

BILL ANALYSIS

Senate Research Center
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S.B. 314
By: Schwertner et al.
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this bill is to enact the recommendations of the Sunset Commission regarding the Texas Optometry Board (TOB). TOB licenses and regulates optometrists. To achieve its mission, the agency reviews initial license applications, renews licenses annually, and investigates complaints against optometrists, taking action when necessary.

The TOB is subject to abolishment under the Sunset Act on September 1, 2017, unless continued by the Legislature. The Sunset Commission concluded that Texas has an ongoing need for the functions of TOB, but opportunities exist to strengthen licensing and enforcement practices to be more consistent with standard best practices.

TOB is governed by Chapters 351 and 353 of the Occupations Code. This legislation addresses issues differently from current law by:

- Requiring optometrists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing certain drugs.
- Requiring the optometry board to query the Prescription Monitoring Program on a periodic basis to identify potentially harmful prescribing patterns among its licensees.
- Requiring the agency to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Requiring the agency to check for disciplinary or other legal actions in other states for license applications and renewals.
- Eliminating the provision requiring five affirmative votes of the nine-member board to take an enforcement action.
- Prohibiting the board from accepting anonymous complaints and requires the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Authorizing the agency to provide biennial license renewal.
- Removing a subjective qualification required of applicants for licensure.
- Removing the notarization requirement for individuals applying for licensure.
- Removing the statutory limitation currently restricting the agency's authority to lower fees.
- Replacing archaic and subjective disciplinary provisions with more specific disciplinary criteria, and authorizes the agency to order physical and mental examinations if probable cause exists to do so.
- Updating a standard across-the-board requirement related to board member training.

- Continuing the state's regulation of optometrists and TOB as an independent agency for 12 years.

As proposed, S.B. 314 amends current law relating to the continuation and functions of the Texas Optometry Board and authorizes a reduction in fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Optometry Board in SECTION 12 (Section 351.302, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 351.004, Occupations Code, as follows:

Sec. 351.004. SUNSET PROVISION. Provides that the Texas Optometry Board (TOB), is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, TOB is abolished and this chapter expires September 1, 2029, rather than 2017.

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

(c) Requires that the training program provide the person with information regarding the law governing TOB operations; TOB's programs, functions, rules, and budget; the scope of the limitations on the rulemaking authority of TOB; the results of the most recent formal audit of TOB; the requirements of laws relating to open meetings, public information, administrative procedures, and disclosing conflicts-of-interest; and other laws applicable to member of TOB in performing their duties; and any applicable ethics policies adopted by TOB or the Texas Ethics Commission. Deletes existing text relating to the legislation that created TOB and the Contact Lens Prescription Act. Redesignates existing Subdivision (4) as (5) and (5) as (6).

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

SECTION 3. Amends Section 351.154(b), Occupations Code, as follows:

(b) Requires TOB to deposit in the University of Houston development fund 15 percent of each renewal fee, rather than annual renewal fee, collected by TOB under Section 351.152 (Fees). Makes no further changes to this subsection.

SECTION 4. Amends Section 351.163(d), Occupations Code, to require the executive director to number and record each license or renewal certificate, rather than annual renewal certificate, issued by TOB.

SECTION 5. Amends the heading to Section 351.2045, Occupations Code, to read as follows:

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

SECTION 6. Amends Section 351.2045, Occupations Code, by amending Subsection (a) and adding Subsections (c-1) and (f), as follows:

(a) Provides that each complaint, adverse report, investigation file, and other investigation report and all other investigative information in the possession of or received or gathered by TOB or TOB's employees or agents relating to a license holder,

an application for a license, or a criminal investigation or proceeding is privileged and confidential and is, rather than TOB's investigation files are confidential, privileged, and, not subject to discovery, subpoena, or any other means of legal compulsion for release to anyone other than TOB or an employee or agent of TOB involved in any disciplinary action relating to a license holder. Makes a nonsubstantive change.

(c-1) Provides that TOB's providing of information under Subsection (c) does not constitute a waiver of privilege or confidentiality under this chapter or any other law.

(f) Requires TOB to protect the identity of a complainant to the extent possible.

SECTION 7. Amends Subchapter E, Chapter 351, Occupations Code, by adding Section 351.2046, as follows:

Sec. 351.2046. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) Defines "anonymous complaint," "insurance agent," "insurer," and "third-party administrator."

(b) Prohibits TOB from accepting anonymous complaints.

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

(d) Requires TOB, not later than the 15th day after the date the complaint is filed with TOB, to 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. Amends Section 351.254(a), Occupations Code, as follows:

(a) Provides that an applicant is eligible to take the licensing examination if the applicant provides to the executive director, on a form provided by TOB, information TOB considers necessary to enforce this chapter, including satisfactory evidence, rather than satisfactory sworn evidence, that the applicant:

(1) makes no change to this subdivision;

(2) deletes previously existing text of Subdivision (2) that required satisfactory evidence that the applicant is of good moral character and redesignates Subdivision (3) as Subdivision (2); and

(3) redesignates existing Subdivision (4) as Subdivision (3).

SECTION 9. Amends Subchapter F, Chapter 351, Occupations Code, by adding Sections 351.2525 and 351.2526, as follows:

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

(b) Prohibits TOB from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TOB to conduct a criminal history record information check of each applicant for a license using certain information.

(d) Authorizes TOB to enter into an agreement with DPS to administer a criminal history record information check required under this section and authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

Sec. 351.2526. REVIEW OF NATIONAL PRACTITIONER DATABASE. Requires TOB to establish a process to review at least one national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license under this chapter.

SECTION 10. Amends the heading to Section 351.301, Occupations Code, to read as follows:

Sec. 351.301. RENEWAL CERTIFICATE.

SECTION 11. Amends Section 351.301(a), Occupations Code, to prohibit a person required by this subchapter to hold a renewal certificate, rather than an annual renewal certificate, from practicing optometry or therapeutic optometry without the certificate.

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

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

(a-1) Redesignates existing text of Subsection (a) as Subsection (a-1).

SECTION 13. Amends Sections 351.304(a) and (b), Occupations Code, as follows:

(a) Requires an optometrist or therapeutic optometrist, not later than the date provided, rather than January 1 of each year or as otherwise provided, under Section 351.302, to pay to TOB a renewal fee, rather than an annual renewal fee, for the renewal of a license to practice optometry or therapeutic optometry, rather than for the year. Makes no further changes to this subsection.

(b) Makes conforming changes.

SECTION 14. Amends Subchapter G, Chapter 351, Occupations Code, by adding Section 351.3045, as follows:

Sec. 351.3045. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) Requires an applicant renewing a license issued under this chapter to 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) Authorizes TOB to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that a license holder is not required to submit fingerprints under this section for the renewal of a license if the license holder has previously submitted fingerprints under certain sections of the Occupations Code.

SECTION 15. Amends Sections 351.305, Occupations Code, as follows:

Sec. 351.305. ISSUANCE OF CERTIFICATE. Requires TOB, on receipt of the required fees, to issue a, rather than an annual, renewal certificate containing information from

TOB records that TOB considers necessary for the proper enforcement of this chapter, including the license number and the period, rather than year, for which the license is renewed.

SECTION 16. Amends Section 351.309, Occupations Code, as follows:

Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS. Provides that a person is exempt from the continuing education requirements of Section 351.308 (Continuing Education) if the person:

- (1) makes no change to this subdivision;
- (2) served in the regular armed forces of the United States during part of the most recent license term, rather than 12 months preceding the annual license renewal date;
- (3) makes conforming change to this subdivision;
- (4) was first licensed during the period, rather than 12 months, preceding the license renewal date, rather than annual license renewal date.

SECTION 17. Amends Subchapter H, Chapter 351, Occupations Code, by adding Section 351.3591, as follows:

Sec. 351.3591. DUTIES RELATED TO CERTAIN PRESCRIPTIONS. (a) Prohibits an optometrist or therapeutic optometrist from prescribing 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) (relating to prohibiting TOB from permitting any person to have access to information submitted to TOB, except for certain health professionals), Health and Safety Code.

(b) Provides that Subsection (a) applies only to the prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

(c) Provides that failure by an optometrist or therapeutic optometrist to comply with the requirements of this section is grounds for disciplinary action under Section 351.501.

SECTION 18. Amends Section 351.501, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Authorizes TOB, rather than authorizes TOB on the vote of five or more members, to 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 TOB determines that:

(1) to (3) makes no changes to these subdivisions;

(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. Deletes the text of previously existing Paragraphs (A) to (D).

(5) to (17) makes no changes to these subdivisions.

(d) Authorizes TOB to refuse to issue a license to an applicant or to revoke or suspend a license or place a license holder on probation for a period determined by TOB because of the applicant's or license holder's violation of a law of this state, other than this chapter,

or a rule of another licensing board in this state, or of a statute or rule of another state as determined by a review conducted as provided by Section 351.2526, if the violation constitutes a violation of the laws of this state or a TOB rule.

SECTION 19. Amends Subchapter K, Chapter 351, Occupations Code, by adding Section 351.5014, as follows:

Sec. 351.5014. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION. (a) Requires TOB or an authorized agent of TOB on probable cause, in enforcing Section 351.501(a)(4), as determined by TOB or agent, to request an applicant or license holder to submit to a mental or physical examination by a physician or other health care professional designated by TOB. Requires TOB to adopt guidelines, in conjunction with persons interested in or affected by this section, to enable TOB to evaluate circumstances in which an applicant or license holder may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) Requires TOB, if the applicant or license holder refuses to submit to the examination under Subsection (a), to issue an order requiring the applicant or license holder to show cause why the applicant or license holder will not submit to the examination. Requires TOB to schedule a hearing on the order not later than the 30th day after the date notice is served on the applicant or license holder. Requires TOB to notify the applicant or license holder of the order and hearing by personal service or certified mail, return receipt requested.

(c) Provides that at the hearing, the applicant or license holder and the applicant's or license holder's attorney are entitled to present testimony or other evidence to show why the applicant or license holder should not be required to submit to the examination. Provides that the applicant or license holder has the burden of proof to show why the applicant or license holder should not be required to submit to the examination.

(d) Requires TOB, after the hearing, to, as applicable, by order require the applicant or license holder to submit to the examination not later than the 60th day after the date of the order or withdraw the request for examination.

SECTION 20. Amends Subchapter M, Chapter 351, Occupations Code, by adding Section 351.6011, as follows:

Sec. 351.6011. MONITORING HARMFUL PRESCRIBING PATTERNS. (a) Requires TOB to periodically check the prescribing information submitted to the Texas State Board of Pharmacy (TSBP) as authorized by Section 481.076(a)(1), Health and Safety Code, to determine whether an optometrist or therapeutic optometrist licensed under this chapter is engaging in potentially harmful prescribing patterns or practices.

(b) Requires TOB, in coordination with TSBP, to determine the conduct that constitutes a potentially harmful prescribing pattern or practice for purposes of Subsection (a). Requires TOB, in determining the conduct that constitutes a potentially harmful prescribing pattern or practice, to consider certain information.

(c) Authorizes TOB, if TOB suspects that an optometrist or therapeutic optometrist licensed under this chapter may be engaging in potentially harmful prescribing patterns or practices, to notify the optometrist or therapeutic optometrist of the potentially harmful prescribing pattern or practice.

(d) Authorizes TOB to initiate a complaint against an optometrist or therapeutic optometrist based on information obtained under this section.

SECTION 21. Repealer: Section 351.152(c) (relating to prohibiting TOB to set a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date), Occupations Code.

SECTION 22. Provides that except as provided by Subsection (b) of this section, Section 351.059, Occupations Code, as amended by this Act, applies to a member of TOB appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TOB who, before the effective date of this Act, completed the training program required by Section 351.059, Occupations Code, as that law existed before the effective date of this Act, is required to complete additional training on the subjects added by this Act to the training program as required by Section 351.059, Occupations Code, as amended by this Act. Prohibits a TOB member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TOB held on or after December 1, 2017, until the member completes the additional training.

SECTION 23. (a) Requires TOB, as soon as possible after the effective date of this Act, to revise TOB's rules as necessary to implement Section 351.254(a), Occupations Code, as amended by this Act.

(b) Requires TOB, not later than September 1, 2022, to obtain criminal history record information on each person who, on the effective date of this Act, holds a license issued under Chapter 351, Occupations Code, and did not undergo a criminal history record information check based on the license holder's fingerprints on initial application for the license. Authorizes TOB to suspend the license of a license holder who does not provide the criminal history record information as required by TOB and this subsection.

(c) Authorizes TOB to establish procedures to implement a biennial renewal of licenses as provided by Subchapter G, Chapter 351, Occupations Code, by this Act.

SECTION 24. Makes application of Section 351.3591 prospective to September 1, 2018.

SECTION 25. Effective date: September 1, 2017.