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AB-1708 State Board of Optometry: practice of optometry: licensure. (2017-2018)

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Assembly Bill No. 1708

CHAPTER 564

An act to amend Sections 3006, 3010.5, 3014.6, 3030, 3057, and 3145 of, to add Sections 2553.7 and 3047 to, and to repeal Section 3057.5 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor October 07, 2017. Filed with Secretary of State October 07, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, Low. State Board of Optometry: practice of optometry: licensure.

Existing law, the Optometry Practice Act, until January 1, 2018, establishes the State Board of Optometry. Under existing law, the State Board of Optometry is responsible for the licensure and regulation of the practice of optometry, registered dispensing opticians, spectacle lens dispensers, and contact lens dispensers. Existing law, until January 1, 2018, authorizes the State Board of Optometry to appoint an executive officer to perform duties delegated by the board. Existing law establishes the Optometry Fund and provides that all fee money collected under the act is paid into that fund and continuously appropriated. Existing law makes a violation of that act punishable as a crime.

This bill would extend the operation of the board and the authority to appoint an executive officer to January 1, 2022. The bill would make all money collected under the act available only upon appropriation of the Legislature to carry out the purposes of the act.

Existing law provides that registrations for spectacle lens dispensers and contact lens dispensers expire at 12 midnight on the last day of the birth month of the licensee during the 2nd year of a 2-year term if not renewed and that registrations for dispensing opticians expire at midnight on the last day of the month in which the license was issued during the 2nd year of a 2-year term if not renewed.

This bill would instead provide that registrations for dispensing opticians, spectacle lens dispensers, and contact lens dispensers expire at midnight on the last day of the month in which the license was issued during the 2nd year of a 2-year term if not renewed.

Existing law defines the term "advertise" for purposes of the Optometry Practice Act. Existing law makes it unlawful to advertise or hold himself or herself out as an optometrist without having first obtained a license and prohibits an optometrist from advertising or otherwise holding himself or herself out to be a specialist in eye disease and treatment.

This bill would redefine the term "advertise" to also include the use of the Internet. By changing the definition of an existing crime, the bill would impose a state-mandated local program.

Existing law authorizes the board to, at any time, inspect the premises in which optometry is being practiced or in which spectacle or contact lenses are fitted or dispensed and provides that this authority does not extend to premises that are not registered with the board.

This bill would instead authorize the board or its designated agent, at any time, to inspect both any premise in which optometric services, as defined, are provided or reasonably suspected of being provided and any premise in which the services of dispensing, adjusting, or fitting of contact lenses or spectacle lenses are provided or reasonably suspected of being provided.

Existing law authorizes the board to issue a license to practice optometry to a person who meets certain requirements, including that an applicant for licensure has never had his or her license to practice optometry revoked or suspended in any state where he or she holds a license.

This bill would make this requirement inoperative on July 1, 2018.

Existing law requires the board to permit a graduate of a foreign university who meets certain requirements to take the examinations for an optometrist license.

This bill would repeal that provision.

This bill would require the board to develop an interface with the National Practitioner Data Bank for the purpose of conducting inquiries on applicants for licensure, applicants for renewal of licensure, and current licensees, as specified. The bill, on and after July 1, 2018, would require the board, in addition to any other fees, to charge an applicant for licensure \$2 and an applicant for renewal of licensure \$4 for this purpose.

This bill would incorporate additional changes to Section 3057 of the Business and Professions Code proposed by AB 443 to be operative only if this bill and AB 443 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2553.7 is added to the Business and Professions Code, to read:

2553.7. Registrations of dispensing opticians, spectacle lens dispensers, and contact lens dispensers shall expire at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed.

SEC. 2. Section 3006 of the Business and Professions Code is amended to read:

3006. As used in this chapter, the term "advertise" and any of its variants include the use of a newspaper, magazine, the Internet, 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 now or hereafter employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses, frames, or other accessories or appurtenances.

SEC. 3. Section 3010.5 of the Business and Professions Code is amended to read:

3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members and one of the nonpublic members shall be an individual registered as a dispensing optician, spectacle lens dispenser, or contact lens dispenser. The registered dispensing member shall be registered pursuant to Chapter 5.5 (commencing with Section 2550) and in good standing with the board.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to former Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

(d) The amendments to this section by the act adding this subdivision shall apply to appointments made on or after January 1, 2016.

SEC. 4. Section 3014.6 of the Business and Professions Code is amended to read:

3014.6. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 5. Section 3030 of the Business and Professions Code is amended to read:

3030. (a) The board, or its designated agent, may at any time inspect either of the following:

(1) Any premise in which optometric services, as defined in Section 3041, are provided or reasonably suspected of being provided.

(2) Any premise in which the services of dispensing, adjusting, or fitting of contact lenses or spectacle lenses are provided or reasonably suspected of being provided.

(b) Nothing in this section shall be construed to grant the board jurisdiction over the practice of medicine.

SEC. 6. Section 3047 is added to the Business and Professions Code, to read:

3047. (a) The board shall develop an interface with the National Practitioner Data Bank for the purpose of conducting inquiries on applicants for licensure, applicants for renewal of licensure, and current licensees.

(b) The board shall limit its inquiries to both of the following:

(1) Whether an applicant or current licensee has been subject to discipline.

(2) Whether an applicant or current licensee has been the subject of an action required to be reported to the National Practitioner Data Bank by federal law.

(c) On and after July 1, 2018, the board shall charge, in addition to the fees in Section 3152, an applicant for licensure two dollars (\$2) and an applicant for renewal of licensure four dollars (\$4) for the purposes of this section.

SEC. 7. Section 3057 of the Business and Professions Code is amended to read:

3057. (a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(5) Has furnished a signed release allowing the disclosure of information from the National Practitioner Data Bank and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has never had his or her license to practice optometry revoked or suspended in any state where the person holds a license. This paragraph shall become inoperative on July 1, 2018.

(7) (A) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code.

(8) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(9) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(10) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(11) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(12) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(13) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical examination or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board may reduce or waive the fees required by paragraph (12) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a licensed psychologist or licensed psychiatrist so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 7.5. Section 3057 of the Business and Professions Code is amended to read:

3057. (a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(5) Has furnished a signed release allowing the disclosure of information from the National Practitioner Data Bank and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has never had his or her license to practice optometry revoked or suspended in any state where the person holds a license. This paragraph shall become inoperative on July 1, 2018.

(7) (A) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code.

(8) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(9) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (d) of Section 3041.

(10) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(11) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(12) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(13) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical examination or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board may reduce or waive the fees required by paragraph (12) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a licensed psychologist or licensed psychiatrist so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 8. Section 3057.5 of the Business and Professions Code is repealed.

SEC. 9. Section 3145 of the Business and Professions Code is amended to read:

3145. There is the Optometry Fund in the State Treasury. Unless otherwise provided, all money collected under the authority of this chapter shall be paid into this fund, and shall be available, upon appropriation of the Legislature, to carry out the purposes of this chapter. The board shall not maintain a reserve balance in the fund that is greater than six months of the appropriated operating expenses of the board in any fiscal year.

SEC. 10. Section 7.5 of this bill incorporates amendments to Section 3057 of the Business and Professions Code proposed by both this bill and Assembly Bill 443. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 3057 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 443, in which case Section 7 of this bill shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.