

## SENATE THIRD READING

SB 776 (Ashby)

As Amended

Majority vote

**SUMMARY**

Extends the sunset date for the California Board of Optometry (Board) until January 1, 2030 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process.

**Major Provisions**

- 1) Extends the repeal date on the Board until January 1, 2030.
- 2) Clarifies that the federal contact lens rule governs when a prescriber of contact lenses is required to provide a patient's prescription.
- 3) Establishes a definition of "dispensing ophthalmic business."
- 4) Requires registrants and licensees to provide the Board with a valid email address at the time of an application for an initial or renewed registration or license, exempts those email addresses from the California Public Records Act, and provides that information sent to an applicant, registrant, or licensee by the Board via email is presumed to have been delivered.
- 5) Authorizes the Board to issue a probationary registration to an RDO applicant.
- 6) Clarifies that only natural persons may be licensed to practice optometry in California and defines "person" for purposes of the Optometry Practice Act.
- 7) Specifies that the temporary license issued by the Board is for applicants who cannot take the Part III - Patient Encounters and Performance Skills Examination from the National Board of Examiners in Optometry (NBEO).
- 8) Removes the current restriction limiting the owner and operator of a mobile optometry officer to no more than 12 offices within the first two-year renewal period.
- 9) Changes the reporting requirement for owners and operators of mobile optometric officers from quarterly to annual reports to the Board and removes the requirement that the report include a summary of all complaints received by each mobile optometric office, the disposition of those complaints, and referral information.
- 10) Clarifies how and when the consumer notice must be provided by the owner and operator of a mobile optometric office to consumers.
- 11) Adjusts the minimum and maximum amounts that the Board may charge in fees for the registration or certification of various individuals and entities regulated by the Board.
- 12) Recasts the membership of the Dispensing Optician Committee (DOC).

**COMMENTS**

*California Board of Optometry.* The Board is the regulatory entity responsible for licensing and overseeing the optometry profession. As of January 2025, the Board licenses approximately 7,800 optometrists and registers approximately 1,185 Registered Dispensing Ophthalmic Businesses, 3,300 Registered Spectacle Lens Dispensers, 1,370 Registered Contact Lens Dispensers, and 23 Nonresident Ophthalmic Lens Dispensers. The Board is also responsible for issuing certifications for optometrists to use Diagnostic Pharmaceutical Agents; Therapeutic Pharmaceutical Agents (TPA); TPA with Lacrimal Irrigation and Dilation; and TPA with Glaucoma Certification; and TPA with Lacrimal Irrigation and Dilation and Glaucoma Certification. The Board additionally issues statements of licensure and fictitious name permits.

*Sunset review.* 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. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils. The background paper for the Board's sunset review oversight hearing contained a total of 20 issues and recommendations, each of which is eligible to result in statutory changes enacted through the Board's sunset bill.

*Mobile Optometric Offices.* Issue no. 3 in the sunset background paper for the Board considered whether reporting requirements for mobile optometric offices (MOOs) should be streamlined. AB 896 (Low) of 2020 authorized a new pathway under the Optometry Practice Act that permitted the operation of MOOs, without a requirement that the MOO be connected to an optometry school. The MOO program now allows a nonprofit (501(c)(3)) or a charitable organization (501(c)(4)) to provide mobile optometric services to patients regardless of the patient's ability to pay, under a registration program administered by the Board.

AB 896 established safeguards to ensure that the optometric care provided in MOOs is consistent with the standard of care. MOOs must be owned solely by a nonprofit or charitable organization, must register with the Board, no more than 12 MOOs can be operated by one owner or operator within the first renewal period, and medical operations are to be directed solely by a licensed optometrist. Additionally, MOOs must provide the Board with details about business operations, including the name and license number of all optometrists, optician registration numbers, a catalog of complaints, dates of operations, and the counties or cities served by the MOO.

The language enacted through AB 896 requires an owner and operator of a MOO to file a quarterly report with the Board, and the owner or operator of a MOO is subject to Board enforcement for any non-compliance. Although MOOs are required to report quarterly to the Board, there is no statutory directive for the Board to do anything with the information provided in those reports. In addition, current law requires the owner or operator of a MOO to provide each patient, and if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the Board with specified information including an optometrist's license number, contact information, a statement on how the patient can obtain copy of the medical records, information on follow up care, and upon request a copy of the patient's prescription.

Current law already requires an optometrist to provide a copy of a prescription to a patient. The consumer information and reporting requirements for MOOs is vital to the Board's consumer protection mandate. However, current law does not specify what the Board is to do with the quarterly information provided by the MOOs, and it's unclear why duplicative prescription information is needed in statute. The sunset background paper proposed streamlining the reporting requirements for MOOs to ensure the Board only receives information that is necessary for the regulation and enforcement of MOOs. The Board was further directed to advise the Committees as to whether it believed the prescription requirements for MOOs should be consistent with existing law. Following that discussion, this bill was amended to change the quarterly reporting requirements to annual reporting and to amend the information that must be provided by MOOs.

Issue no. 14 also raised the question of whether the current 12-office cap on mobile optometric offices still makes sense. During the Board's last sunset review, AB 1534 (Low), among other changes, established a limit of 12 for the number of MOOs that a nonprofit corporation or charitable organization could own and operate for the first licensure period. After the first renewal period, the cap is lifted and the MOO registrant is permitted to own and operate as many MOOs as they choose. This contrasts with the limit on the number of optometric practices that optometrists are permitted because that cap of 11 is maintained throughout the life of the license.

Prior to 2019, a licensed optometrist was technically allowed to own only two physical locations. SB 1386 (McGuire) of 2018 statutorily increased the cap to 11, the number of offices that an optometrist, or two or more optometrists in partnership, could own. MOOs were established legislatively after the enactment of SB 1386, therefore a cap on the number of MOOs was not considered as part of that legislation. Although it is likely that the cap of 12 for MOOs was included to match the current cap on the number of brick-and-mortar optometry offices, the benefit is unclear as to why an initial cap of 12 for MOOs is necessary and what consumer protection benefits it provides, given that they are allowed to increase to more than 12 after the initial licensure period. The Board only recently began accepting applications for the MOO program beginning in January 2025. Although AB 896 was chaptered into law four years ago, it took the Board a number of years to establish the regulations for the registration program. During the time period after the bill was signed into law, MOOs were able to provide services pending the Board's progress in establishing regulations.

Given that MOO operators are non-profit or charitable organizations, the limit on the number of mobile offices could impact services for vulnerable populations. It is unclear what the consumer protection benefit is to a limited number of MOOs during the first renewal period. This bill would eliminate the 12-office cap for MOOs during their first renewal period.

*Landlord-Tenant Relationships.* Issue no. 12 in the sunset background paper discussed longstanding issues with implementation of AB 684 (Alejo/Bonilla) of 2015, which entrusted the Board with responsibility to enforce laws and regulations governing the business relationships between optometrists and opticians. That bill additionally made a number of changes to the requirements for optical retailers to make eye exams available to customers and enacted a myriad of new consumer protections in exchange for clarifying what types of relationships between optometrists and retailers would be lawful. As a result, the majority of optical retailers in California are able to additionally offer eye examinations without inappropriately intermingling the sale of optometric products and the optometric care provided to a patient.

According to the Board, it is aware of optical retail establishments who claim that their use of corporate structure and contractual relationships eliminate any Board authority to regulate them. As noted by the Board, there is a specific retailer in California with multiple store locations, which they claim are exempt from Board regulation because they contract with an ophthalmologist who subleases space from their retail store. This retailer also claims not to dispense or fit and adjust any lenses because all fitting, adjusting, and dispensing is performed in the subleased space by the ophthalmologist. The distinction is invisible to the consumer.

In order to enhance current law to make it clear that *any* retail entity which offers, advertises, or performs optical services for the general public must be registered with the Board, the Board recommended the Legislature amend current law to require registration as a dispensing ophthalmic business for all optical companies that manufacture, sell, or distribute lenses, frames, and other optical or optometric supplies and products, to physicians and optometrists, when the optical company also acts as a landlord and subleases space to the physician or optometrist, and their corporation, and when the optical company offers, advertises, and performs optical services for the general public. This bill would effectuate that recommendation, including through the establishment of a formal definition of "dispensing ophthalmic business."

*Definition of Person.* Issue no. 13 in the sunset background paper for the Board discussed the existing statutory definition of "person" and whether updates were needed. Section 3040 of the Optometry Practice Act makes it unlawful for a *person* to engage in the practice of optometry or to advertise or hold themselves out as an optometrist without a valid, unrevoked California optometrist license. However, there is not a current definition of "person" in the Act. Until a recent enforcement case brought by the Board, the lack of a definition for "person" in the optometry practice act had not been an issue. During a recent enforcement case, the Board issued a citation which alleged a violation of the Section 3040, because the business was advertising or holding themselves out as an optometrist. In an administrative law hearing, the judge determined that "by its own terms, section 3040 applies to natural persons. Nowhere in the Optometry Practice Act is 'person' defined to include a business entity." Although the Board argued against the judge's reading of the law, the judge determined that "if the legislature wished to define 'person' in the Optometry Practice Act to include a business entity it could have done so, as it has done elsewhere."

Without a clear statutory definition of "person" within the Optometry Practice Act, the Board could potentially face additional challenges in taking enforcement actions against entities operating as "optometrists" without the appropriate license. There are other practice acts within the Business and Professions Code that have previously defined "person." The Board's sunset report to the Committees requested language to statutorily define "person" in the Optometry Practice Act to clarify that only a natural person may be licensed as an optometrist. That language is included in this bill.

*Federal Contact Lens Rule and Conflict with California Statute.* As discussed in Issue no. 18 of the sunset background paper, pursuant to the current federal contact lens rule, a prescriber (an optometrist or physician) is required to provide a patient with a copy of their prescription, whether it is requested or not, and the prescriber must maintain documentation that they provided the copy of the prescription to their patient. Under California law, a prescriber is required to retain professional discretion regarding the release of the contact lens prescription for patients who wear certain types of contact lenses. However, the federal contact lens rule does not permit an exemption for specified types of lenses.

As noted in the Board's sunset report to the Committees, the Board is seeking clarification as to whether state and federal law conflict and a potential resolution to conform state law to federal law by deleting the exemption for contact lens dispensers to provide the patient a copy of their prescription. The sunset background paper requested information from the Board regarding how California law should be amended to remove any discretion for a prescriber to not provide a patient's contact lens prescription to conform to the federal rule. This bill clarifies that licensees and registrants in California are subject to the provisions of the federal contact lens rule, and deletes the current exemption.

*Dispensing Optician Committee.* Issue no. 1 in the sunset background paper noted that the DOC has not met for a number of years. The DOC is required to advise and make recommendations to the Board regarding the regulation of dispensing opticians, spectacle lens dispensers, and contact lens dispensers. The Committee is comprised of five members, including one registered dispensing optician, either one spectacle lens dispenser or contact lens dispenser, two public members, and a current member of the Board. All appointments to the DOC are gubernatorial appointments. The DOC is required to meet twice a year, and as needed to conduct business. Any recommendations made by the DOC regarding scope of practice or regulatory changes must be approved, modified, or rejected by the Board within 90 days. Between the years 2017-2021, the DOC met at least twice a year as required by statute. However, at the time of sunset review, the DOC had not met since April 2021, due to a lack of appointed committee membership. This was the second sunset review of the Board since the establishment of DOC. This bill would address these issues by reducing the number of members required for appointment to the DOC and make other changes to the DOC's composition.

*Projected Fund Deficit.* Issue no. 4 in the sunset background paper considered whether the Board will need to seek a fee increase. As noted by the Board in its report, the Board has been operating with a structural deficit for the last three fiscal years (FYs), and the Board's projected reserve level is one month in FY 2025-26. According to updated budget information, the Board is now projected to have a negative reserve level in FY 2027-28. In order to address the Board's current structural deficit, the Board reports that it has relied on a combination of spending reserves and salary savings through staff vacancies to manage the fund. In addition, effective July 1, 2024, the Board, via regulations raised the majority of its licensing and registration fees to their statutorily maximum.

As the Board may continue to sacrifice staff positions for salary savings, there is concern that the Board will not be able to maintain its current licensing timeframes and further extend the already long enforcement process. During FYs 2022-23 and 2023-24, the Board has reduced its administration expenses from 26% in FY 2021-22 to 19%. In addition, the Board expended less on enforcement in FY 2023-24, then it did during the previous three FYs. The Board has slowly increased fees to the statutory maximum over the last decade through the regulatory process. The last two statutory fee increases for this Board occurred in 1993 and 2009 respectively. Recognizing the need for additional revenue to maintain fiscal solvency, this bill would increase the minimum and maximum fees that may be charged by the Board for various services.

*Continued Operation.* Issue no. 20 in the sunset background paper for the Board posed the traditional question of whether the licensing and regulation of optometrists and dispensing opticians be continued and be regulated by the current Board membership. The sunset background paper recommended that the Board should be continued, and reviewed again on a future date to be determined. This bill would extend the Board's sunset date by four years.

**According to the Author**

"This bill is the sunset review vehicle for the California Board of Optometry, authored by the Chair of the Senate Committee on Business, Professions, and Economic Development. The bill extends the sunset date for the Board and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process."

**Arguments in Support**

The *California Optometric Association* (COA) supports this bill, writing: "COA supports the enforcement enhancements in SB 776, particularly the new definition of 'person' that clarifies that corporations may be held accountable for unlicensed practice. Aligning the Optometric Practice Act with the Medical Practice Act ensures corporate entities cannot exploit loopholes to evade oversight." COA further writes: "COA looks forward to continued collaboration with the Committee and stands ready to support efforts that promote high-quality, accessible, and equitable eye care in California."

**Arguments in Opposition**

There is no opposition on file.

**FISCAL COMMENTS**

According to the Assembly Committee on Appropriations, extending the operations of the Board will cost approximately \$4.3 million per year; the Board does not anticipate significant costs to implement other provisions of this bill. In addition, the Department of Consumer Affairs Office of Information Services estimates absorbable costs of \$1,000 to remove the governing rule that limits the number of mobile optometric offices to 12 during the first two years from its online licensing and enforcement system.

**VOTES****SENATE FLOOR: 39-0-1**

**YES:** Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNERney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

**ABS, ABST OR NV:** Reyes

**ASM BUSINESS AND PROFESSIONS: 17-0-1**

**YES:** Berman, Flora, Ahrens, Alanis, Bains, Caloza, Chen, Elhawary, Hadwick, Haney, Irwin, Jackson, Krell, Lowenthal, Macedo, Nguyen, Pellerin

**ABS, ABST OR NV:** Bauer-Kahan

**ASM APPROPRIATIONS: 11-0-4**

**YES:** Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache

**ABS, ABST OR NV:** Sanchez, Dixon, Ta, Tangipa

**UPDATED**

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