



ISSUE MEMORANDUM

DATE	March 8, 2019
TO	Legislation and Regulations Committee (LRC)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 896 (Low): Registered Dispensing Opticians: dispensing opticians Fund: Optometry Fund.

The Board's 2017-2020 Strategic Plan, as outlined in Strategic Goal #3.8, sets out the goal of exploring the feasibility of proposing legislation to merge the RDO and Optometry funds. At the February 1, 2019 public meeting, the Board was presented with potential text to combine the Optometry and Registered Dispensing Optician (RDO) funds into a single fund for accounting purposes. This change requires legislative action, and Board staff successfully obtained Assembly Member Evan Low as the author for the bill. The proposed bill will assist Board staff and Budgets in fiscal tracking and planning for the RDO program, and assists the stabilization of the Board's fund condition. It is currently awaiting referral to a policy committee.

The Board is the sponsor of this bill. As currently written, this bill would abolish the Dispensing Opticians Fund on July 1, 2022, and would require that any moneys in that fund be transferred to the Optometry Fund before July 1, 2022. The bill would make various related conforming changes. Additionally, existing law provides that specified provisions of the Medical Practice Act that are not inconsistent or in conflict with certain provisions of law relating to the registration and regulation of dispensing opticians apply to the issuance, and govern the expiration and renewal, of certificates of registration issued to dispensing opticians; this bill would delete that provision.

Other than minor process changes, the bill is expected to have no fiscal or workload impact on the Board, as RDO operations are already fully integrated into Board operations.

Staff recommends a 'support' position on this bill and direction to the Executive Officer to inform the Legislature of this position.

Attachments:

1. AB 896 text

ASSEMBLY BILL

No. 896

Introduced by Assembly Member Low

February 20, 2019

An act to amend Sections 655, 2545, 2546.9, 2556.2, 2567, and 2568 of, to amend, repeal, and add Section 205 of, and to add Section 205.2 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 896, as introduced, Low. Registered Dispensing Opticians: dispensing opticians Fund: Optometry Fund.

Existing law provides for the registration and regulation of dispensing opticians, spectacle lens dispensers, nonresident contact lens sellers, and contact lens dispensers by the State Board of Optometry and requires certain fees and fines in connection therewith to be paid to the board. Existing law establishes the Dispensing Opticians Fund and requires that these fees and fines be paid into that fund, and provides that the funds be available, upon appropriation, to the board for specified purposes.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the board and requires certain fees and fines in connection therewith to be paid to the board. The act establishes the Optometry Fund and requires that these fees and fines be paid into that fund, and provides that the funds, unless otherwise provided, be available, upon appropriation, to the board in order to carry out the purposes of the act.

This bill would abolish the Dispensing Opticians Fund on July 1, 2022, and would require that any moneys in that fund be transferred to

the Optometry Fund before July 1, 2022. The bill would make various related conforming changes.

Existing law provides that specified provisions of the Medical Practice Act that are not inconsistent or in conflict with certain provisions of law relating to the registration and regulation of dispensing opticians apply to the issuance, and govern the expiration and renewal, of certificates of registration issued to dispensing opticians.

This bill would delete that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 205 of the Business and Professions Code
- 2 is amended to read:
- 3 205. (a) There is in the State Treasury the Professions and
- 4 Vocations Fund. The fund shall consist of the following special
- 5 funds:
- 6 (1) Accountancy Fund.
- 7 (2) California Architects Board Fund.
- 8 (3) Athletic Commission Fund.
- 9 (4) Barbering and Cosmetology Contingent Fund.
- 10 (5) Cemetery and Funeral Fund.
- 11 (6) Contractors' License Fund.
- 12 (7) State Dentistry Fund.
- 13 (8) Home Furnishings and Thermal Insulation Fund.
- 14 (9) California Architects Board-Landscape Architects Fund.
- 15 (10) Contingent Fund of the Medical Board of California.
- 16 (11) Optometry Fund.
- 17 (12) Pharmacy Board Contingent Fund.
- 18 (13) Physical Therapy Fund.
- 19 (14) Private Investigator Fund.
- 20 (15) Private Security Services Fund.
- 21 (16) Professional Engineer's, Land Surveyor's, and Geologist's
- 22 Fund.
- 23 (17) Consumer Affairs Fund.
- 24 (18) Behavioral Sciences Fund.
- 25 (19) Licensed Midwifery Fund.
- 26 (20) Court Reporters' Fund.
- 27 (21) Veterinary Medical Board Contingent Fund.

- 1 (22) Vocational Nursing and Psychiatric Technicians Fund.
- 2 (23) Electronic and Appliance Repair Fund.
- 3 (24) Dispensing Opticians Fund.
- 4 (25) Acupuncture Fund.
- 5 (26) Physician Assistant Fund.
- 6 (27) Board of Podiatric Medicine Fund.
- 7 (28) Psychology Fund.
- 8 (29) Respiratory Care Fund.
- 9 (30) Speech-Language Pathology and Audiology and Hearing
- 10 Aid Dispensers Fund.
- 11 (31) Board of Registered Nursing Fund.
- 12 (32) Animal Health Technician Examining Committee Fund.
- 13 (33) State Dental Hygiene Fund.
- 14 (34) State Dental Assistant Fund.
- 15 (35) Structural Pest Control Fund.
- 16 (36) Structural Pest Control Eradication and Enforcement Fund.
- 17 (37) Structural Pest Control Research Fund.
- 18 (38) Household Movers Fund.
- 19 (b) For accounting and recordkeeping purposes, the Professions
- 20 and Vocations Fund shall be deemed to be a single special fund,
- 21 and each of the several special funds therein shall constitute and
- 22 be deemed to be a separate account in the Professions and
- 23 Vocations Fund. Each account or fund shall be available for
- 24 expenditure only for the purposes as are now or may hereafter be
- 25 provided by law.
- 26 (c) ~~This section shall become operative on July 1, 2018. This~~
- 27 ~~section shall be repealed on July 1, 2022.~~
- 28 SEC. 2. Section 205 is added to the Business and Professions
- 29 Code, to read:
- 30 205. (a) There is in the State Treasury the Professions and
- 31 Vocations Fund. The fund shall consist of the following special
- 32 funds:
- 33 (1) Accountancy Fund.
- 34 (2) California Architects Board Fund.
- 35 (3) Athletic Commission Fund.
- 36 (4) Barbering and Cosmetology Contingent Fund.
- 37 (5) Cemetery and Funeral Fund.
- 38 (6) Contractors' License Fund.
- 39 (7) State Dentistry Fund.
- 40 (8) Home Furnishings and Thermal Insulation Fund.

- 1 (9) California Architects Board-Landscape Architects Fund.
- 2 (10) Contingent Fund of the Medical Board of California.
- 3 (11) Optometry Fund.
- 4 (12) Pharmacy Board Contingent Fund.
- 5 (13) Physical Therapy Fund.
- 6 (14) Private Investigator Fund.
- 7 (15) Private Security Services Fund.
- 8 (16) Professional Engineer's, Land Surveyor's, and Geologist's
- 9 Fund.
- 10 (17) Consumer Affairs Fund.
- 11 (18) Behavioral Sciences Fund.
- 12 (19) Licensed Midwifery Fund.
- 13 (20) Court Reporters' Fund.
- 14 (21) Veterinary Medical Board Contingent Fund.
- 15 (22) Vocational Nursing and Psychiatric Technicians Fund.
- 16 (23) Electronic and Appliance Repair Fund.
- 17 (24) Acupuncture Fund.
- 18 (25) Physician Assistant Fund.
- 19 (26) Board of Podiatric Medicine Fund.
- 20 (27) Psychology Fund.
- 21 (28) Respiratory Care Fund.
- 22 (29) Speech-Language Pathology and Audiology and Hearing
- 23 Aid Dispensers Fund.
- 24 (30) Board of Registered Nursing Fund.
- 25 (31) Animal Health Technician Examining Committee Fund.
- 26 (32) State Dental Hygiene Fund.
- 27 (33) State Dental Assistant Fund.
- 28 (34) Structural Pest Control Fund.
- 29 (35) Structural Pest Control Eradication and Enforcement Fund.
- 30 (36) Structural Pest Control Research Fund.
- 31 (37) Household Movers Fund.
- 32 (b) For accounting and recordkeeping purposes, the Professions
- 33 and Vocations Fund shall be deemed to be a single special fund,
- 34 and each of the several special funds therein shall constitute and
- 35 be deemed to be a separate account in the Professions and
- 36 Vocations Fund. Each account or fund shall be available for
- 37 expenditure only for the purposes as are now or may hereafter be
- 38 provided by law.
- 39 (c) This section shall become operative on July 1, 2022.

1 SEC. 3. Section 205.2 is added to the Business and Professions
2 Code, to read:

3 205.2. Whenever any reference is made in any provision of
4 this code to the “Dispensing Opticians Fund,” it means the
5 Optometry Fund. All moneys within the Dispensing Opticians
6 Fund shall be deposited into the Optometry Fund by July 1, 2022.
7 On July 1, 2022, the Dispensing Opticians Fund shall be abolished.

8 SEC. 4. Section 655 of the Business and Professions Code is
9 amended to read:

10 655. (a) For the purposes of this section, the following terms
11 have the following meanings:

12 (1) “Health plan” means a health care service plan licensed
13 pursuant to the Knox-Keene Health Care Service Plan Act of 1975
14 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
15 the Health and Safety Code).

16 (2) “Optical company” means a person or entity that is engaged
17 in the manufacture, sale, or distribution to physicians and surgeons,
18 optometrists, health plans, or dispensing opticians of lenses, frames,
19 optical supplies, or optometric appliances or devices or kindred
20 products.

21 (3) “Optometrist” means a person licensed pursuant to Chapter
22 7 (commencing with Section 3000) or an optometric corporation,
23 as described in Section 3160.

24 (4) “Registered dispensing optician” means a person licensed
25 pursuant to Chapter 5.5 (commencing with Section 2550).

26 (5) “Therapeutic ophthalmic product” means lenses or other
27 products that provide direct treatment of eye disease or visual
28 rehabilitation for diseased eyes.

29 (b) No optometrist may have any membership, proprietary
30 interest, coownership, or any profit-sharing arrangement, either
31 by stock ownership, interlocking directors, trusteeship, mortgage,
32 or trust deed, with any registered dispensing optician or any optical
33 company, except as otherwise permitted under this section.

34 (c) (1) A registered dispensing optician or an optical company
35 may operate, own, or have an ownership interest in a health plan
36 so long as the health plan does not directly employ optometrists
37 to provide optometric services directly to enrollees of the health
38 plan, and may directly or indirectly provide products and services
39 to the health plan or its contracted providers or enrollees or to other
40 optometrists. For purposes of this section, an optometrist may be

1 employed by a health plan as a clinical director for the health plan
2 pursuant to Section 1367.01 of the Health and Safety Code or to
3 perform services related to utilization management or quality
4 assurance or other similar related services that do not require the
5 optometrist to directly provide health care services to enrollees.
6 In addition, an optometrist serving as a clinical director may not
7 employ optometrists to provide health care services to enrollees
8 of the health plan for which the optometrist is serving as clinical
9 director. For the purposes of this section, the health plan's
10 utilization management and quality assurance programs that are
11 consistent with the Knox-Keene Health Care Service Plan Act of
12 1975 (Chapter 2.2 (commencing with Section 1340) of Division
13 2 of the Health and Safety Code) do not constitute providing health
14 care services to enrollees.

15 (2) The registered dispensing optician or optical company shall
16 not interfere with the professional judgment of the optometrist.

17 (3) The Department of Managed Health Care shall forward to
18 the State Board of Optometry any complaints received from
19 consumers that allege that an optometrist violated the Optometry
20 Practice Act (Chapter 7 (commencing with Section 3000)). The
21 Department of Managed Health Care and the State Board of
22 Optometry shall enter into an Inter-Agency Agreement regarding
23 the sharing of information related to the services provided by an
24 optometrist that may be in violation of the Optometry Practice Act
25 that the Department of Managed Health Care encounters in the
26 course of the administration of the Knox-Keene Health Care
27 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
28 1340) of Division 2 of the Health and Safety Code).

29 (d) An optometrist, a registered dispensing optician, an optical
30 company, or a health plan may execute a lease or other written
31 agreement giving rise to a direct or indirect landlord-tenant
32 relationship with an optometrist, if all of the following conditions
33 are contained in a written agreement establishing the
34 landlord-tenant relationship:

35 (1) (A) The practice shall be owned by the optometrist and in
36 every phase be under the optometrist's exclusive control, including
37 the selection and supervision of optometric staff, the scheduling
38 of patients, the amount of time the optometrist spends with patients,
39 fees charged for optometric products and services, the examination

1 procedures and treatment provided to patients and the optometrist's
2 contracting with managed care organizations.

3 (B) Subparagraph (A) shall not preclude a lease from including
4 commercially reasonable terms that: (i) require the provision of
5 optometric services at the leased space during certain days and
6 hours, (ii) restrict the leased space from being used for the sale or
7 offer for sale of spectacles, frames, lenses, contact lenses, or other
8 ophthalmic products, except that the optometrist shall be permitted
9 to sell therapeutic ophthalmic products if the registered dispensing
10 optician, health plan, or optical company located on or adjacent
11 to the optometrist's leased space does not offer any substantially
12 similar therapeutic ophthalmic products for sale, (iii) require the
13 optometrist to contract with a health plan network, health plan, or
14 health insurer, or (iv) permit the landlord to directly or indirectly
15 provide furnishings and equipment in the leased space.

16 (2) The optometrist's records shall be the sole property of the
17 optometrist. Only the optometrist and those persons with written
18 authorization from the optometrist shall have access to the patient
19 records and the examination room, except as otherwise provided
20 by law.

21 (3) The optometrist's leased space shall be definite and distinct
22 from space occupied by other occupants of the premises, have a
23 sign designating that the leased space is occupied by an
24 independent optometrist or optometrists and be accessible to the
25 optometrist after hours or in the case of an emergency, subject to
26 the facility's general accessibility. This paragraph shall not require
27 a separate entrance to the optometrist's leased space.

28 (4) All signs and displays shall be separate and distinct from
29 that of the other occupants and shall have the optometrist's name
30 and the word "optometrist" prominently displayed in connection
31 therewith. This paragraph shall not prohibit the optometrist from
32 advertising the optometrist's practice location with reference to
33 other occupants or prohibit the optometrist or registered dispensing
34 optician from advertising their participation in any health plan's
35 network or the health plan's products in which the optometrist or
36 registered dispensing optician participates.

37 (5) There shall be no signs displayed on any part of the premises
38 or in any advertising indicating that the optometrist is employed
39 or controlled by the registered dispensing optician, health plan or
40 optical company.

1 (6) Except for a statement that an independent doctor of
2 optometry is located in the leased space, in-store pricing signs and
3 as otherwise permitted by this subdivision, the registered
4 dispensing optician or optical company shall not link its advertising
5 with the optometrist's name, practice, or fees.

6 (7) Notwithstanding paragraphs (4) and (6), this subdivision
7 shall not preclude a health plan from advertising its health plan
8 products and associated premium costs and any copayments,
9 coinsurance, deductibles, or other forms of cost sharing, or the
10 names and locations of the health plan's providers, including any
11 optometrists or registered dispensing opticians that provide
12 professional services, in compliance with the Knox-Keene Health
13 Care Service Plan Act of 1975 (Chapter 2.2 (commencing with
14 Section 1340) of Division 2 of the Health and Safety Code).

15 (8) A health plan that advertises its products and services in
16 accordance with paragraph (7) shall not advertise the optometrist's
17 fees for products and services that are not included in the health
18 plan's contract with the optometrist.

19 (9) The optometrist shall not be precluded from collecting fees
20 for services that are not included in a health plan's products and
21 services, subject to any patient disclosure requirements contained
22 in the health plan's provider agreement with the optometrist or
23 that are not otherwise prohibited by the Knox-Keene Health Care
24 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
25 1340) of Division 2 of the Health and Safety Code).

26 (10) The term of the lease shall be no less than one year and
27 shall not require the optometrist to contract exclusively with a
28 health plan. The optometrist may terminate the lease according to
29 the terms of the lease. The landlord may terminate the lease for
30 the following reasons:

31 (A) The optometrist's failure to maintain a license to practice
32 optometry or the imposition of restrictions, suspension or
33 revocation of the optometrist's license or if the optometrist or the
34 optometrist's employee is or becomes ineligible to participate in
35 state or federal government-funded programs.

36 (B) Termination of any underlying lease where the optometrist
37 has subleased space, or the optometrist's failure to comply with
38 the underlying lease provisions that are made applicable to the
39 optometrist.

1 (C) If the health plan is the landlord, the termination of the
2 provider agreement between the health plan and the optometrist,
3 in accordance with the Knox-Keene Health Care Service Plan Act
4 of 1975 (Chapter 2.2 (commencing with Section 1340) of Division
5 2 of the Health and Safety Code).

6 (D) Other reasons pursuant to the terms of the lease or permitted
7 under the Civil Code.

8 (11) The landlord shall act in good faith in terminating the lease
9 and in no case shall the landlord terminate the lease for reasons
10 that constitute interference with the practice of optometry.

11 (12) Lease or rent terms and payments shall not be based on
12 number of eye exams performed, prescriptions written, patient
13 referrals or the sale or promotion of the products of a registered
14 dispensing optician or an optical company.

15 (13) The landlord shall not terminate the lease solely because
16 of a report, complaint, or allegation filed by the optometrist against
17 the landlord, a registered dispensing optician or a health plan, to
18 the State Board of Optometry or the Department of Managed
19 Health Care or any law enforcement or regulatory agency.

20 (14) The landlord shall provide the optometrist with written
21 notice of the scheduled expiration date of a lease at least 60 days
22 prior to the scheduled expiration date. This notice obligation shall
23 not affect the ability of either party to terminate the lease pursuant
24 to this section. The landlord may not interfere with an outgoing
25 optometrist's efforts to inform the optometrist's patients, in
26 accordance with customary practice and professional obligations,
27 of the relocation of the optometrist's practice.

28 (15) The State Board of Optometry may inspect, upon request,
29 an individual lease agreement pursuant to its investigational
30 authority, and if such a request is made, the landlord or tenant, as
31 applicable, shall promptly comply with the request. Failure or
32 refusal to comply with the request for lease agreements within 30
33 days of receiving the request constitutes unprofessional conduct
34 and is grounds for disciplinary action by the appropriate regulatory
35 agency. This section shall not affect the Department of Managed
36 Health Care's authority to inspect all books and records of a health
37 plan pursuant to Section 1381 of the Health and Safety Code.

38 Any financial information contained in the lease submitted to a
39 regulatory entity, pursuant to this paragraph, shall be considered
40 confidential trade secret information that is exempt from disclosure

1 under the California Public Records Act (Chapter 3.5 (commencing
2 with Section 6250) of Division 7 of Title 1 of the Government
3 Code).

4 (16) This subdivision shall not be applicable to the relationship
5 between any optometrist employee and the employer medical
6 group, or the relationship between a medical group exclusively
7 contracted with a health plan regulated by the Department of
8 Managed Health Care and that health plan.

9 (e) No registered dispensing optician may have any membership,
10 proprietary interest, coownership, or profit-sharing arrangement
11 either by stock ownership, interlocking directors, trusteeship,
12 mortgage, or trust deed, with an optometrist, except as permitted
13 under this section.

14 (f) Nothing in this section shall prohibit a person licensed under
15 Chapter 5 (commencing with Section 2000) or its professional
16 corporation from contracting with or employing optometrists,
17 ophthalmologists, or optometric assistants and entering into a
18 contract or landlord tenant relationship with a health plan, an
19 optical company, or a registered dispensing optician, in accordance
20 with Sections 650 and 654 of this code.

21 (g) Any violation of this section constitutes a misdemeanor as
22 to such person licensed under Chapter 7 (commencing with Section
23 3000) of this division and as to any and all persons, whether or
24 not so licensed under this division, who participate with such
25 licensed person in a violation of any provision of this section.

26 (h) (1) Notwithstanding any other law and in addition to any
27 action available to the State Board of Optometry, the State Board
28 of Optometry may issue a citation containing an order of
29 abatement, an order to pay an administrative fine, or both, to an
30 optical company, an optometrist, or a registered dispensing optician
31 for a violation of this section. The administrative fine shall not
32 exceed fifty thousand dollars (\$50,000) per investigation. In
33 assessing the amount of the fine, the board shall give due
34 consideration to all of the following:

- 35 (A) The gravity of the violation.
- 36 (B) The good faith of the cited person or entity.
- 37 (C) The history of previous violations of the same or similar
38 nature.
- 39 (D) Evidence that the violation was or was not willful.

1 (E) The extent to which the cited person or entity has cooperated
2 with the board's investigation.

3 (F) The extent to which the cited person or entity has mitigated
4 or attempted to mitigate any damage or injury caused by the
5 violation.

6 (G) Any other factors as justice may require.

7 (2) A citation or fine assessment issued pursuant to a citation
8 shall inform the cited person or entity that if a hearing is desired
9 to contest the finding of a violation, that hearing shall be requested
10 by written notice to the board within 30 days of the date of issuance
11 of the citation or assessment. If a hearing is not requested pursuant
12 to this section, payment of any fine shall not constitute an
13 admission of the violation charged. Hearings shall be held pursuant
14 to Chapter 5 (commencing with Section 11500) of Part 1 of
15 Division 3 of Title 2 of the Government Code.

16 (3) The board shall adopt regulations to implement a system for
17 the issuance of citations, administrative fines, and orders of
18 abatement authorized by this section. The regulations shall include
19 provisions for both of the following:

20 (A) The issuance of a citation without an administrative fine.

21 (B) The opportunity for a cited person or entity to have an
22 informal conference with the executive officer of the board in
23 addition to the hearing described in paragraph (2).

24 (4) The failure of a licensee to pay a fine within 30 days of the
25 date of assessment, unless the citation is being appealed, may result
26 in disciplinary action being taken by the board. Where a citation
27 is not contested and a fine is not paid, the full amount of the
28 assessed fine shall be added to the fee for renewal of the license.
29 A license shall not be renewed without payment of the renewal
30 fee and fine.

31 (5) Notwithstanding any other law, if a fine is paid to satisfy an
32 assessment based on the finding of a violation, payment of the fine
33 shall be represented as satisfactory resolution of the matter for
34 purposes of public disclosure.

35 (i) Administrative fines collected pursuant to this section shall
36 be deposited in the ~~Dispensing Opticians~~ *Optometry* Fund. It is
37 the intent of the Legislature that moneys collected as fines and
38 deposited in the fund be used by the board primarily for
39 enforcement purposes.

1 SEC. 5. Section 2545 of the Business and Professions Code is
 2 amended to read:

3 2545. (a) Whenever any person has engaged, or is about to
 4 engage, in any acts or practices which constitute, or will constitute,
 5 an offense against this chapter, the superior court in and for the
 6 county wherein the acts or practices take place, or are about to
 7 take place, may issue an injunction, or other appropriate order,
 8 restraining the conduct on application of the State Board of
 9 Optometry, the Medical Board of California, the Osteopathic
 10 Medical Board of California, the Attorney General, or the district
 11 attorney of the county.

12 The proceedings under this section shall be governed by Chapter
 13 3 (commencing with Section 525) of Title 7 of Part 2 of the Code
 14 of Civil Procedure.

15 (b) (1) Any person who violates any of the provisions of this
 16 chapter shall be subject to a fine of not less than one thousand
 17 dollars (\$1,000) nor more than two thousand five hundred dollars
 18 (\$2,500) per violation. The fines collected pursuant to this section
 19 from licensed physicians and surgeons shall be available upon
 20 appropriation to the Medical Board of California for the purposes
 21 of administration and enforcement. The fines collected pursuant
 22 to this section from licensed optometrists and registered dispensing
 23 opticians shall be deposited into the Optometry Fund ~~and the~~
 24 ~~Dispensing Opticians Fund, respectively,~~ and shall be available
 25 upon appropriation to the State Board of Optometry for the
 26 purposes of administration and enforcement.

27 (2) The Medical Board of California and the State Board of
 28 Optometry shall adopt regulations implementing this section and
 29 shall consider the following factors, including, but not limited to,
 30 applicable enforcement penalties, prior conduct, gravity of the
 31 offense, and the manner in which complaints will be processed.

32 (3) The proceedings under this section shall be conducted in
 33 accordance with the provisions of Chapter 5 (commencing with
 34 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
 35 Code.

36 SEC. 6. Section 2546.9 of the Business and Professions Code
 37 is amended to read:

38 2546.9. The amount of fees prescribed in connection with the
 39 registration of nonresident contact lens sellers is that established
 40 by the following schedule:

1 (a) The application fee for a nonresident contact lens seller shall
2 be a minimum of one hundred fifty dollars (\$150) and shall not
3 exceed two hundred dollars (\$200).

4 (b) The initial registration fee shall be a minimum of two
5 hundred dollars (\$200) and shall not exceed three hundred dollars
6 (\$300).

7 (c) The renewal fee shall be a minimum of two hundred dollars
8 (\$200) and shall not exceed three hundred dollars (\$300).

9 (d) The delinquency fee shall be a minimum of fifty dollars
10 (\$50) and shall not exceed seventy-five dollars (\$75).

11 (e) The fee for replacement of a lost, stolen, or destroyed
12 registration shall be twenty-five dollars (\$25).

13 (f) The State Board of Optometry may periodically revise and
14 fix by regulation the fees specified in subdivisions (a), (b), (c), and
15 (d), and these revised fees shall not exceed the reasonable
16 regulatory cost.

17 (g) The fees collected pursuant to this chapter shall be deposited
18 in the ~~Dispensing Opticians~~ *Optometry* Fund, and shall be
19 available, upon appropriation, to the State Board of Optometry for
20 the purposes of this chapter.

21 SEC. 7. Section 2556.2 of the Business and Professions Code
22 is amended to read:

23 2556.2. (a) Notwithstanding any other law, subsequent to the
24 effective date of this section and until January 1, 2019, any
25 individual, corporation, or firm operating as a registered dispensing
26 optician under this chapter before the effective date of this section,
27 or an employee of such an entity, shall not be subject to any action
28 for engaging in conduct prohibited by Section 2556 or Section 655
29 as those sections existed prior to the effective date of this bill,
30 except that a registrant shall be subject to discipline for duplicating
31 or changing lenses without a prescription or order from a person
32 duly licensed to issue the same.

33 (b) Nothing in this section shall be construed to imply or suggest
34 that a person registered under this chapter is in violation of or in
35 compliance with the law.

36 (c) This section shall not apply to any business relationships
37 prohibited by Section 2556 commencing registration or operations
38 on or after the effective date of this section.

39 (d) Subsequent to the effective date of this section and until
40 January 1, 2019, nothing in this section shall prohibit an individual,

1 corporation, or firm operating as a registered dispensing optician
2 from engaging in a business relationship with an optometrist
3 licensed pursuant to Chapter 7 (commencing with Section 3000)
4 before the effective date of this section at locations registered with
5 the Medical Board of California before the effective date of this
6 section.

7 (e) This section does not apply to any administrative action
8 pending, litigation pending, cause for discipline, or cause of action
9 accruing prior to September 1, 2015.

10 (f) Any registered dispensing optician or optical company that
11 owns a health plan that employs optometrists, subject to this
12 section, shall comply with the following milestones:

13 (1) By January 1, 2017, 15 percent of its locations shall no
14 longer employ an optometrist.

15 (2) By August 1, 2017, 45 percent of its locations shall no longer
16 employ an optometrist.

17 (3) By January 1, 2019, 100 percent of its locations shall no
18 longer employ an optometrist.

19 (g) Any registered dispensing optician or optical company that
20 owns a health plan that employs optometrists shall report to the
21 State Board of Optometry in writing as to whether it has met each
22 of the milestones in subdivision (f) within 30 days of each
23 milestone. The State Board of Optometry shall provide those
24 reports as soon as it receives them to the director and the
25 Legislature. The report to the Legislature shall be submitted in
26 compliance with Section 9795 of the Government Code.

27 (h) (1) Notwithstanding any other law and in addition to any
28 action available to the State Board of Optometry, the State Board
29 of Optometry may issue a citation containing an order of
30 abatement, an order to pay an administrative fine, or both, to an
31 optical company, an optometrist, or a registered dispensing optician
32 for a violation of this section. The administrative fine shall not
33 exceed fifty thousand dollars (\$50,000). In assessing the amount
34 of the fine, the board shall give due consideration to all of the
35 following:

36 (A) The gravity of the violation.

37 (B) The good faith of the cited person or entity.

38 (C) The history of previous violations of the same or similar
39 nature.

40 (D) Evidence that the violation was or was not willful.

1 (E) The extent to which the cited person or entity has cooperated
2 with the board's investigation.

3 (F) The extent to which the cited person or entity has mitigated
4 or attempted to mitigate any damage or injury caused by the
5 violation.

6 (G) Any other factors as justice may require.

7 (2) A citation or fine assessment issued pursuant to a citation
8 shall inform the cited person or entity that if a hearing is desired
9 to contest the finding of a violation, that hearing shall be requested
10 by written notice to the board within 30 days of the date of issuance
11 of the citation or assessment. If a hearing is not requested pursuant
12 to this section, payment of any fine shall not constitute an
13 admission of the violation charged. Hearings shall be held pursuant
14 to Chapter 5 (commencing with Section 11500) of Part 1 of
15 Division 3 of Title 2 of the Government Code.

16 (3) The board shall adopt regulations to implement a system for
17 the issuance of citations, administrative fines, and orders of
18 abatement authorized by this section. The regulations shall include
19 provisions for both of the following:

20 (A) The issuance of a citation without an administrative fine.

21 (B) The opportunity for a cited person or entity to have an
22 informal conference with the executive officer of the board in
23 addition to the hearing described in paragraph (2).

24 (4) The failure of a licensee to pay a fine within 30 days of the
25 date of assessment, unless the citation is being appealed, may result
26 in disciplinary action being taken by the board. Where a citation
27 is not contested and a fine is not paid, the full amount of the
28 assessed fine shall be added to the fee for renewal of the license.
29 A license shall not be renewed without payment of the renewal
30 fee and fine.

31 (5) Notwithstanding any other law, if a fine is paid to satisfy an
32 assessment based on the finding of a violation, payment of the fine
33 shall be represented as satisfactory resolution of the matter for
34 purposes of public disclosure.

35 (i) Administrative fines collected pursuant to this section shall
36 be deposited in the ~~Dispensing Opticians~~ *Optometry* Fund. It is
37 the intent of the Legislature that moneys collected as fines and
38 deposited in the fund be used by the board primarily for
39 enforcement purposes.

1 SEC. 8. Section 2567 of the Business and Professions Code is
2 amended to read:

3 ~~2567. (a) The provisions of Article 19 (commencing with~~
4 ~~Section 2420) and Article 20 (commencing with Section 2435) of~~
5 ~~Chapter 5 which are not inconsistent or in conflict with this chapter~~
6 ~~apply to the issuance and govern the expiration and renewal of~~
7 ~~certificates issued under this chapter. All fees collected from~~
8 ~~persons registered or seeking registration under this chapter shall~~
9 ~~be paid into the Dispensing Opticians Optometry Fund, and shall~~
10 ~~be available, upon appropriation, to the State Board of Optometry~~
11 ~~for the purposes of this chapter. Any moneys within the Contingent~~
12 ~~Fund of the Medical Board of California collected pursuant to this~~
13 ~~chapter shall be deposited in the Dispensing Opticians Optometry~~
14 ~~Fund. Any moneys within the Dispensing Opticians Fund collected~~
15 ~~pursuant to this chapter shall be deposited in the Optometry Fund.~~

16 (b) The board may employ, subject to civil service regulations,
17 whatever additional clerical assistance is necessary for the
18 administration of this chapter.

19 SEC. 9. Section 2568 of the Business and Professions Code is
20 amended to read:

21 2568. The board shall report to the Controller at the beginning
22 of each month for the month preceding the amount and source of
23 all revenue received by it pursuant to this chapter, and shall pay
24 the entire amount thereof to the Treasurer for deposit in the
25 ~~Dispensing Opticians Fund, which fund is created to carry out the~~
26 ~~provisions of this chapter. Optometry Fund.~~