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SB-509 Optometry: COVID-19 pandemic: temporary licenses. (2021-2022)

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Senate Bill No. 509

CHAPTER 219

An act to amend Section 3090 of, and to add Section 3046.1 to, the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2021. Filed with Secretary of State September 22, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 509, Wilk. Optometry: COVID-19 pandemic: temporary licenses.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry. The act prohibits engaging in the practice of optometry without an optometrist license from the board. The act requires, in order for an applicant to obtain a license to practice optometry in California, that the applicant have graduated from an accredited school of optometry, passed the required examinations for licensure, not have met any of certain grounds for denial, and not be currently required to register as a sex offender. Existing law specifies that a violation of the act is a misdemeanor punishable by fine or imprisonment, as provided. The act also authorizes the board to take action against all persons guilty of violating the act or regulations of the board. The act requires the board to enforce and administer its enforcement provisions as to licenseholders, including those who hold a retired license, a license with a retired volunteer designation, or an inactive license.

This bill would establish provisions for temporary licensure. The bill would require the board to issue a temporary license to practice optometry to any person who applies for and is eligible for licensure under existing law, but who is unable to immediately take the required examination for licensure due to the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic. The bill would establish an application fee. The bill would require the applicant to satisfy prescribed additional conditions for issuance of a temporary license. The bill would require that a temporary licensee practice under the direct supervision of a supervising optometrist, as described. The bill would prohibit a temporary licensee, during the timeframe in which that licensee holds a temporary license, from opening their own optometric office or place of practice. The bill would define terms for these purposes. Under the bill, a temporary license would expire upon the date that the temporary licensee completes all of the requirements for licensure or 6 months after the date the state of emergency, proclaimed by the Governor in response to the COVID-19 pandemic has ended, whichever occurs first. The bill would require the supervising optometrist to submit to the board any violations of the act committed by the temporary licensee within a certain timeframe. The bill would require a person requesting to be a temporary licensee and a person requesting to be a supervising optometrist to apply to the board using an application in substantially a specified form and making certain declarations under penalty of perjury, as prescribed. The bill would provide that the board is not required to adopt regulations to carry out these provisions. The bill would require the board to enforce and administer its enforcement provisions against holders of a temporary license. By establishing new requirements for temporary licensure and the supervision of temporary licensees, the violation of which would be a crime, and expanding the crime of perjury, the bill would impose a state-mandated local program.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. (a) The COVID-19 pandemic has forced the closure of the national test center of the National Board of Examiners in Optometry (NBO) and the closure of California testing sites for the state jurisprudence examination. These closures have prohibited and will continue to prohibit students who have graduated from a school of optometry approved by the federal Accreditation Council on Optometric Association (ACOE) from being licensed.

(b) These graduates possess the knowledge and expertise to immediately contribute to the health care needs of Californians during this difficult time, including the provision of urgent and emergent care, which is vitally important to keep patients with eye problems away from emergency departments and urgent care clinics.

(c) In addition to the immediate needs for service on the front lines of care, the removal of the state of emergency declaration will likely cause a surge in the number of patients who need care. Licensing qualified graduates now will ensure that Californians will receive appropriate, timely health care.

(d) It is the intent of the Legislature that the provisions of this bill be used for the purpose of progressing optometry students who are prevented from taking the NBO and state jurisprudence examination for licensure due to the COVID-19 pandemic and resulting state of emergency and any future similar situation.

SEC. 2. Section 3046.1 is added to the Business and Professions Code, to read:

3046.1. (a) The board shall issue a temporary license to practice optometry to any person who applies for and is eligible for licensure pursuant to Section 3046, but who is unable to immediately take the Section III - Clinical Skills Examination developed by the National Board of Examiners in Optometry (NBO), required for licensure under this chapter, due to the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic. In addition to Section 3046, the person shall also satisfy all of the following conditions:

(1) The person has never been previously licensed to practice optometry in any state in the United States.

(2) The person pays to the board the applicable fee of one hundred dollars (\$100), or a fee in an amount as determined by the board, not to exceed the reasonable cost of administering this section and submits an application to be a temporary licensee, as described in subdivision (j), to the board.

(3) The person has received approval from their accredited school of optometry that the person meets the educational requirements to practice optometry.

(4) The person satisfies all other conditions to licensure established by this chapter.

(b) A person holding a temporary license shall be subject to the same rights and restrictions that are afforded to a person holding a valid, unrevoked California optometrist license, except as set forth in this section. For the purposes of this chapter, "temporary licensee" means a person holding a temporary license pursuant to this section.

(c) A temporary licensee shall practice under the direct supervision of a supervising optometrist. For the purposes of this chapter, "supervising optometrist" means a California licensed optometrist that has been licensed for a minimum of five years and has been certified for the treatment of glaucoma, pursuant to subdivision (e) of Section 3041, and submits an application to be a supervising optometrist, as described in subdivision (k), to the board. A licensed physician practicing ophthalmology may also supervise a temporary licensee and shall be subject to all of the same reporting requirements as set forth in this section.

(d) Notwithstanding any other law, a temporary licensee may perform services as authorized by this chapter if both of the following requirements are met:

(1) The temporary licensee renders the services under the direct supervision of a supervising optometrist who is not subject to a disciplinary condition imposed by the board prohibiting that supervision or prohibiting the employment of a temporary licensee.

(2) The supervising optometrist is legally and professionally responsible for the actions of the temporary licensee.

(e) For the purposes of this chapter, "direct supervision" means that a supervising optometrist oversees the activities of, and accepts responsibility for, the services rendered by a temporary licensee. Direct supervision, as defined in this subdivision, requires that the supervising optometrist be physically present and immediately available in the facility or office in which the optometric services are being provided when the temporary licensee is with a patient.

(f) The supervising optometrist shall have a formal written procedure in place by which patients are informed that an optometrist with a temporary license will be performing the services. Additionally, the patient shall be informed that the supervising optometrist will be supervising the temporary licensee and the supervising optometrist will be identified to the patient. The temporary licensee shall note in the medical record the patient's consent to this process prior to performing services authorized by this chapter.

(g) During the timeframe in which the temporary licensee holds a temporary license, the temporary licensee shall not open their own optometric office or place of practice.

(h) The temporary license shall expire either upon the date that the temporary licensee completes all of the requirements for licensure or six months after the date the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic has ended, pursuant to Section 8629 of the Government Code, whichever occurs first.

(i) The supervising optometrist shall submit in writing to the board any violations of this chapter committed by the temporary licensee within 14 days of becoming aware of the violation.

(j) A person requesting to be a temporary licensee shall apply to the board pursuant to an application that shall be in substantially the following form, and may include any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter:

"Application for Temporary License

Pursuant to Section 3046.1 of the Business and Professions Code, the board shall issue a temporary license to practice optometry to any person who applies for and is eligible for licensure pursuant to Section 3046 of the Business and Professions Code, but who is unable to immediately take the Section III - Clinical Skills Examination developed by the National Board of Examiners in Optometry (NBEO), required for licensure under this chapter, due to the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic. If eligible, you must also meet and maintain the following requirements to be a temporary licensee:

(1) Never been previously licensed to practice optometry in any state in the United States; and

(2) Receive confirmation via transcript or other correspondence from your accredited school of optometry that you meet the educational requirements to practice optometry.

To apply to be a temporary licensee, provide documentation for item (2) above with your application. All documentation must be provided, or the application will be rejected.

First, Middle, and Last Name:

Address (City, State, Zip Code):

Phone Number:

Email Address:

Social Security or ITIN number:

Date of Birth:

Name of School of Optometry:

Address of School of Optometry (City, State, Zip Code, Country):

Date Degree Conferred:

Name and License Number of Supervising Optometrist:

Date you completed the CLRE:

Regulations require the submission of fingerprints prior to issuance of the temporary license. Due to a change in the regulations, fingerprints are now checked by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). Live Scan is required for California residents and a Manual Fingerprint Card is required for non-California residents.

I declare under penalty of perjury under the laws of the State of California that the information provided on this form and the attached documents or other requested proof of completion is true and accurate. I understand and agree that any misstatements of material facts may

be cause for denial of the Application for Temporary License and disciplinary action by the State Board of Optometry.

Applicant Signature:

Date: "

(k) A person requesting to be a supervising optometrist shall apply to the board pursuant to an application that shall be in substantially the following form, and may include any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter:

"Application to be a Supervising Optometrist

Pursuant to Section 3046.1 of the Business and Professions Code, an individual may act as supervising optometrist to a temporary licensee, as defined in that section, if they meet the following conditions:

(1) Has been licensed for a minimum of five years; and

(2) Has been certified for the treatment of glaucoma pursuant to subdivision (e) of Section 3041.

To apply to be a supervising optometrist, provide documentation for items (1) and (2) above with your application. All documentation must be provided, or the application will be rejected.

First, Middle, and Last Name:

Address of Record:

Phone Number:

Email Address:

License Number:

Name of temporary licensee whom you will be supervising:

1. I declare under penalty of perjury under the laws of the State of California that the information provided on this form and the attached documents or other requested proof of completion is true and accurate. I understand and agree that any misstatements of material facts may be cause for denial of the application to be a Supervising Optometrist and disciplinary action by the State Board of Optometry.

AND

2. I declare under of perjury under the laws of the State of California that I will comply with all with all duties as a supervising optometrist set forth in Section 3046.1 of the Business and Professions Code, and that pursuant to that section, I am legally and professionally responsible for the actions of the temporary licensee which may result in action being taken against my license in cases of temporary licensee misconduct.

Applicant Signature:

Date: "

(l) The board shall not be required to adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to carry out this section.

SEC. 3. Section 3090 of the Business and Professions Code is amended to read:

3090. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, including those who hold a retired license, a license with a retired volunteer designation, an inactive license issued pursuant to Article 9 (commencing with Section 700) of Chapter 1, or a temporary license, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

SEC. 4. 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.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect public health and preserve the future health care workforce by ensuring that qualified optometry graduates are permitted to practice during the COVID-19 pandemic as soon as possible, it is necessary that this act take effect immediately.