

BILL ANALYSIS

S.B. 314
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Optometry Board, which licenses and regulates optometrists, is subject to the Texas Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. S.B. 314 seeks to continue the optometry board with several statutory modifications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 314 amends the Occupations Code to postpone from September 1, 2017, to September 1, 2029, the date on which the Texas Optometry Board is abolished and the Texas Optometry Act expires unless continued in existence as provided by the Texas Sunset Act. The bill revises the training program for board members and provides for a training manual. The bill's provisions relating to board member training and the training manual apply to a board member appointed before, on, or after the bill's effective date. The bill requires a board member who, before the bill's effective date, completed the training program under the law as it existed before the bill's effective date to complete additional training only on subjects added by the bill to the training program and prohibits such a board member from voting, deliberating, or being counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the member completes the additional training.

S.B. 314 extends the privilege and confidentiality of the board's investigation files and the exemption of those files from any means of legal compulsion for release to anyone other than the board or a board employee or agent to all investigative information in the possession of or received or gathered by the board or the board's employees or agents relating to a license holder, an application for a license, or a criminal investigation or proceeding. The authorized disclosure of that information to a board employee or agent is restricted to an employee or agent involved in a disciplinary action relating to a license holder. The bill establishes that the board's provision to a license holder of information in the board's possession that the board intends to offer into evidence in presenting its case in chief at a contested case hearing on a complaint against the license holder does not constitute a waiver of a privilege or confidentiality under any law. The bill requires the board to protect the identity of a complainant to the extent possible.

S.B. 314 prohibits the board from accepting anonymous complaints and requires a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder to include the name and address of the agent, insurer,

company, or administrator filing the complaint. The bill requires the board, not later than the 15th day after the date the complaint is filed with the board, to notify the license holder who is the subject of the complaint of the name and address of the agent, insurer, company, or administrator who filed the complaint, unless the notice would jeopardize an investigation.

S.B. 314 removes the requirement that the evidence an applicant for a license must present to the board to be eligible to take a licensing exam be sworn evidence, removes from such evidence proof that the applicant is of good moral character, and requires the board to revise the board's rules as necessary to implement these changes. The bill requires the board to require that an applicant for a license submit a complete and legible set of fingerprints to the board or to the Department of Public Safety (DPS) on a board-prescribed form for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation, sets out the board's duties regarding a criminal history record information check of a license applicant, and provides for an agreement between the board and DPS for DPS to administer such a check. The bill sets out a requirement for certain license renewal applicants to submit fingerprints and authorizes the board to administratively suspend or refuse to renew the license of a person who does not comply with the requirement. The bill requires the board 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. The bill requires the board to obtain, not later than September 1, 2022, criminal history record information on each person who on the bill's effective date holds a license issued by the board and did not undergo a criminal history record information check based on the license holder's fingerprints on initial application for the license and authorizes the board to suspend the license of such a license holder who does not provide the criminal history record information as required.

S.B. 314 makes a license issued by the board valid for a term of one or two years as determined by board rule and authorizes the board to establish procedures to implement a biennial renewal of licenses.

S.B. 314 removes the condition on the board's authority to take disciplinary action that five or more members vote for the action, revises the grounds on which the board may impose a disciplinary action, and sets out requirements for an applicant or license holder to submit to a mental or physical examination if the board determines that 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.

S.B. 314 repeals Section 351.152(c), Occupations Code, which prohibits the board from setting a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date.

EFFECTIVE DATE

September 1, 2017.