

BILL ANALYSIS

Senate Research Center

C.S.S.B. 291
By: Patterson
State Affairs
2-21-97
Committee Report (Substituted)

DIGEST

Currently, orthotic and prosthetic providers deliver viable health care services. An orthotist is a health care professional who provides care to a patient who requires a brace. The orthotist evaluates the individual's situation and recommends the best type of orthosis to treat that patient. A prosthetist is a health care professional who provides care to a patient requiring an artificial limb due to the loss of a limb as a result of disease or trauma. The prosthetist assesses the needs of each patient and recommends to the prescribing physician the best prosthetic design for that individual. S.B. 291 addresses regulation of orthotic and prosthetic providers.

PURPOSE

As proposed, C.S.S.B. 291 outlines provisions and provides civil penalties regarding the regulation of orthotists and prosthetists.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Orthotics and Prosthetics under SECTION 1 (Sections 5(f), 6(b), 26(a), 11(a), and 23(a) V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 132, V.T.C.S., by adding Article 8920, as follows:

Art. 8920. REGULATION OF ORTHOTISTS AND PROSTHETISTS

Sec. 1. SHORT TITLE: ORTHOTICS AND PROSTHETICS ACT.

Sec. 2. DEFINITIONS. Defines "board," "commissioner," "custom-fabricated," "custom-fitted," "department," "license," "licensed orthotist," "LO," "licensed orthotist assistant," "LOA," "licensed prosthetist," "LP," "licensed prosthetist assistant," "LPA," "licensed prosthetist orthotist," "LPO," "licensed prosthetist orthotist assistant," "LPOA," "orthosis," "orthotic or prosthetic facility," "orthotics," "person," "profession of orthotics or prosthetics," "prosthesis," "prosthetics," "registered orthotic technician," "registered prosthetic orthotic technician," and "registered prosthetic technician."

Sec. 3. BOARD. Sets forth provisions for the governing of the Texas Board of Orthotics and Prosthetics (board).

Sec. 4. REMOVAL FROM BOARD. Sets forth the instances in which a member is eligible for removal from the board.

Sec. 5. BOARD POWERS AND DUTIES. Sets forth the powers and duties of the board.

Sec. 6. PUBLIC INFORMATION. Sets forth requirements for the preparation and dispersion of public information by the board.

Sec. 7. PUBLIC PARTICIPATION IN BOARD MEETINGS. Requires the board to develop and implement policies providing the public with an opportunity to appear before the

board and speak on any issue under the board's jurisdiction.

Sec. 8. PROGRAM ACCESSIBILITY. Requires the board to prepare a plan describing how a non-English speaking person can be provided access to the board's programs. Requires the board to comply with federal and state laws for program and facility accessibility.

Sec. 9. TRAINING; STANDARDS OF CONDUCT INFORMATION. Requires each board member to comply with the mandatory board member training requirements established.

Sec. 10. OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE REQUIREMENTS. Provides that the board is subject to Chapters 551 and 2001, Government Code.

Sec. 11. ORGANIZATION OF BOARD. Sets forth the requirements for the establishment of the board's organization.

Sec. 12. COMPENSATION. Provides that a board member is entitled to compensation and reimbursement of travel expenses as provided by the General Appropriations Act.

Sec. 13. EFFECT OF LOBBYING ACTIVITY. Prohibits a person from serving as a board member or acting as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 14. PUBLIC MEMBERSHIP RESTRICTION. Sets forth instances in which a person is prohibited from appointment by the governor as a public board member.

Sec. 15. CONFLICT OF INTEREST RESTRICTIONS. Sets forth instances in which certain persons are prohibited from serving as a board member.

Sec. 16. AUDIT. Provides that the financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 17. REPORT TO GOVERNOR AND LEGISLATURE. Requires the board to file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

Sec. 18. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. Requires the executive director or the executive director's designee to prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. Sets forth the requirements to be included in the policy statement.

Sec. 19. NOTICE OF STANDARDS OF CONDUCT. Requires the board to provide to its members and employees information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 20. APPROPRIATIONS TO TEXAS DEPARTMENT OF HEALTH. Requires the Texas Department of Health (department) to receive and account for funds derived under this Act. Requires the department to deposit all funds collected under this Act to the credit of the general revenue fund.

Sec. 21. EXEMPTIONS. Sets forth the instances in which this Act does not restrict a license holder of another state agency from performing health care services within the scope of the license holder's applicable licensing act. Sets forth a list of persons to which this Act does not apply.

Sec. 22. PROHIBITED ACTS. Sets forth the acts from which an unlicensed person is prohibited. Provides that a person licensed under this Act violates this Act if the person violates Section 161.091, Health and Safety Code.

Sec. 23. PROSTHETIST AND ORTHOTIST LICENSE REQUIREMENTS. Sets forth the requirements for obtaining a license to practice prosthetics or orthotics. Sets forth the items required to be included in the requirements for a license established by board rule. Sets forth alternatives to the board's rules providing requirements for a license. Provides that this subsection expires January 1, 2005. Sets forth the requirements authorizing a person to apply for an exemption. Sets forth instances authorizing a person to obtain a license to practice in this state by completing and passing all written and practical examinations approved and required by the board. Requires the board to issue a license to a person who is determined to be exempt from certain license requirements. Provides that such a license holder is entitled to the same license privileges as if the person met certain educational and vocational requirements. Provides that the person is subject to the license renewal requirements adopted by the board, except for the academic, clinical training, and examination requirements, which may not be imposed as a condition of the person's license.

Sec. 24. PHARMACISTS. Requires the board to issue a license to a person who applies and is licensed by the Texas State Board of Pharmacy and is certified by the National Community Pharmacists Association as a certified fitter or master orthotist.

Sec. 25. PROSTHETIST OR ORTHOTIST ASSISTANT LICENSE. Sets forth the requirements for an applicant for a prosthetist or orthotist assistant license.

Sec. 26. PROSTHETIC OR ORTHOTIC TECHNICIAN REGISTRATION. Sets forth the necessary requirements for an applicant for prosthetic or orthotic technician registration.

Sec. 27. ACCREDITATION OF FACILITIES. Sets forth the requirements for the accreditation of orthotic or prosthetic facilities.

Sec. 28. ISSUANCE OF LICENSE. Sets forth the requirements by which the board is required to issue a license. Authorizes a license to be granted in either orthotics or prosthetics if the person meets the requirements established by the board.

Sec. 29. PROVISIONAL LICENSE. Requires a person practicing prosthetic or orthotic patient management who is not licensed as a prosthetist or orthotist by October 1, 1998 to fulfill certain requirements. Sets forth the instances in which a person is authorized to apply for a provisional license. Provides that this section expires January 1, 2005.

Sec. 30. TEMPORARY LICENSE. Sets forth a list of individuals for whom the board is authorized to issue a temporary license. Provides that a temporary license is valid for one year from the date issued and is authorized to be renewed for not more than one year if the applicant presents to the board evidence for good cause for renewal.

Sec. 31. STUDENT REGISTRATION. Sets forth a list of individuals for whom the board is authorized to issue a student registration certificate. Authorizes a student registrant to work only under the direct supervision of a licensed orthotist, prosthetist, or prosthetist orthotist. Provides that a student registration certificate is valid for two years from the date issued and is authorized to be renewed once for an additional two years.

Sec. 32. EXAMINATION EXEMPTION. Authorizes the board to accept as a substitute for the examination requirement proof that the applicant for the exemption holds a current license in a state that has licensing requirements that are equal to or exceed the requirements of this Act.

Sec. 33. CONTINUING EDUCATION. Sets forth requirements regarding the mandatory continuing education for applicants for license renewals and current license holders.

Sec. 34. DISCIPLINARY PROVISIONS. Sets forth the findings by which the board is authorized to revoke, suspend, or refuse to renew a license issued under this Act. Authorizes a certain license to be reinstated after the first anniversary of the date of the revocation by the board on terms the board determines to be necessary.

Sec. 35. CIVIL PENALTY. Provides that a person who violates this Act is subject to a civil penalty of \$200 for the first violation and \$500 for each subsequent violation. Requires the attorney general to bring an action in the name of the state to collect a civil penalty at the request of the board. Provides that each day a violation of Section 22 of this Act continues is a separate violation.

SECTION 2. (a) Sets forth the appointments the governor is required to make not later than October 1, 1997 in making the initial appointments to the board.

(b) Requires the initial board members appointed under this section to have the necessary qualifications. Sets forth the necessary qualifications for initial board members.

(c) Authorizes a member appointed under this section to a place on the board required to be held by a person licensed under Article 8920, V.T.C.S., as added by this Act, to continue to serve without having the appropriate license until February 1, 1999, by which date the person must obtain the required license.

(d) Requires the board to adopt rules under Article 8920, V.T.C.S., as added by this Act, not later than October 1, 1998.

SECTION 3. (a) Effective date: September 1, 1997, except as provided by Subsection (b).

(b) Effective date of Sections 22 and 34, Article 8920, V.T.C.S., as added by this Act: October 1, 1998.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1, Sections 23, 24, 28, and 30, Article 8920, V.T.C.S., by adding a new subsection and renumbering existing subsections regarding regulation of orthotics and prosthetists.