

By: Schwertner, et al.

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 the results of the most recent formal audit of the

board;

(5) [~~(4)~~] the requirements of:

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

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

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

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

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

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

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

(d) The executive director shall number and record each

1 license or ~~[annual]~~ renewal certificate issued by the board.

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

4 Sec. 351.2045. CONFIDENTIALITY OF COMPLAINTS, ADVERSE
5 REPORTS, INVESTIGATION FILES, AND OTHER INFORMATION.

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

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

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

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

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

27 Sec. 351.2046. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a)

In this section:

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

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

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

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

(b) The board may not accept anonymous complaints.

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

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

SECTION 8. Section 351.254(a), Occupations Code, is amended

1 to read as follows:

2 (a) An applicant is eligible to take the licensing
3 examination if the applicant provides to the executive director, on
4 a form provided by the board, information the board considers
5 necessary to enforce this chapter, including satisfactory ~~[sworn]~~
6 evidence that the applicant:

7 (1) has attained the age of majority;

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

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

12 (3) ~~[(4)]~~ has attended and graduated from a reputable
13 college of optometry that meets board requirements.

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

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

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

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

1 information:

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

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

6 (d) The board may:

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

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

14 Sec. 351.2526. REVIEW OF NATIONAL PRACTITIONER DATABASE.
15 The board shall establish a process to review at least one national
16 practitioner database to determine whether another state has taken
17 any disciplinary or other legal action against an applicant or
18 license holder before issuing an initial or renewal license under
19 this chapter.

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

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

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

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

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

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

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

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

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

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

SECTION 14. Subchapter G, Chapter 351, Occupations Code, is

amended by adding Section 351.3045 to read as follows:

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

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

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

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

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

SECTION 15. Sections 351.305, Occupations Code, is amended to read as follows:

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

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

Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS. A person is

exempt from the continuing education requirements of Section 351.308 if the person:

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

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

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

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

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

Sec. 351.3591. DUTIES RELATED TO CERTAIN PRESCRIPTIONS.

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

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

(1) opioids;

(2) benzodiazepines;

(3) barbiturates; or

1 (4) carisoprodol.

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

5 SECTION 18. Section 351.501, Occupations Code, is amended
6 by amending Subsection (a) and adding Subsection (d) to read as
7 follows:

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

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

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

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

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

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

1 ~~[(B) is addicted to the use of morphine, cocaine,~~
2 ~~or other drugs having similar effect,~~
3 ~~[(C) has become insane, or~~
4 ~~[(D) has been found by a court to be of unsound~~
5 ~~mind];~~

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

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

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

16 (8) the applicant or license holder has wilfully or
17 repeatedly violated this chapter or a board rule adopted under this
18 chapter;

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

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

27 (11) the applicant or license holder has acted to

1 deceive, defraud, or harm the public;

2 (12) the applicant or license holder is guilty of
3 gross incompetence in the practice of optometry or therapeutic
4 optometry;

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

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

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

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

20 (17) the license holder has practiced or attempted to
21 practice optometry while the license holder's license was
22 suspended.

23 (d) The board may refuse to issue a license to an applicant
24 or may revoke or suspend a license or place a license holder on
25 probation for a period determined by the board because of the
26 applicant's or license holder's violation of a law of this state,
27 other than this chapter, or a rule of another licensing board in

1 this state, or of a statute or rule of another state as determined
2 by a review conducted as provided by Section 351.2526, if the
3 violation constitutes a violation of the laws of this state or a
4 board rule.

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

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

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

1 (c) At the hearing, the applicant or license holder and the
2 applicant's or license holder's attorney are entitled to present
3 testimony or other evidence to show why the applicant or license
4 holder should not be required to submit to the examination. The
5 applicant or license holder has the burden of proof to show why the
6 applicant or license holder should not be required to submit to the
7 examination.

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

12 SECTION 20. Subchapter M, Chapter 351, Occupations Code, is
13 amended by adding Section 351.6011 to read as follows:

14 Sec. 351.6011. MONITORING HARMFUL PRESCRIBING PATTERNS.

15 (a) The board shall periodically check the prescribing information
16 submitted to the Texas State Board of Pharmacy as authorized by
17 Section 481.076(a)(1), Health and Safety Code, to determine whether
18 an optometrist or therapeutic optometrist licensed under this
19 chapter is engaging in potentially harmful prescribing patterns or
20 practices.

21 (b) The board, in coordination with the Texas State Board of
22 Pharmacy, shall determine the conduct that constitutes a
23 potentially harmful prescribing pattern or practice for purposes of
24 Subsection (a). In determining the conduct that constitutes a
25 potentially harmful prescribing pattern or practice, the board
26 shall consider:

27 (1) the number of times an optometrist or therapeutic

1 optometrist prescribes a drug listed in Section 351.3591(b); and

2 (2) for prescriptions described by Subdivision (1),
3 patterns of prescribing combinations of those drugs and other
4 dangerous combinations of drugs identified by the board.

5 (c) If the board suspects that an optometrist or therapeutic
6 optometrist licensed under this chapter may be engaging in
7 potentially harmful prescribing patterns or practices, the board
8 may notify the optometrist or therapeutic optometrist of the
9 potentially harmful prescribing pattern or practice.

10 (d) The board may initiate a complaint against an
11 optometrist or therapeutic optometrist based on information
12 obtained under this section.

13 SECTION 21. Section 351.152(c), Occupations Code, is
14 repealed.

15 SECTION 22. (a) Except as provided by Subsection (b) of
16 this section, Section 351.059, Occupations Code, as amended by this
17 Act, applies to a member of the Texas Optometry Board appointed
18 before, on, or after the effective date of this Act.

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

1 completes the additional training.

2 SECTION 23. (a) As soon as possible after the effective
3 date of this Act, the Texas Optometry Board shall revise the board's
4 rules as necessary to implement Section 351.254(a), Occupations
5 Code, as amended by this Act.

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

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

18 SECTION 24. Section 351.3591, Occupations Code, as added by
19 this Act, applies only to a prescription issued on or after
20 September 1, 2018. A prescription issued before September 1, 2018,
21 is governed by the law in effect on the date the prescription is
22 issued, and the former law is continued in effect for that purpose.

23 SECTION 25. This Act takes effect September 1, 2017.