

## **BILL ANALYSIS**

Senate Research Center  
77R5419 JMM-F

S.B. 931  
By: Moncrief  
Health & Human Services  
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As Filed

### **DIGEST AND PURPOSE**

Current law does not permit anyone except physicians, optometrists, or their employees to dispense contact lenses. As proposed, S.B. 931 allows for mail order dispensation of contact lenses by eliminating legal barriers such as the requirement for an original prescription.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 353A, Occupations Code, by adding Sections 353.005 and 353.006, as follows:

Sec. 353.005. EXEMPTION FROM OTHER LAWS. Provides that a permit holder under this chapter who is not licensed under Subtitle B or Chapter 351 is exempt from the requirements of those laws as long as the permit holder is in compliance with this chapter.

Sec. 353.006. DIGITAL SIGNATURE. (a) Defines “digital signature.”

(b) Provides that a written electronic communication sent from or received in this state in connection with a transaction governed by this chapter is considered signed if a digital signature is transmitted with the communication.

(c) Provides that this section does not preclude any symbol from being valid as a signature under other applicable law.

(d) Provides that the use of a digital signature under this chapter is subject to criminal laws relating to fraud and computer crimes, including Chapters 32 (Fraud) and 33 (Computer Crimes), Penal Code.

SECTION 2. Amends Section 353.051, Occupations Code, to authorize a business entity that holds a contact lens dispensing permit issued under this subchapter to dispense contact lenses.

SECTION 3. Amends Section 353.101, Occupations Code, to prohibit a person other than the prescribing physician, optometrist, or therapeutic optometrist from filling a contact lens prescription or selling or dispensing contact lenses to a consumer in this state unless the person receives a contact lens prescription, rather than an original contact lens prescription, that has not expired and that conforms to the requirements of this chapter; or has verified or attempted to verify the consumer’s contact lens prescription.

SECTION 4. Amends Section 353.104, Occupations Code, as follows:

Sec. 353.104. New heading: **REQUEST FOR PRESCRIPTION REFILL OR VERIFICATION**. Requires a physician, optometrist, or therapeutic optometrist, if a patient or an agent of the patient requests a refill or verification of the patient's contact lens prescription, to provide the prescription or verification, rather than may telephone or fax the prescription, to a person authorized to dispense contact lenses under Section 353.051. Requires the prescription or verification record to include certain information, if known, of the physician, optometrist, or therapeutic optometrist. Makes conforming changes.

SECTION 5. Amends Section 353.152, Occupations Code, to delete text requiring that a contact lens prescription be written and contain: the original signature of the physician, optometrist, or therapeutic optometrist; and, in the case of disposable contact lenses, the total number of lenses authorized to be issued under the prescription.

SECTION 6. Amends Section 353.153, Occupations Code, to prohibit a physician, optometrist, or therapeutic optometrist from issuing a contact lens prescription that expires before the second, rather than first, anniversary of the date the patient's prescription parameters are determined, with exceptions.

SECTION 7. Amends Section 353.154, Occupations Code, to make a conforming change.

SECTION 8. Amends Section 353.155(b), Occupations Code, to make a conforming change.

SECTION 9. Amends Section 353.156, Occupations Code, to require a physician, optometrist, or therapeutic optometrist who performs an eye examination and fits a patient for contact lenses to prepare and give a contact lens prescription to the patient. Requires the physician or optometrist who issued a prescription to provide the prescription to the patient or the patient's agent and to verify the patient's prescription at any time during which the prescription is valid. Provides that if the prescribing physician or optometrist fails to respond to a request for verification of a prescription within a medically reasonable time, the prescription previously provided to the patient or agent is considered to be valid. Requires a health care professional who sells contact lenses to post a sign in plain view of the area in which payment for the lenses is to be made and having a certain sized font the following statement: **"YOU HAVE A RIGHT TO RECEIVE YOUR CONTACT LENS PRESCRIPTION FOLLOWING THE FINAL FITTING OF YOUR CONTACTS."** Deletes text regarding a request for a prescription, the physician or optometrist determining the prescription, and a request from a patient without an original prescription.

SECTION 10. Amends Section 353.157, Occupations Code, to authorize a physician, optometrist, or therapeutic optometrist to exclude categories of contact lenses from a contact lens prescription only if the exclusion is clinically indicated. Authorizes a physician or optometrist to refuse to release a contact lens prescription under certain circumstances. Makes conforming changes.

SECTION 11. Amends Section 353.158, Occupations Code, to prohibit a physician, optometrist, or therapeutic optometrist from failing or refusing to respond to a request for verification of a prescription if the prescription information submitted for verification contains an error.

SECTION 12. Amends Section 353.204(b), Occupations Code, to provide that, except as otherwise provided by this section, the Texas Board of Health (board) is solely responsible for enforcing this chapter and for enforcing Subtitle B and Chapter 351 with respect to an alleged violation by a business that holds a permit under Section 353.052.

SECTION 13. Amends Chapter 353E, Occupations Code, by adding Section 353.2041, as follows:

Sec. 353.2041. **DEFENSE TO ENFORCEMENT OR OTHER ACTION**. Provides that it is a complete defense to any action against a permit holder under this chapter that the permit holder was prevented from complying with a provision of this chapter as a result of the refusal by a physician, optometrist, or therapeutic optometrist, or an agent of such an individual, to verify a

prescription or to provide prescription information required under this chapter.

SECTION 14. Effective date: September 1, 2001.

Makes application of this Act prospective.