

SUBJECT: Continuing the Texas Optometry Board

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick,
Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

SENATE VOTE: On final passage, April 19 — 30-1 (Hall)

WITNESSES: None

BACKGROUND: In 1921, the 37th Legislature created the Texas State Board of Examiners in Optometry, now known as the Texas Optometry Board. The mission of the board is to ensure optometry professionals are qualified, competent, and adhere to established standards.

Functions. The Texas Optometry Board licenses optometrists, regulates the separation of optometry practices and retail optical dispensing, and investigates complaints, taking disciplinary action when necessary. The board also can collect fees for providing certain services, including giving examinations and issuing licenses.

Governing structure. The board is composed of nine members who serve staggered six-year terms, including six optometrists or therapeutic optometrists and three members of the public. Board members are appointed by the governor.

Disciplinary actions. Under Occupations Code, sec. 351.501, on the vote of five or more members and in certain circumstances, the board may refuse to issue a license to practice optometry, place a probation on a license holder, impose a fine, or impose a condition for continued practice.

Funding. The total expenditures of the board in fiscal 2016 totaled \$472,825. Most board funding comes from fees deposited to general revenue, with the remainder coming from certain appropriated receipts and interagency contracts.

Staffing. In fiscal 2016, the board employed seven staff members.

The Texas Optometry Board is subject to the Sunset Review Act and, unless continued, will be abolished September 1, 2017.

DIGEST:

SB 314 would continue the Texas Optometry Board through September 1, 2029. The bill also would adopt certain Sunset Advisory Commission recommendations.

Disciplinary actions. The board could impose disciplinary measures on an applicant or license holder who developed an incapacity that prevented the individual from practicing optometry with reasonable skill, competence, and safety to the public. The bill would remove the requirement that five of the nine board members must vote in order to refuse to issue a license, place a probation on a license holder, impose a fine, or impose a condition for continued practice. It also would remove certain references to specific reasons for the board to discipline a license holder.

To enforce a disciplinary action against an applicant or license holder who developed an incapacity, the board or an agent of the board would have to request the individual to submit to a mental or physical examination by a physician or other health care professional. The board would adopt guidelines to evaluate circumstances in which an applicant or license holder could be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

If the individual refused to submit to the examination, the board would have to issue an order requiring the applicant or license holder to show

cause for refusal. The board would schedule a hearing on the order within 30 days of the notice being served, and notify the applicant or license holder of the order and hearing. The individual would have the burden of proof to show why he or she should not be required to submit to the examination. After the hearing, the board would either require the applicant or license holder to submit to the examination no within 60 days after the order was submitted or withdraw the request.

Training program. The bill would expand the training program required for members of the board to include information regarding the scope and limitation of the board's rulemaking authority and the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law. The executive director of the board would have to create a training manual and distribute the manual to each board member annually.

A board member who had not completed the additional training required in the bill could not vote, deliberate, or be counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the member had completed the additional training.

Criminal history record information. The board would require applicants for a new or renewed optometry license to submit a complete and legible set of fingerprints for the purpose of obtaining criminal history record information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation by September 1, 2022. The board could not issue a license to an individual who did not comply with fingerprinting requirements. A license holder would not have to submit fingerprints for a renewed license if the license holder had done so previously for the initial license or a prior license renewal.

The bill would allow the board to enter into an agreement with DPS to administer a criminal history record information check and authorize DPS to collect from an applicant any costs incurred in conducting the check. The board also would establish a process to search at least one national practitioner database to determine whether another state had taken disciplinary action against an applicant or license holder.

The board could suspend or refuse to renew the license of an individual who did not comply with fingerprinting requirements or for violating a statute or rule of this or another state.

Investigative process. Complaints, adverse reports, and all investigative information received by the Texas Optometry Board relating to an optometry license holder, license application, or criminal investigation would be privileged and confidential. The board would be required to protect the identity of a complainant to the extent possible.

The bill would prohibit the board from accepting anonymous complaints. A complaint filed by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder would have to include the name and address of the person filing the complaint. The board would have to notify the license holder who was the subject of a complaint of the name and address of the complainant within 15 days of the filing date unless the notice would jeopardize an investigation.

Licensing and applications. The bill would allow a license to practice optometry or therapeutic optometry to be valid for a term of one or two years, as determined by board rules.

The bill would remove language from statute requiring that an optometry license applicant be "of good moral character" to be issued a license.

Fees. The bill would repeal Occupations Code, sec. 351.152(c), which prohibited the board from setting a fee less than the amount that the fee was on September 1, 1993.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS
SAY:

SB 314 would continue the Texas Optometry Board, a state agency necessary to oversee the practice of optometry and therapeutic optometry in the state. The bill also would strengthen licensing and enforcement practices to be more consistent with standard best practices.

The bill would require license applicants to submit to fingerprinting and criminal background checks in order to conform to common licensing standards across the state. Requiring mental or physical examination as part of a disciplinary action is also standard procedure for several state boards.

It is important that the board protect the identity of a complainant to the best extent possible to ensure that individuals are not disincentivized from submitting complaints against problematic optometrists.

OPPONENTS
SAY:

SB 314 would expand government and increase the regulatory burden on the optometry industry by allowing the Texas Optometry Board to require a member to submit to mental or physical examination and by requiring license applicants to submit to fingerprinting and background checks.

Further, maintaining the confidentiality of complaints against a license holder could be impossible in cases in which patient records are necessary to adjudicate the complaint.

NOTES:

A companion bill, HB 3012 by Flynn, was considered in a public hearing by the Public Health Committee on May 9 and left pending.