

AMENDED IN ASSEMBLY JANUARY 15, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 156

Introduced by Assembly Member Voepel

January 7, 2019

~~An act to add Chapter 5.48 (commencing with Section 2548) to Division 2 of the Business and Professions Code, relating to eye care. An act to amend Section 3152 of the Business and Professions Code, relating to healing arts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 156, as amended, Voepel. ~~Eye care: remote assessment. Optometrists: endorsement fee.~~

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, which is within the Department of Consumer Affairs. Existing law requires various fees for purposes of the act, and requires those moneys to be deposited in the Optometry Fund.

This bill would establish an endorsement fee of \$50, and would authorize the board to increase the fee to not more than \$100.

~~Existing law restricts to a physician and surgeon licensed by the Medical Board of California or optometrist licensed by the State Board of Optometry the power to prescribe ophthalmic devices, including spectacle or contact lenses. Existing law establishes standards for spectacle lens and contact lens prescriptions. Existing law prohibits any person other than licensed physicians and surgeons, licensed optometrists, or registered dispensing opticians from dispensing, selling, or furnishing prescription lenses, except as provided in the Nonresident Contact Lens Seller Registration Act.~~

~~This bill would prohibit a person from operating an assessment mechanism to conduct an eye assessment or to generate a prescription for contact lenses or visual aid glasses to a patient at a California residence unless prescribed requirements are met. The bill would define “assessment mechanism” to mean an automated or virtual equipment, application, or technology designed to be used on a telephone, a computer, or an internet-based device that may be used either in person or remotely to conduct an eye assessment and includes artificial intelligence devices and any equipment that is used to perform an eye assessment. The bill would define other terms for its purposes. The bill would prohibit a person from operating an assessment mechanism to conduct an eye assessment or generate a prescription to a California patient that is under 18 years of age or to a California patient that has not received an in-person comprehensive eye health examination by an optometrist or physician and surgeon within the previous 24 months. The bill would require that the evaluation, treatment, and consultation recommendations by a licensed optometrist or physician and surgeon utilizing an assessment mechanism be held to the same standards of appropriate practice as those in traditional in-person clinical settings. The bill would make a knowing violation of these provisions subject to civil penalties and enforceable by the Attorney General.~~

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 3152 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 3152. The amounts of fees and penalties prescribed by this
- 4 chapter shall be established by the board in amounts not greater
- 5 than those specified in the following schedule:
- 6 (a) The fee for applicants applying for a license shall not exceed
- 7 two hundred seventy-five dollars (\$275).
- 8 (b) The fee for renewal of an optometric license shall not exceed
- 9 five hundred dollars (\$500).
- 10 (c) The annual fee for the renewal of a branch office license
- 11 shall not exceed seventy-five dollars (\$75).
- 12 (d) The fee for a branch office license shall not exceed
- 13 seventy-five dollars (\$75).

1 (e) The penalty for failure to pay the annual fee for renewal of
2 a branch office license shall not exceed twenty-five dollars (\$25).

3 (f) The fee for issuance of a license or upon change of name
4 authorized by law of a person holding a license under this chapter
5 shall not exceed twenty-five dollars (\$25).

6 (g) The delinquency fee for renewal of an optometric license
7 shall not exceed fifty dollars (\$50).

8 (h) The application fee for a certificate to perform lacrimal
9 irrigation and dilation shall not exceed fifty dollars (\$50).

10 (i) The application fee for a certificate to treat glaucoma shall
11 not exceed fifty dollars (\$50).

12 (j) The fee for approval of a continuing education course shall
13 not exceed one hundred dollars (\$100).

14 (k) The fee for issuance of a statement of licensure shall not
15 exceed forty dollars (\$40).

16 (l) The fee for biennial renewal of a statement of licensure shall
17 not exceed forty dollars (\$40).

18 (m) The delinquency fee for renewal of a statement of licensure
19 shall not exceed twenty dollars (\$20).

20 (n) The application fee for a fictitious name permit shall not
21 exceed fifty dollars (\$50).

22 (o) The renewal fee for a fictitious name permit shall not exceed
23 fifty dollars (\$50).

24 (p) The delinquency fee for renewal of a fictitious name permit
25 shall not exceed twenty-five dollars (\$25).

26 (q) The fee for a retired license shall not exceed twenty-five
27 dollars (\$25).

28 (r) The fee for a retired license with volunteer designation shall
29 not exceed fifty dollars (\$50).

30 (s) The biennial renewal fee for a retired license with volunteer
31 designation shall not exceed fifty dollars (\$50).

32 (t) The application fee for a certificate to administer
33 immunizations shall not exceed fifty dollars (\$50).

34 (u) The application fee for a home residence permit is fifty
35 dollars (\$50). The board may increase the fee to not more than one
36 hundred dollars (\$100).

37 (v) The renewal fee for a home residence permit is fifty dollars
38 (\$50). The board may increase the fee to not more than one hundred
39 dollars (\$100).

(w) The delinquency fee for a home residence permit is twenty-five dollars (\$25). The board may increase the fee to not more than one hundred dollars (\$100).

(x) *The endorsement fee is fifty dollars (\$50). The board may increase the fee to not more than one hundred dollars (\$100).*

~~SECTION 1. Chapter 5.48 (commencing with Section 2548) is added to Division 2 of the Business and Professions Code, to read:~~

~~CHAPTER 5.48. CONSUMER PROTECTION IN EYE CARE ACT~~

~~2548. This chapter shall be known as the Consumer Protection in Eye Care Act.~~

~~2548.1. As used in this chapter:~~

~~(a) "Assessment mechanism" means automated or virtual equipment, application, or technology designed to be used on a telephone, a computer, or an internet-based device that may be used either in person or remotely to conduct an eye assessment and includes artificial intelligence devices and any equipment, electronic or nonelectronic, that is used to perform an eye assessment.~~

~~(b) "Contact lens" has the same meaning as described in Section 2541.~~

~~(c) "Diagnostic information and data" includes, but is not limited to, photographs and scans.~~

~~(d) "Eye assessment" means an assessment of the ocular health and visual status of a patient that may include, but is not limited to, objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis for the correction of vision disorders.~~

~~(e) "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity.~~

~~(f) "Prescription" means a handwritten or electronic order issued by a licensed optometrist or physician and surgeon, or an oral order issued directly by a licensed optometrist or physician and surgeon.~~

~~(g) "Seller" means an individual or entity that sells contact lenses or visual aid glasses and dispenses them to residents of this state in any manner.~~

1 (h) “Visual aid glasses” means eyeglasses, spectacles, or lenses
2 designed or used to correct visual defects, including spectacles
3 that may be adjusted by the wearer to achieve different types or
4 levels of visual correction or enhancement. “Visual aid glasses”
5 does not include optical instruments or devices that are any of the
6 following:

7 (1) Not intended to correct or enhance vision.

8 (2) Sold without consideration of the visual status of the
9 individual who will use the optical instrument or device, including,
10 but not limited to, sunglasses that are designed and used solely to
11 filter out light.

12 (3) Completely assembled eyeglasses or spectacles designed
13 and used solely to magnify.

14 2548.2. (a) A person shall not operate an assessment
15 mechanism to conduct an eye assessment or to generate a
16 prescription for contact lenses or visual aid glasses to a patient at
17 a California residence, unless all of the following apply:

18 (1) Diagnostic information and data gathered by the assessment
19 mechanism are read and interpreted by a licensed optometrist or
20 physician and surgeon.

21 (2) The licensed optometrist or physician and surgeon can
22 confirm the identity of the patient requesting treatment via the
23 assessment mechanism.

24 (3) The assessment mechanism is approved by the federal Food
25 and Drug Administration or any third-party certification program
26 endorsed by the Food and Drug Administration for the intended
27 use.

28 (4) The assessment mechanism is designed and operated in a
29 manner that provides any applicable accommodation required by
30 the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101
31 et seq.).

32 (5) The assessment mechanism and accompanying technology
33 used for the collection and transmission of information and data
34 gathers and transmits protected health information in compliance
35 with the federal Health Insurance Portability and Accountability
36 Act of 1996 (Public Law 104-191).

37 (6) The procedure for which the assessment mechanism is used
38 has a recognized Current Procedural Terminology code maintained
39 by the American Medical Association.

1 ~~(7) The assessment mechanism prominently displays the name~~
2 ~~and California state license number of the optometrist or physician~~
3 ~~and surgeon who will read and interpret the diagnostic information~~
4 ~~and data.~~

5 ~~(8) The owner or lessee of the assessment mechanism maintains~~
6 ~~liability insurance in an amount adequate to cover claims made by~~
7 ~~individuals diagnosed or treated based on diagnostic information~~
8 ~~and data generated by the assessment mechanism.~~

9 ~~(9) The assessment mechanism creates and maintains a medical~~
10 ~~record for each patient, which is for use during the ongoing~~
11 ~~treatment of a patient, and complies with all state and federal laws~~
12 ~~regarding maintenance and accessibility.~~

13 ~~(10) There is simultaneous interaction between the patient and~~
14 ~~the licensed optometrist or physician and surgeon.~~

15 ~~(11) The licensed optometrist or physician and surgeon utilizing~~
16 ~~an assessment mechanism provides a handwritten or electronic~~
17 ~~signature certifying their evaluation, treatment, prescription, or~~
18 ~~consultation recommendations of the patient.~~

19 ~~(b) A person shall not operate an assessment mechanism to~~
20 ~~conduct an eye assessment or to generate a prescription to a patient~~
21 ~~under 18 years of age at a California residence.~~

22 ~~(c) A person shall not operate an assessment mechanism to~~
23 ~~conduct an eye assessment or to generate a prescription to a patient~~
24 ~~at a California residence unless the patient has received an~~
25 ~~in-person comprehensive eye health examination by an optometrist~~
26 ~~or physician and surgeon within the previous 24 months.~~

27 ~~(d) Evaluation, treatment, and consultation recommendations~~
28 ~~by a licensed optometrist or physician and surgeon utilizing an~~
29 ~~assessment mechanism as required in this section, including issuing~~
30 ~~a prescription via electronic means, shall be held to the same~~
31 ~~standards of appropriate practice as those in traditional in-person~~
32 ~~clinical settings.~~

33 ~~2548.3. A person that engages in a knowing violation of this~~
34 ~~chapter shall be subject to a civil penalty of not more than ten~~
35 ~~thousand dollars (\$10,000) for each violation. These civil penalties~~
36 ~~may be assessed and recovered through a civil action brought in~~
37 ~~the name of the people of the State of California by the Attorney~~
38 ~~General.~~

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