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**To:** LRC Members **Date:** March 23, 2018

**From:** Todd Kerrin **Telephone:** (916) 575-7170  
Policy Analyst

**Subject: Agenda Item 8 – Update and Possible Action on 2017-18 Legislation Impacting the Practice of Optometry, Healing Arts Boards and Department Wide Programs; Potential Recommendations to Full Board**

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The following bills, as currently written, impact the Board's functions and the practice of optometry. Legislation versions and status change frequently. For this reason, staff does not print or attach specific bill language. To view the most current bill version, status and corresponding analysis, please click on the applicable hyperlinks below. The information below is current as of March 21, 2018.

## Optometry

### A. **AB [1802](#) (Salas) Optometry: scope of practice**

Summary: This bill would correct an erroneous cross-reference in the provision relating to the authority of an optometrist certified to use therapeutic pharmaceutical agents to administer immunizations, and would make other non-substantive changes.

Status: In Assembly, referred to Committee on Business and Professions.

Staff Comments: Recommend Support

### B. **AB [2444](#) (Burke) Pupil health: eye and vision health**

Summary: This bill would require the State Department of Education to adopt regulations that require pupil vision appraisals, training requirements, and a method of testing for near vision. This is the Board-sponsored children's vision bill that is replacing AB 1110. It includes requirements for the development of informational material regarding pediatric vision, as well as creates a pilot program that will perform follow-up comprehensive eye exams for children in select participating school districts.

Status: In Assembly, referred to Health and Education Committees

Staff Comments: Recommend Support

### C. **AB [3184](#) (Rubio) California State Board of Optometry**

Summary: This bill would rename the State Optometry Board the California State Board of Optometry.

Status: In Assembly, referred to Business and Professions Committee

Staff Comments: This was a spot bill for the industry and separate from the amendments proposed in the omnibus bill.

**D. SB [1386](#) (McGuire) Professions and vocations**

Summary: This bill repeals Section 126 of the Business and Professions Code.

Status: In Senate, referred to Senate Rules Committee.

Staff Comments: Currently, this is the spot bill for repealing the Branch Office law (BPC § 3077) as requested by the Board. The author's office requests language that the Board and COA can support prior to putting anything in print. They have organized multiple discussions with representative from Senate Business and Professions, COA, and the Board's EO and Vice President.

The attached language (Attachment 1) has been discussed, but all agreed it needs additional work. Staff anticipates new language from the author's office for Board consideration shortly. A special meeting may be required prior to the April 20 Board meeting for the Board to weigh in on the legislation.

**Healing Arts Boards**

**A. AB [1659](#) (Low) Healing arts boards: inactive licenses**

Summary: This bill would prohibit a licensee with an inactive license from representing that he or she has an active license. This bill would also authorize a healing arts board to establish a lower renewal fee for an inactive license. Finally, this bill would reorganize existing provisions of law without substantive change.

Status: In Senate, pending referral

**B. AB [2078](#) (Daly) Sex offenses: professional services**

Summary: This bill would expand the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services. This bill would also expand the definitions of the crimes of rape, sodomy, oral copulation, and sexual penetration to include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body.

Status: In Assembly, referred to Committee on Public Safety

**C. AB [2193](#) (Maienschein) Maternal mental health**

Summary: This bill would require a licensed health care practitioner who treats or attends a mother or child, or both, to screen the mother for maternal mental health conditions at least once during pregnancy and once during the postpartum period, and to report the findings of the screening to the mother's primary care physician.

Status: In Assembly, referred to Committee on Health.

**D. AB [2461](#) (Flora and Obernolte)**

Summary: This bill requires the Department of Justice to provide subsequent arrest notifications to Boards whose licensees are fingerprinted as a condition of licensure.

Status: In Assembly, referred to Public Safety Committee.

Analysis: [03/19/18- Assembly Public Safety](#)

Staff Comments: Currently, the DOJ already provides the Board with subsequent arrest reports for applicants and licensees. However, the DOJ does not participate in the FBI's "Rap Back" program, so the Board does not receive any subsequent arrest notifications when those arrests occur in other states.

Part of the Board's Strategic Plan is to determine what is necessary to participate in the FBI "Rap Back" program and has sought assistance from the DCA to work with the DOJ. However, little progress has been made. In a statement submitted to DCA's Legal Affairs Office, an Assistant Director provided the following response to DCA's request:

*The passage of Assembly Bill [2342](#) in September 2012 expanded the scope of the subsequent arrest and disposition information to include federal arrest and dispositions to any entity authorized to receive the information under state or federal statutory law. The codification of the bill made it permissible for the California Department of Justice (DOJ) to participate in the Federal Bureau of Investigations' (FBI) Next Generation Identification "Rap Back Program."*

*At the time, however, the FBI had not yet finalized their implementation plan, the cost, or details surrounding the service. There was agreement with the California legislature that the DOJ would convene a group of the largest applicant agency stakeholders to examine the financial aspects of participation in the program and would invite statewide public opinion on the program via the Attorney General's website. In addition, because participation in the federal program means the dissemination of more criminal history, the DOJ also agreed to engage with privacy and social justice advocates.*

*The DOJ is committed to evaluating the State's participation in the federal program and is evaluating the resource requirements needed to determine the procedural and fiscal feasibility of the State's participation in the program. In addition to engaging with all stakeholders and examining the financial impact of implementing the service, e.g., determination of State administrative fees, differences in State and federal policies and procedures must be considered and DOJ systems must be enhanced to support the inflow and distribution of subsequent federal notifications. The DOJ anticipates there will be a need for a Budget Change Proposal, as well as a variety of procurement activities, and has identified a resource to begin the development of an actionable project plan.*

However, AB 2342 appears to be unrelated to the FBI Rap Back Program, and there seems to be little to no movement on this issue. Staff is concerned something so crucial for consumer protection is not a priority for the DOJ.

The LRC may want to recommend the Board take a Support if Amended position – to include amendments requiring the DOJ to participate in the FBI's Rap Back Program.

#### **E. [SB 762](#) (Hernandez) Healing arts licensee: license activation fee: waiver**

Summary: This bill would require healing arts boards to waive the reactivation fee for inactive license holders who certify that the restoration of their license is for the sole purpose of providing voluntary, unpaid service. Specifically, this service must be provided to a public agency, not-for-profit agency, institution or corporation that provides medical services in medically underserved or critical-need population areas of the state.

Status: In Assembly, referred to Committee on Business & Professions

Analysis: [05/27/17- Senate Floor Analyses](#)

## Department Wide:

### A. [AB 767](#) (Quirk-Silva) Master Business License Act

Summary: This bill would create within the Governor's Office of Business and Economic Development, or its successor, a business license center to develop and administer an online master business license system to simplify the process of engaging in business in this state.

Status: In Senate, referred to Business, Professions and Economic Development

Staff Comments: The DCA estimated a fiscal impact of \$18.7 million in administrative and system modifications and an on-going cost of \$240,000 annually. These costs would be distributed to all DCA programs through pro-rata. BreZE already provides a simplified process for issuing multiple licenses online quickly.

Creating another separate and costly system seems redundant and potentially confusing to applicants, licensees, and registrants. In addition, users will be charged an additional fee to use the GO-Biz system – on top of the regular application fees; thus, it is more cost effective for users to just use BreZE.

### B. [AB 2138](#) (Chiu) Licensing boards: denial of application: criminal conviction

Summary: This bill would prohibit a person from being denied a license solely on the basis that he or she has been convicted of a nonviolent crime and would make conforming changes.

Status: In Assembly, referred to Business and Professions

### C. [AB 2264](#) (Brough) Professions and vocations: fees

Summary: This bill would authorize the Department of Consumer Affairs and boards to charge a fee of not more than \$2 for a certificate and delete the requirement that late fees would not be less than \$25.

Status: In Assembly, referred to Business and Professions

### D. [AB 3183](#) (Carrillo) Consumers

Summary: This bill would make non-substantive changes to Section 301 of the Business and Professions Code, which states the Legislature's intent to promote, protect, and advance the interests of the people as consumers.

Status: In Assembly, pending referral

Staff Comments:

### E. [SB 244](#) (Lara) Privacy: agencies: personal information

Summary: This bill would exempt from the Public Records Act all personal information provided to the Department of Consumer Affairs (Department) or its boards for the purposes of obtaining a professional license. This bill would also prohibit disclosure of that information except as required to administer the licensing program or as otherwise required by law or court order.

Status: In Assembly, ordered to Inactive File

Analysis: [09/08/17- Assembly Floor Analysis](#)

Staff Comments: This bill could potentially lead to the need for a limited term employee to help with the redacting of personal information that could potentially be included as part of a licensee's currently public information. It's estimated this would cost \$83,000 initially, and \$75,000 per year for as long as it took to redact the information for the last decade of public actions.

**F. [SB 984](#) (Skinner) State boards and commissions: representation: women**

Summary: This bill would require all state boards and commissions to be comprised of at least 50% women. This bill would also require the Secretary of State to disclose the gender composition of every state board and commission on its website.

Status: In Senate, referred to Committees on Government Organization and Judiciary

Staff Comments: Seven women currently sit on the Board (63%); however, only 40% (2 of 5) of the Dispensing Optician Committee are women. As members may recall, recruiting and appointing DOC members was extremely challenging. Requiring 50% to be women may have delayed this process even more. In addition, there is no exception for member vacancies. Staff is concerned with potential unintended consequences this requirement may have on boards and commissions who are charged with carrying out vital public services.

**G. [SB 1137](#) (Vidak) Veterans: professional licensing benefits**

Summary: This bill would require the Department of Veterans Affairs and the Department of Consumer Affairs to consult with each other in order to take appropriate steps to increase awareness and notification for veterans regarding professional licensing benefits.

Status: In Senate, referred to Committees on Veterans Affairs and Business, Professions, & Economic Development

**H. [SB 1465](#) (Hill) Professions and vocations: examinations**

Summary: This bill would prevent any board from appointing commissioners on examinations.

Status: In Senate, referred to Senate Business, Professions and Economic Development

**BUSINESS AND PROFESSIONS CODE - BPC**  
**DIVISION 2. HEALING ARTS [500 - 4999.129]**

( Division 2 enacted by Stats. 1937, Ch. 399. )

**CHAPTER 7. Optometry [3000 - 3167]**

( Chapter 7 added by Stats. 1937, Ch. 423. )

**ARTICLE 4. Registration [3070 - 3078]**

( Article 4 added by Stats. 1937, Ch. 423. )

**3077.**

As used in this section, "office" means any office or other place for the practice of optometry.

(a) No person, singly or in combination with others, may have an office unless he or she is licensed to practice optometry under this chapter.

(b) On and after July 1, 2019, no optometrist, and no two or more optometrists jointly, may have more than one office unless he or she or they comply with the provisions of this section as to each additional office.

(c) On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire to operate more than one office shall notify the board in writing in a manner prescribed by the board.

(d) Any failure to comply with the provisions of this chapter relating to additional offices shall result in the suspension of the optometrist license of each optometrist who, individually or with others, has a more than one office. An optometrist license so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a license after suspension for failure to comply with the provisions of this chapter relating to additional offices.

(e) An optometrist, or two or more optometrists jointly, may have more than one office if the owners, individually or in combination, are in personal attendance at each of the offices at least 10 percent of the time during which the offices are open for the practice of optometry. However, nothing herein shall require any individual optometrist in the group that has the offices to actually be present in any of the offices provided the overall percentage set forth in this subdivision is met. For purposes of this section, "owner" is an individual with at least a X percent interest in the optometric corporation or partnership.

(f) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.

(g) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:

- (1) Complies with the definition of an optometric corporation in Section 3160.
- (2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.
- (3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.

Add a new Section 16780. (a) No individual or legal entity may employ or contract with an optometrist in any setting in which he or she is subject to interference in his or her professional judgment in treating a patient.

(b) Violation of this section shall be considered an unfair trade practice subject to action under Chapter Four of Division Seven of this code.