedures to
12 implement a biennial renewal of licenses as provided by Subchapter
13 G, Chapter 351, Occupations Code, as amended by this Act.

14 SECTION 22. This Act takes effect September 1, 2017.