

**SUBJECT:** Regulating contact lens dispensing

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 6 ayes — Gray, Coleman, Capelo, Glaze, Maxey, Uresti  
2 nays — Delisi, Wohlgemuth  
1 absent — Longoria

**WITNESSES:** For — Dawn Domaschk; Jay Ellwanger; Heather Gould; Lisa McGiffert, Consumers Union; Bruce Richardson, Opticians Association of Texas; Amy Shepherd; *Registered but did not testify:* Deborah Hornickel; Anthony Kniffen; Robert Solomon  
  
Against — Clark Newman, Marcus Piccolo, Laurie Sorrenson, Texas Optometric Association; Thomas Walters; *Registered but did not testify:* B.J. Avery, John Cornett, Texas Optometric Association; Annette Badz-Wible  
  
On — Rebecca Berryhill, Stephen Mills, Texas Department of Health; Joe DeLoach; Lisa Ewald, Texas Optometry Board; G. Thorne, Texas Ophthalmological Association

**BACKGROUND:** In 1997, the 75th Legislature enacted the Contact Lens Prescription Act (Occupations Code, ch. 353, subch. A) to regulate the dispensing of contact lenses, including the release of prescriptions, the filling of contact lens prescriptions and the establishment of a lens dispensing permit.

**DIGEST:** CSHB 1877 would amend the Contact Lens Prescription Act to change certain provisions with regard to the regulation of contact lens prescriptions and dispensing. It would direct the Texas Board of Health to adopt the necessary rules to implement this bill and to ensure the prompt release or confirmation of a patient's valid prescription. The board also would be responsible for enforcement.

This bill would add businesses that held a contact lens dispensing permit to the list of entities authorized to dispense contact lenses. These entities would be permitted to dispense lenses if they receive a valid prescription, rather than an original prescription. Prescriptions could be transmitted electronically, and a digital signature would be considered equal to a written signature. The prescription also could contain documentation of the physician's oral approval. The dispenser would have to verify that the prescription was valid, whether written or electronic.

The dispenser would have to keep a copy of the prescription for five years after it was filled, return the original to the patient, and notify the prescribing physician of the dispensing. The prescribing physician would have to release or confirm promptly the validity of the prescription, which would be kept on record by the dispenser. A physician would be authorized to declare a prescription invalid if the prescription had expired or the total number of lenses dispensed exceeded the original prescription by 20 percent. A patient or the agent of a patient could request an extension of the prescription, which the physician could do without another eye exam.

Physicians would have to provide patients with the original prescription and additional copies at no charge upon request. Contact lens prescriptions could be limited only in brand, and follow up visits could be required only in cases where warranted by the patient's health. Physicians only could refuse to write a prescription if the refusal were based on a health concern; the patient had not fulfilled a financial obligation, unless it was an insurance claim; or the prescription had expired. If the prescription had not expired, but more than a year had passed, the physician still would not be permitted to refuse. Physicians would have to provide a written reason for the refusal.

This bill would allow lens dispensing permit holders to use a physician's refusal to promptly release a prescription as a defense to enforcement or other action if the permit holder were prevented from complying with the Contact Lens Prescription Act.

The bill would take effect September 1, 2001, and would apply only to requests for release of a prescription made after that date. This bill would direct the board to adopt these rules by January 1, 2002.

SUPPORTERS  
SAY:

CSHB 1877 would help consumers obtain needed prescriptions for contact lenses in a timely and convenient manner, allow them to shop competitively for contact lenses, and prevent unnecessary and duplicative eye examination expenses or over-priced contact lens charges. The bill would strike a fair balance between the public's right to access prescriptions and concerns for medical consequences.

CSHB 1877 would close some of the loopholes left after the 75th Legislature enacted the Contact Lens Prescription Act. Physicians would have to release a prescription at the time of an eye exam and respond to requests for prescription verification. This would allow consumers to shop around for and fill their prescription somewhere other than their eye doctor's office. The bill also would prohibit physicians from refusing a prescription, then filling it themselves.

CSHB 1877 would protect consumers from possible eye problems that could be caused by outdated prescriptions, hard contact lens-related problems, or medical conditions in which the wearing of a contact lens could cause complications. The bill would allow physicians and optometrists to refuse to release a prescription for health-related reasons, including any potential harm to the patient's ocular health, or because the prescription had expired. The bill would limit the number of contacts that could be dispensed from one prescription to 120 percent of the original limit to ensure that consumers could obtain extras, but not stockpile them at a risk to their health.

OPPONENTS  
SAY:

CSHB 1877 would perpetuate the mistaken belief that contact lenses are a consumer commodity that is harmless and should not be monitored tightly by eye doctors. The FDA considers contact lenses a medical device because of the potential health hazard they pose if poorly fitted or improperly used. Patients should have the ability to shop around, but physicians also should be able to protect their patients' health.

NOTES:

The committee substitute would allow the physician to set a medically appropriate expiration. It also would require dispensers to obtain verification and physicians to respond promptly. The substitute would limit the number of contacts that could be dispensed from one prescription to 120 percent of the original limit. The committee substitute would permit a physician to declare a prescription invalid only in specific instances and with a written

explanation, and would direct the Texas Board of Health to implement and enforce contact lens prescription regulations.

The committee substitute would not extend the expiration on prescriptions to two years, would not require record keeping for prescriptions requesting fewer than the maximum amount of lenses, would not presume verification if there were no response from a physician, and would not enforce posting requirements, as in the original version.

The companion bill, SB 931 by Moncrief, was referred to the Senate Health and Human Services Committee on February 27.