

BILL ANALYSIS

Senate Research Center

C.S.H.B. 196
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Health & Human Services
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Committee Report (Substituted)

DIGEST

Currently, 22 states require eye doctors to release contact lens prescriptions to patients, either by statute or board rule. The Texas Optometry Board newsletter has recommended, but not required, licensees to notify patients of their prescription release policies prior to administering an eye exam. Presently, Texas law does not explicitly require optometrists or ophthalmologists to release prescriptions to their patients. Some eye doctors release prescriptions, while others do not. Eye doctors defend the practice of withholding prescriptions by stating it is needed to control quality of care and to protect themselves from liability. Consequently, Texas consumers often spend more for contact lenses because they are unable to purchase their lenses from other vendors at more competitive prices. C.S.H.B. 196 establishes a patient's right to access a prescription for contact lenses, and requires ophthalmologists, optometrists, and therapeutic optometrists to release contact lens prescriptions to their patients, unless certain medical or other specified conditions warrant refusal.

PURPOSE

As proposed, C.S.H.B. 196 provides for the issuance of a contact lens prescription and a patient's right of access to that prescription, and establishes penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Health in SECTIONS 4(j) and 10 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE: Texas Contact Lens Prescription Act.

SECTION 2. DEFINITIONS. Defines "board," "contact lens prescription," "department," "disposable contact lenses," "optician," "optometrist," "pharmacist," "physician," and "therapeutic optometrist."

SECTION 3. MANDATORY RELEASE OF CONTACT LENS PRESCRIPTION. Sets forth the terms by which each physician, optometrist, or therapeutic optometrist who performs an eye examination and fits a patient for contact lenses, except as provided by Subsection (d), is required to prepare and give a contact lens prescription to the patient on request; and is authorized to exclude categories of contact lenses if the exclusion is clinically indicated. Prohibits the physician, optometrist, or therapeutic optometrist from charging the patient a fee in addition to the examination and fitting fee as a condition for giving a prescription to the patient. Sets forth the terms by which a physician, optometrist, or therapeutic optometrist is authorized to refuse to give a prescription to a patient. Prohibits a physician, optometrist, or therapeutic optometrist from conditioning the availability of an eye examination, a fitting for contact lenses, or the issuance of a contact lens prescription on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from certain individuals or entities.

SECTION 4. REGULATION OF PERSONS FILLING CONTACT LENS PRESCRIPTIONS. Prohibits a person from filling a prescription in this state or selling, delivering, or dispensing contact lenses to any person in this state except as provided by this Act. Prohibits a person, other than the prescribing individual, from selling, delivering, or dispensing contact lenses to a patient or other

consumer unless the person receives an original contact lens prescription that conforms with the requirements of this Act. Authorizes contact lenses to be dispensed only by certain persons, and prohibits a prescription from being modified, except as provided by this Act. Sets forth other regulations for persons filling contact lens prescriptions. Authorizes the board to adopt rules that permit a contact lens prescription to be maintained under this Act to be scanned into a computer and the original paper prescription destroyed.

SECTION 5. CONTACT LENS DISPENSING PERMIT. Requires an optician to obtain a contact lens dispensing permit from the Texas Board of Health (board) before dispensing contact lenses to a person in this state. Requires the board to issue a permit to applicants who meet certain qualifications. Requires a corporation or other business entity that dispenses contact lenses to obtain a permit in the entity's own name; and prohibits the same from dispensing lenses through an employee or other person who holds a permit. Sets forth the terms by which a corporation or other business entity that has not less than 10 locations is authorized to obtain a single permit for the entity and its employees. Prohibits the board from requiring an applicant for renewal of a permit from providing more information than is required for issuance of an original permit.

SECTION 6. ENFORCEMENT; OFFENSE. Authorizes the board to suspend or revoke a person's permit, place the permit holder on probation, or impose an administrative penalty of not more than \$1,000 for a violation of this Act. Requires a course of conduct involving more than one prescription to be considered a separate violation for each prescription filled. Provides that a person commits a Class B misdemeanor if the person violates this Act. Authorizes a court, in addition to granting injunctive relief or other legal relief, to impose a civil penalty for a violation of this Act or a rule adopted under this Act. Sets forth the agencies responsible for enforcing this Act with regard to a violation by a physician, an optometrist, a therapeutic optometrist, or a pharmacist. Sets forth other procedures regarding the enforcement of this Act and the punishment of violations.

SECTION 7. PERMIT FEES; RENEWAL. Establishes the annual permit fees for a contact lens dispensing permit. Sets forth the procedure regarding adoption of permit fees in certain amounts; deposit of all amounts received in the general revenue fund; validity of permits; and permit renewal.

SECTION 8. EMPLOYEES OF PHYSICIANS, OPTOMETRISTS, THERAPEUTIC OPTOMETRISTS, AND PHARMACISTS. Sets forth the terms by which employees of physicians, optometrists, therapeutic optometrists, and pharmacists are not required to obtain permits under certain conditions.

SECTION 9. PHYSICIAN'S PRESCRIPTIONS; DELEGATION. Provides that this Act does not prevent, limit, or restrict a physician from treating or prescribing for the physician's patients or from directing or instructing others under the physician's control or supervision. Sets forth the procedure regarding the filling of prescriptions by an optician independent of a physician's office. Establishes the conditions under which a person holding a permit is authorized to take measurements of the eye or cornea and evaluate the physical fit of lenses.

SECTION 10. PUBLIC INFORMATION. Requires the board to provide to the public and appropriate state agencies information regarding the release of contact lens prescriptions. Authorizes the board to adopt rules as necessary to implement this section.

SECTION 11. LIABILITY. Prohibits a contact lens prescription from containing, and a physician, optometrist, or therapeutic optometrist from requiring, a patient to sign a form or notice that waives or disclaims the liability of those individuals for the accuracy of the eye examination or the prescription. Sets forth the terms by which a physician, optometrist, or therapeutic optometrist is not liable for any subsequent use of a contact lens prescription by a patient.

SECTION 12. AMENDMENT. Amends Section 5.21, Article 4552, V.T.C.S. (Texas Optometry Act), by adding Subsection (e), to provide that this section does not affect the right of a patient under the Texas Contact Lens Prescription Act to have access to the patient's prescription.

SECTION 13. (a) Effective date: upon passage, except as provided by Subsection (b).

(b) Effective date for SECTIONS 3-6: January 1, 1998.

SECTION 14. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 4.

Authorizes the board to adopt rules that permit a contact lens prescription required to be maintained to be scanned into a computer and the original paper prescription destroyed.

SECTION 5.

Sets forth the terms by which a corporation or other business entity that has not less than 10 locations is authorized to obtain a single permit for the entity and its employees. Prohibits the board from requiring an applicant for renewal of a permit from providing more information than is required for issuance of an original permit.

SECTION 7.

Sets forth the various annual permit fees for a contact lens dispensing permit, depending on the status of the applicant, rather than charging a flat \$10 fee.

SECTION 13.

Changes the effective date from September 1, 1997 to upon passage.