

Date of Hearing: September 14, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1708 (Low) – As Amended September 8, 2017

**SUBJECT:** State Board of Optometry: practice of optometry: licensure.

**SUMMARY:** Extends the sunsets for the California Board of Optometry (Board) and its authority to appoint an executive officer from January 1, 2018 to January 1, 2022; redefines the term “advertise” to include the Internet for purposes of the Optometry Practice Act; and makes various changes to statute to improve the state’s oversight of the optometry profession and related eye health professions.

**EXISTING LAW:**

- 1) Establishes the Board under the jurisdiction of the Department of Consumer Affairs (DCA) for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) Sections 3000 *et seq.* and 2550 *et seq.*)
- 2) Subjects the Board to review by the appropriate policy committees of the Legislature and sunsets the Board on January 1, 2018. (BPC Section 3010.5)
- 3) Requires the Board to consist of eleven members, five of whom are public members, and one member is a registered dispensing optician. (BPC Section 3010.5(a))
- 4) States that protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC Section 3010.1)
- 5) Establishes under the Board, a dispensing optician committee to advise and make recommendations to the Board regarding the regulation of dispensing opticians, spectacle lens dispensers, and contact lens dispensers; requires the Committee to consist of five members, of which one must be a registered dispensing optician; one of whom shall be a spectacle lens dispenser or contact lens dispenser; two of whom shall be public members, and one of whom shall be a member of the board and, requires the Board to make the initial appointments, as specified. (BPC Section 3020)
- 6) Defines advertising as including the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any other means or methods employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale in connection with lenses, frames, or other accessories or appurtenances. (BPC Section 3006)

**THIS BILL:**

- 1) Extends the sunset date of the Board by four years, until January 1, 2022.
- 2) Extends the Board's authority to appoint an executive office by four years, until January 1, 2022.

- 3) Includes "internet" in reference to advertising.
- 4) Allow for the Board to query the National Practitioner Data Bank (NPDB) to verify whether an in-state license applicant has any out-of-state practice violations, and to charge a fee to the applicant for this query.
- 5) Clarify the Board's discretion to approve or deny an applicant with prior disciplinary issues by deleting contradicting language in current law.
- 6) Provide express inspection authority for registrants under the Registered Dispensing Opticians program.
- 7) Delete the Board's authority to award Letters of Sponsorship for individuals who may be ineligible to obtain licensure in California.
- 8) Provide express authority for the Board to take action against unlicensed individuals or entities who advertise or offer licensed professional services.
- 9) Relocate provisions relating to registration renewal cycles for spectacle lens dispensers and contact lens dispensers to a new code section within the Optometry Practice Act and sets expiration for these registrations at midnight on the last day of the month in which the license was issued during the second year of a two-year term.
- 10) Clarify that money deposited in the Optometry Fund are available to the Board only upon appropriation of the Legislature.

**FISCAL EFFECT:** According to the Senate Committee on Appropriations, new one-time costs of \$45,000 for information technology changes to allow the Board systems to interface with the NPDB and ongoing costs of about \$15,000 per year for the Board to query the data bank, which would be offset by the additional fees authorized in the bill.

**COMMENTS:**

**Purpose.** In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. The provisions in this bill are a result of the issues raised during the Board's sunset review hearing and those issues addressed in this Committee's staff background paper.

**Background.** The Board of Optometry is responsible for the licensure and regulation of numerous professionals involved in the optical healthcare industry. The Board regulates nearly 7,000 licensed optometrists, as well as contact lens dispensers, spectacle lens dispensers, and certified agents. The Board is also responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma. In addition, the Board is also responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma. As a result of AB 684 (Alejo and Bonilla),

Chapter 405, Statutes of 2015, the regulation of registered dispensing opticians (RDOs) was transferred from the jurisdiction of the Medical Board of California to the Board. This transition increased the regulatory and oversight responsibilities of the Board. The Board was last reviewed in 2013 and was granted a four-year sunset extension at that time.

One issue raised in the Board's sunset background paper related to the process by which license applicants are vetted prior to the issuance or renewal of a license to practice. Currently, the Board does not query the National Practitioner Databank (NPDB) to check whether an applicant residing in California has any outstanding practice violations under a healing arts regulatory entity in another state. This bill would enable the Board to look a licensing applicant up in the NPDB prior to issuing a license.

The Board's authority to award Letters of Sponsorship to "foreign graduates" from educational institutions outside the United States has also proven problematic, because many sponsored foreign graduates are unable to actually obtain licensure by the Board because they have not met minimum educational requirements. This bill would delete the authority to award these letters.

Another identified issue relates to an ambiguity regarding the Board's discretion to approve applicants from other states who have prior disciplinary issues. This bill would expressly state that the Board has discretion to approve or deny an applicant with prior disciplinary issues.

The Board's background paper also identified limitations related to the Board's authority to inspect premises RDOs are now allowed to operate with limited colocation between retail sellers and practicing optometrists. This bill would provide the Board with express inspection authority.

Finally, the renewal cycle provisions for registrations of individuals and entities regulated by the Board are currently contained in the Medical Board of California's practice act; this bill would relocate those provisions to a new section in the Optometry Practice Act.

**Current Related Legislation.** AB 443 (Salas) of the current legislative session would expand the scope of practice for optometrists to address access to care deficiencies. *STATUS: This bill is currently pending on the Senate Floor.*

**Prior Related Legislation.** SB 1478 (Committee on Business, Professions and Economic Development) Chapter 489, Statutes of 2016, made numerous minor, technical, or non-substantive changes to various provisions pertaining to the health-related regulatory boards of the Department of Consumer Affairs (DCA).

AB 684 (Alejo and Bonilla) Chapter 405, Statutes of 2015, authorized the establishment of landlord-tenant relationships between a registered dispensing optician (RDO), optometrist and an optical company as specified; transfers the regulation of RDOs from the Medical Board of California (MBC) to the California State Board of Optometry (CBO); replaced an optometrist with a RDO on the CBO; establishes a RDO advisory committee; and establishes a three-year period for the transition of direct employment of optometrists to leasing arrangements.

SB 821 (Committee on Business, Professions and Economic Development) Chapter 473, Statutes of 2013 made several technical and noncontroversial changes to provisions within the BPC related to the regulation of the Dental Board of California, the Board, Board of Behavioral Sciences, and Board of Pharmacy, as well as dental hygienists regulated under the Welfare and Institutions Code, as specified.

SB 305 (Lieu), Chapter 516, Statutes of 2013, extended until January 1, 2018, the sunset dates for the provisions establishing the Naturopathic Medicine Committee, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, The Board of Occupational Therapy, the Physical Therapy Board of California, the Board, and the Respiratory Care Board of California, extended the term of specified executive officers; provided that certain acts of sexual abuse or misconduct may result in denial or revocation of licensure, or may be deemed unprofessional conduct by the Board; and specified that any board, committee or bureau regulated by DCA is authorized to receive specified criminal records needed to complete an application for licensure, as specified.

**REGISTERED SUPPORT:**

California State Board of Optometry  
FirstSight Vision Services, Inc.  
National Vision, Inc.

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301