

1-1 By: Schwertner, et al. S.B. No. 314
 1-2 (In the Senate - Filed March 6, 2017; March 7, 2017, read
 1-3 first time and referred to Committee on Health & Human Services;
 1-4 March 30, 2017, reported favorably by the following vote: Yeas 9,
 1-5 Nays 0; March 30, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the continuation and functions of the Texas Optometry
 1-20 Board; authorizing a reduction in fees.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 351.004, Occupations Code, is amended to
 1-23 read as follows:

1-24 Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board
 1-25 is subject to Chapter 325, Government Code (Texas Sunset Act).
 1-26 Unless continued in existence as provided by that chapter, the
 1-27 board is abolished and this chapter expires September 1, 2029
 1-28 [~~2017~~].

1-29 SECTION 2. Section 351.059, Occupations Code, is amended by
 1-30 amending Subsection (c) and adding Subsection (e) to read as
 1-31 follows:

1-32 (c) The training program must provide the person with
 1-33 information regarding:

1-34 (1) the law governing board operations [~~the~~
 1-35 ~~legislation that created the board and the legislation that created~~
 1-36 ~~the Contact Lens Prescription Act~~];

1-37 (2) the board's programs, functions, rules, and
 1-38 budget;

1-39 (3) the scope of and limitations on the rulemaking
 1-40 authority of the board;

1-41 (4) the results of the most recent formal audit of the
 1-42 board;

1-43 (5) [~~(4)~~] the requirements of:

1-44 (A) laws relating to open meetings, public
 1-45 information, administrative procedures, and disclosing
 1-46 conflicts-of-interest; and

1-47 (B) other laws applicable to members of the board
 1-48 in performing their duties; and

1-49 (6) [~~(5)~~] any applicable ethics policies adopted by
 1-50 the board or the Texas Ethics Commission.

1-51 (e) The executive director of the board shall create a
 1-52 training manual that includes the information required by
 1-53 Subsection (c). The executive director shall distribute a copy of
 1-54 the training manual annually to each board member. On receipt of
 1-55 the training manual, each board member shall sign and submit to the
 1-56 executive director a statement acknowledging receipt of the
 1-57 training manual.

1-58 SECTION 3. Section 351.154(b), Occupations Code, is amended
 1-59 to read as follows:

1-60 (b) The board shall deposit in the University of Houston
 1-61 development fund 15 percent of each [~~annual~~] renewal fee collected

2-1 by the board under Section 351.152. The money paid to that fund
 2-2 under this subsection may be used solely for scholarships or
 2-3 improvements in the physical facilities, including library
 2-4 facilities, of the College of Optometry.

2-5 SECTION 4. Section 351.163(d), Occupations Code, is amended
 2-6 to read as follows:

2-7 (d) The executive director shall number and record each
 2-8 license or ~~annual~~ renewal certificate issued by the board.

2-9 SECTION 5. The heading to Section 351.2045, Occupations
 2-10 Code, is amended to read as follows:

2-11 Sec. 351.2045. CONFIDENTIALITY OF COMPLAINTS, ADVERSE
 2-12 REPORTS, INVESTIGATION FILES, AND OTHER INFORMATION.

2-13 SECTION 6. Section 351.2045, Occupations Code, is amended
 2-14 by amending Subsection (a) and adding Subsections (c-1) and (f) to
 2-15 read as follows:

2-16 (a) Each complaint, adverse report, investigation file, and
 2-17 other investigation report and all other investigative information
 2-18 in the possession of or received or gathered by the board or the
 2-19 board's employees or agents relating to a license holder, an
 2-20 application for a license, or a criminal investigation or
 2-21 proceeding is privileged and confidential and is ~~[The board's~~
 2-22 investigation files are confidential, privileged, and] not subject
 2-23 to discovery, subpoena, or any other means of legal compulsion for
 2-24 release to anyone other than ~~[to]~~ the board or an employee or agent
 2-25 of the board involved in any disciplinary action relating to a
 2-26 license holder.

2-27 (c-1) The board's providing of information under Subsection
 2-28 (c) does not constitute a waiver of a privilege or confidentiality
 2-29 under this chapter or any other law.

2-30 (f) The board shall protect the identity of a complainant to
 2-31 the extent possible.

2-32 SECTION 7. Subchapter E, Chapter 351, Occupations Code, is
 2-33 amended by adding Section 351.2046 to read as follows:

2-34 Sec. 351.2046. REQUIREMENTS FOR CERTAIN COMPLAINTS.

2-35 (a) In this section:

2-36 (1) "Anonymous complaint" means a complaint that lacks
 2-37 sufficient information to identify the source or the name of the
 2-38 person who filed the complaint.

2-39 (2) "Insurance agent" means a person licensed under
 2-40 Chapter 4054, Insurance Code.

2-41 (3) "Insurer" means an insurance company or other
 2-42 entity authorized to engage in the business of insurance under
 2-43 Subtitle C, Title 6, Insurance Code.

2-44 (4) "Third-party administrator" means a person
 2-45 required to have a certificate of authority under Chapter 4151,
 2-46 Insurance Code.

2-47 (b) The board may not accept anonymous complaints.

2-48 (c) Notwithstanding any confidentiality requirements under
 2-49 Chapter 552, Government Code, or this chapter, a complaint filed
 2-50 with the board by an insurance agent, insurer, pharmaceutical
 2-51 company, or third-party administrator against a license holder must
 2-52 include the name and address of the insurance agent, insurer,
 2-53 pharmaceutical company, or third-party administrator filing the
 2-54 complaint.

2-55 (d) Not later than the 15th day after the date the complaint
 2-56 is filed with the board, the board shall notify the license holder
 2-57 who is the subject of the complaint of the name and address of the
 2-58 insurance agent, insurer, pharmaceutical company, or third-party
 2-59 administrator who filed the complaint, unless the notice would
 2-60 jeopardize an investigation.

2-61 SECTION 8. Section 351.254(a), Occupations Code, is amended
 2-62 to read as follows:

2-63 (a) An applicant is eligible to take the licensing
 2-64 examination if the applicant provides to the executive director, on
 2-65 a form provided by the board, information the board considers
 2-66 necessary to enforce this chapter, including satisfactory ~~sworn~~
 2-67 evidence that the applicant:

2-68 (1) has attained the age of majority;

2-69 (2) ~~[is of good moral character,~~

3-1 ~~[(3)]~~ has a preliminary education equivalent to one
 3-2 that would permit the applicant to enroll in The University of
 3-3 Texas; and

3-4 (3) ~~[(4)]~~ has attended and graduated from a reputable
 3-5 college of optometry that meets board requirements.

3-6 SECTION 9. Subchapter F, Chapter 351, Occupations Code, is
 3-7 amended by adding Sections 351.2525 and 351.2526 to read as
 3-8 follows:

3-9 Sec. 351.2525. CRIMINAL HISTORY RECORD INFORMATION FOR
 3-10 LICENSE ISSUANCE. (a) The board shall require that an applicant
 3-11 for a license submit a complete and legible set of fingerprints, on
 3-12 a form prescribed by the board, to the board or to the Department of
 3-13 Public Safety for the purpose of obtaining criminal history record
 3-14 information from the Department of Public Safety and the Federal
 3-15 Bureau of Investigation.

3-16 (b) The board may not issue a license to a person who does
 3-17 not comply with the requirement of Subsection (a).

3-18 (c) The board shall conduct a criminal history record
 3-19 information check of each applicant for a license using
 3-20 information:

3-21 (1) provided by the individual under this section; and

3-22 (2) made available to the board by the Department of
 3-23 Public Safety, the Federal Bureau of Investigation, and any other
 3-24 criminal justice agency under Chapter 411, Government Code.

3-25 (d) The board may:

3-26 (1) enter into an agreement with the Department of
 3-27 Public Safety to administer a criminal history record information
 3-28 check required under this section; and

3-29 (2) authorize the Department of Public Safety to
 3-30 collect from each applicant the costs incurred by the Department of
 3-31 Public Safety in conducting the criminal history record information
 3-32 check.

3-33 Sec. 351.2526. REVIEW OF NATIONAL PRACTITIONER DATABASE.
 3-34 The board shall establish a process to review at least one national
 3-35 practitioner database to determine whether another state has taken
 3-36 any disciplinary or other legal action against an applicant or
 3-37 license holder before issuing an initial or renewal license under
 3-38 this chapter.

3-39 SECTION 10. The heading to Section 351.301, Occupations
 3-40 Code, is amended to read as follows:

3-41 Sec. 351.301. ~~[ANNUAL]~~ RENEWAL CERTIFICATE.

3-42 SECTION 11. Section 351.301(a), Occupations Code, is
 3-43 amended to read as follows:

3-44 (a) A person required by this subchapter to hold a [an
 3-45 annual] renewal certificate may not practice optometry or
 3-46 therapeutic optometry without the certificate.

3-47 SECTION 12. Section 351.302, Occupations Code, is amended
 3-48 by amending Subsection (a) and adding Subsection (a-1) to read as
 3-49 follows:

3-50 (a) A license under this chapter is valid for a term of one
 3-51 or two years as determined by board rule.

3-52 (a-1) The board by rule may adopt a system under which
 3-53 licenses expire on various dates during the year. The board shall
 3-54 adjust the final dates for payment, the dates for notice of
 3-55 nonpayment, and the dates for license cancellation accordingly.

3-56 SECTION 13. Sections 351.304(a) and (b), Occupations Code,
 3-57 are amended to read as follows:

3-58 (a) Not later than the date ~~[January 1 of each year or as~~
 3-59 ~~otherwise]~~ provided under Section 351.302, an optometrist or
 3-60 therapeutic optometrist shall pay to the board a [an annual]
 3-61 renewal fee for the renewal of a license to practice optometry or
 3-62 therapeutic optometry ~~[for the year]~~. A person may renew an
 3-63 unexpired license by paying the required renewal fee to the board
 3-64 before the license expiration date.

3-65 (b) A person whose license has been expired for 90 days or
 3-66 less may renew the license by paying to the board a renewal fee that
 3-67 is equal to one and one-half times the ~~[annual]~~ renewal fee set by
 3-68 the board under Section 351.152. If a person's license has been
 3-69 expired for more than 90 days but less than one year, the person may

4-1 renew the license by paying to the board a renewal fee that is equal
4-2 to two times the [~~annual~~] renewal fee set by the board under Section
4-3 351.152.

4-4 SECTION 14. Subchapter G, Chapter 351, Occupations Code, is
4-5 amended by adding Section 351.3045 to read as follows:

4-6 Sec. 351.3045. CRIMINAL HISTORY RECORD INFORMATION
4-7 REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a
4-8 license issued under this chapter shall submit a complete and
4-9 legible set of fingerprints for purposes of performing a criminal
4-10 history record information check of the applicant as provided by
4-11 Section 351.2525.

4-12 (b) The board may administratively suspend or refuse to
4-13 renew the license of a person who does not comply with the
4-14 requirement of Subsection (a).

4-15 (c) A license holder is not required to submit fingerprints
4-16 under this section for the renewal of the license if the license
4-17 holder has previously submitted fingerprints under:

4-18 (1) Section 351.2525 for the initial issuance of the
4-19 license; or

4-20 (2) this section as part of a prior license renewal.

4-21 SECTION 15. Section 351.305, Occupations Code, is amended
4-22 to read as follows:

4-23 Sec. 351.305. ISSUANCE OF CERTIFICATE. On receipt of the
4-24 required fees, the board shall issue a [~~an annual~~] renewal
4-25 certificate containing information from board records that the
4-26 board considers necessary for the proper enforcement of this
4-27 chapter, including the license number and the period [~~year~~] for
4-28 which the license is renewed.

4-29 SECTION 16. Section 351.309, Occupations Code, is amended
4-30 to read as follows:

4-31 Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS. A person is
4-32 exempt from the continuing education requirements of Section
4-33 351.308 if the person:

4-34 (1) holds a license but does not practice optometry or
4-35 therapeutic optometry in this state;

4-36 (2) served in the regular armed forces of the United
4-37 States during part of the most recent license term [~~12 months~~
4-38 ~~preceding the annual license renewal date~~];

4-39 (3) submits proof to the board that the person
4-40 suffered a serious or disabling illness or physical disability
4-41 preventing the person from complying with the requirements during
4-42 the most recent license term [~~12 months preceding the annual~~
4-43 ~~license renewal date~~]; or

4-44 (4) was first licensed during the period [~~12 months~~]
4-45 preceding the [~~annual~~] license renewal date.

4-46 SECTION 17. Subchapter H, Chapter 351, Occupations Code, is
4-47 amended by adding Section 351.3591 to read as follows:

4-48 Sec. 351.3591. DUTIES RELATED TO CERTAIN PRESCRIPTIONS.

4-49 (a) An optometrist or therapeutic optometrist may not prescribe a
4-50 drug listed in Subsection (b) to a patient unless the optometrist or
4-51 therapeutic optometrist has reviewed the patient's prescription
4-52 history by accessing the prescription information submitted to the
4-53 Texas State Board of Pharmacy as authorized by Section
4-54 481.076(a)(5), Health and Safety Code.

4-55 (b) Subsection (a) applies only to the prescribing of:

4-56 (1) opioids;

4-57 (2) benzodiazepines;

4-58 (3) barbiturates; or

4-59 (4) carisoprodol.

4-60 (c) Failure by an optometrist or therapeutic optometrist to
4-61 comply with the requirements of this section is grounds for
4-62 disciplinary action under Section 351.501.

4-63 SECTION 18. Section 351.501, Occupations Code, is amended
4-64 by amending Subsection (a) and adding Subsection (d) to read as
4-65 follows:

4-66 (a) The [~~On the vote of five or more members, the~~] board may
4-67 refuse to issue a license to an applicant, revoke or suspend a
4-68 license, place on probation a person whose license has been
4-69 suspended, impose a fine, impose a stipulation, limitation, or

5-1 condition relating to continued practice, including conditioning
 5-2 continued practice on counseling or additional education, or
 5-3 reprimand a license holder if the board determines that:

5-4 (1) the applicant or license holder is guilty of
 5-5 fraud, deceit, dishonesty, or misrepresentation in the practice of
 5-6 optometry or therapeutic optometry or in seeking admission to that
 5-7 practice;

5-8 (2) the applicant or license holder is unfit or
 5-9 incompetent by reason of negligence;

5-10 (3) the applicant or license holder has been convicted
 5-11 of a misdemeanor involving moral turpitude or a felony;

5-12 (4) the applicant or license holder has developed an
 5-13 incapacity that prevents or could prevent the applicant or license
 5-14 holder from practicing optometry or therapeutic optometry with
 5-15 reasonable skill, competence, and safety to the public[+

5-16 [~~(A) is a habitual drunkard,~~

5-17 [~~(B) is addicted to the use of morphine, cocaine,~~
 5-18 ~~or other drugs having similar effect,~~

5-19 [~~(C) has become insane, or~~

5-20 [~~(D) has been found by a court to be of unsound~~
 5-21 ~~mind]~~;

5-22 (5) the license holder has directly or indirectly
 5-23 employed, hired, procured, or induced a person to practice
 5-24 optometry or therapeutic optometry in this state without a license;

5-25 (6) the license holder has directly or indirectly
 5-26 aided or abetted an unlicensed person in the practice of optometry
 5-27 or therapeutic optometry;

5-28 (7) the license holder has placed the holder's license
 5-29 at the disposal or service of, including lending, leasing, or
 5-30 renting to, a person not licensed to practice optometry or
 5-31 therapeutic optometry in this state;

5-32 (8) the applicant or license holder has wilfully or
 5-33 repeatedly violated this chapter or a board rule adopted under this
 5-34 chapter;

5-35 (9) the license holder has wilfully or repeatedly
 5-36 represented to a member of the public that the license holder is
 5-37 authorized or competent to cure or treat an eye disease beyond the
 5-38 authorization granted by this chapter;

5-39 (10) the license holder has had the right to practice
 5-40 optometry or therapeutic optometry suspended or revoked by a
 5-41 federal agency for a cause that the board believes warrants that
 5-42 action;

5-43 (11) the applicant or license holder has acted to
 5-44 deceive, defraud, or harm the public;

5-45 (12) the applicant or license holder is guilty of
 5-46 gross incompetence in the practice of optometry or therapeutic
 5-47 optometry;

5-48 (13) the applicant or license holder has engaged in a
 5-49 pattern of practice or other behavior demonstrating a wilful
 5-50 provision of substandard care;

5-51 (14) the applicant or license holder has committed an
 5-52 act of sexual abuse, misconduct, or exploitation with a patient or
 5-53 has otherwise unethically or immorally abused the doctor-patient
 5-54 relationship;

5-55 (15) the applicant or license holder has prescribed,
 5-56 sold, administered, distributed, or given a drug legally classified
 5-57 as a controlled substance or as an addictive or dangerous drug for
 5-58 other than an accepted diagnostic or therapeutic purpose;

5-59 (16) the applicant or license holder has failed to
 5-60 report to the board the relocation of the applicant's or license
 5-61 holder's office not later than the 30th day after the date of
 5-62 relocation, whether in or out of this state; or

5-63 (17) the license holder has practiced or attempted to
 5-64 practice optometry while the license holder's license was
 5-65 suspended.

5-66 (d) The board may refuse to issue a license to an applicant
 5-67 or may revoke or suspend a license or place a license holder on
 5-68 probation for a period determined by the board because of the
 5-69 applicant's or license holder's violation of a law of this state,

6-1 other than this chapter, or a rule of another licensing board in
 6-2 this state, or of a statute or rule of another state as determined
 6-3 by a review conducted as provided by Section 351.2526, if the
 6-4 violation constitutes a violation of the laws of this state or a
 6-5 board rule.

6-6 SECTION 19. Subchapter K, Chapter 351, Occupations Code, is
 6-7 amended by adding Section 351.5014 to read as follows:

6-8 Sec. 351.5014. SUBMISSION TO MENTAL OR PHYSICAL
 6-9 EXAMINATION. (a) In enforcing Section 351.501(a)(4), the board or
 6-10 an authorized agent of the board on probable cause, as determined by
 6-11 the board or agent, shall request an applicant or license holder to
 6-12 submit to a mental or physical examination by a physician or other
 6-13 health care professional designated by the board. The board shall
 6-14 adopt guidelines, in conjunction with persons interested in or
 6-15 affected by this section, to enable the board to evaluate
 6-16 circumstances in which an applicant or license holder may be
 6-17 required to submit to an examination for mental or physical health
 6-18 conditions, alcohol and substance abuse, or professional behavior
 6-19 problems.

6-20 (b) If the applicant or license holder refuses to submit to
 6-21 the examination under Subsection (a), the board shall issue an
 6-22 order requiring the applicant or license holder to show cause why
 6-23 the applicant or license holder will not submit to the examination.
 6-24 The board shall schedule a hearing on the order not later than the
 6-25 30th day after the date notice is served on the applicant or license
 6-26 holder. The board shall notify the applicant or license holder of
 6-27 the order and hearing by personal service or certified mail, return
 6-28 receipt requested.

6-29 (c) At the hearing, the applicant or license holder and the
 6-30 applicant's or license holder's attorney are entitled to present
 6-31 testimony or other evidence to show why the applicant or license
 6-32 holder should not be required to submit to the examination. The
 6-33 applicant or license holder has the burden of proof to show why the
 6-34 applicant or license holder should not be required to submit to the
 6-35 examination.

6-36 (d) After the hearing, the board, as applicable, by order
 6-37 shall require the applicant or license holder to submit to the
 6-38 examination not later than the 60th day after the date of the order
 6-39 or withdraw the request for examination.

6-40 SECTION 20. Subchapter M, Chapter 351, Occupations Code, is
 6-41 amended by adding Section 351.6011 to read as follows:

6-42 Sec. 351.6011. MONITORING HARMFUL PRESCRIBING PATTERNS.
 6-43 (a) The board shall periodically check the prescribing
 6-44 information submitted to the Texas State Board of Pharmacy as
 6-45 authorized by Section 481.076(a)(1), Health and Safety Code, to
 6-46 determine whether an optometrist or therapeutic optometrist
 6-47 licensed under this chapter is engaging in potentially harmful
 6-48 prescribing patterns or practices.

6-49 (b) The board, in coordination with the Texas State Board of
 6-50 Pharmacy, shall determine the conduct that constitutes a
 6-51 potentially harmful prescribing pattern or practice for purposes of
 6-52 Subsection (a). In determining the conduct that constitutes a
 6-53 potentially harmful prescribing pattern or practice, the board
 6-54 shall consider:

6-55 (1) the number of times an optometrist or therapeutic
 6-56 optometrist prescribes a drug listed in Section 351.3591(b); and

6-57 (2) for prescriptions described by Subdivision (1),
 6-58 patterns of prescribing combinations of those drugs and other
 6-59 dangerous combinations of drugs identified by the board.

6-60 (c) If the board suspects that an optometrist or therapeutic
 6-61 optometrist licensed under this chapter may be engaging in
 6-62 potentially harmful prescribing patterns or practices, the board
 6-63 may notify the optometrist or therapeutic optometrist of the
 6-64 potentially harmful prescribing pattern or practice.

6-65 (d) The board may initiate a complaint against an
 6-66 optometrist or therapeutic optometrist based on information
 6-67 obtained under this section.

6-68 SECTION 21. Section 351.152(c), Occupations Code, is
 6-69 repealed.

7-1 SECTION 22. (a) Except as provided by Subsection (b) of
7-2 this section, Section 351.059, Occupations Code, as amended by this
7-3 Act, applies to a member of the Texas Optometry Board appointed
7-4 before, on, or after the effective date of this Act.

7-5 (b) A member of the Texas Optometry Board who, before the
7-6 effective date of this Act, completed the training program required
7-7 by Section 351.059, Occupations Code, as that law existed before
7-8 the effective date of this Act, is required to complete additional
7-9 training on the subjects added by this Act to the training program
7-10 as required by Section 351.059, Occupations Code, as amended by
7-11 this Act. A board member described by this subsection may not vote,
7-12 deliberate, or be counted as a member in attendance at a meeting of
7-13 the board held on or after December 1, 2017, until the member
7-14 completes the additional training.

7-15 SECTION 23. (a) As soon as possible after the effective
7-16 date of this Act, the Texas Optometry Board shall revise the board's
7-17 rules as necessary to implement Section 351.254(a), Occupations
7-18 Code, as amended by this Act.

7-19 (b) Not later than September 1, 2022, the Texas Optometry
7-20 Board shall obtain criminal history record information on each
7-21 person who, on the effective date of this Act, holds a license
7-22 issued under Chapter 351, Occupations Code, and did not undergo a
7-23 criminal history record information check based on the license
7-24 holder's fingerprints on initial application for the license. The
7-25 board may suspend the license of a license holder who does not
7-26 provide the criminal history record information as required by the
7-27 board and this subsection.

7-28 (c) The Texas Optometry Board may establish procedures to
7-29 implement a biennial renewal of licenses as provided by Subchapter
7-30 G, Chapter 351, Occupations Code, as amended by this Act.

7-31 SECTION 24. Section 351.3591, Occupations Code, as added by
7-32 this Act, applies only to a prescription issued on or after
7-33 September 1, 2018. A prescription issued before September 1, 2018,
7-34 is governed by the law in effect on the date the prescription is
7-35 issued, and the former law is continued in effect for that purpose.

7-36 SECTION 25. This Act takes effect September 1, 2017.

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