

AMENDED IN ASSEMBLY APRIL 3, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2020

Introduced by Assembly ~~Member~~ Members Correa and Matthews

February 15, 2002

An act to ~~add Section 3091 to~~ amend Sections 2543, 2545, 2546.5, 2546.6, and 3090 of, and to add Sections 2541.2 and 2546.10 to, the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, as amended, Correa. Optometry.

(1) Existing law provides for the regulation of prescription lenses and prohibits any person other than a physician and surgeon or optometrist from prescribing ophthalmic or contact lenses or plano contact lenses. Existing law also prohibits any person other than licensed physicians and surgeons, licensed optometrists, or registered dispensing opticians from dispensing, selling, or furnishing prescription lenses.

This bill would prohibit the expiration date of a contact lens prescription from being less than one to 2 years from the date of issuance, with certain exceptions. The bill would provide that it is a deceptive marketing practice to represent by advertisement or sales presentation that contact lenses may be obtained without a prescription. The bill would provide that a violation of the laws regulating prescription lenses is punishable by a fine, not to exceed \$2,500. The bill would create the Contact Lens Consumer Protection Fund in the State Treasury. The bill would require money derived from fines on licensed physicians and surgeons and registered dispensing opticians to be

deposited in the fund and to be available upon appropriation to the Medical Board of California. The bill would also require money derived from fines on optometrists to be deposited in the Optometry Fund and to be available upon appropriation to the State Board of Optometry.

(2) Existing law requires a person located outside California to be registered with the Medical Board of California in order to ship, mail, or deliver contact lenses at retail to a patient at a California address.

This bill would require a nonresident contact lens seller to provide a toll-free telephone number, facsimile line, or E-mail address where contact lens prescribers may confirm their prescriptions. The bill would prohibit a contact lens prescription from being confirmed until a prescriber, or the prescriber’s authorized agent, has communicated that the prescription is accurate. The bill would also provide that violation of the provisions regulating nonresident contact lens sellers is punishable by a fine, not to exceed \$2,500.

(3) Existing law provides for ~~licensing~~ the registration and regulation of optometrists by the State Board of Optometry. Existing law authorizes the board to revoke or suspend the certificate of registration of an optometrist if the optometrist under certain circumstances, including a showing of unprofessional conduct.

This bill would ~~state that protection of the public shall be the highest priority for the board in exercising its disciplinary authority. The bill would require the board, wherever possible, to take disciplinary action that is calculated to aid in the rehabilitation of a licensee, but to order restrictions on scope of practice if warranted due to a lack of continuing education or other reasons~~ authorize the board to revoke or suspend the license of an optometrist for failing to release a spectacle or contact lens prescription.

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 3091 is added to the Business and
- 2 ~~SECTION 1.~~ Section 2541.2 is added to the Business and
- 3 Professions Code, to read:
- 4 2541.2. (a) The expiration date of a contact lens prescription
- 5 shall not be less than one to two years from the date of issuance
- 6 unless the patient’s history or current circumstances establish a
- 7 reasonable probability of changes in the patient’s vision of



1 *sufficient magnitude to necessitate reexamination earlier than one*
2 *year, or the presence or probability of visual abnormalities related*
3 *to ocular or systemic disease indicate the need for reexamination*
4 *of the patient earlier than one year. In no circumstances shall the*
5 *expiration date be shorter than the period of time recommended by*
6 *the prescriber for reexamination of the patient. Establishing an*
7 *expiration date that is not consistent with this section shall be*
8 *regarded as unprofessional conduct by the board that issued the*
9 *prescriber’s license to practice.*

10 *(b) Upon completion of the contact lens fitting process for a*
11 *patient, a prescriber shall provide the patient with a copy of the*
12 *patient’s contact lens prescription unless the prescription meets*
13 *the standards set forth in subdivision (c).*

14 *(c) A prescriber shall retain professional discretion regarding*
15 *the release of the contact lens prescription for patients that wear*
16 *the following types of contact lenses:*

- 17 *(1) Rigid gas permeables.*
- 18 *(2) Bitoric gas permeables.*
- 19 *(3) Bifocal gas permeables.*
- 20 *(4) Keratoconus lenses.*
- 21 *(5) Custom designed lenses that are unique to an individual*
22 *patient.*

23 *(d) When a patient places an order with a seller licensed under*
24 *this section, the prescriber shall, upon request, provide a copy of*
25 *the patient’s valid, unexpired prescription to the seller or promptly,*
26 *by the next business day, verify the information contained in the*
27 *prescription. For the purposes of this section, “business day”*
28 *means Monday through Friday, excluding Saturdays, Sundays,*
29 *and federal holidays.*

30 *(e) For the purpose of this section, the term “completion of the*
31 *contact lens fitting process” begins after the initial eye*
32 *examination, and includes an examination to determine the lens*
33 *specifications, an initial evaluation of the fit of the lens on the*
34 *patient’s eye, except in the case of a renewal prescription of an*
35 *established patient, and followup examinations that are medically*
36 *necessary, and ends when the prescriber is satisfied that a*
37 *successful fit has been achieved, or in the case of a prescription*
38 *renewal for an established patient, the prescriber determines that*
39 *there is no change in the prescription.*



1 (f) *The payment of professional fees for the eye exam, fitting,*
2 *and evaluation may be required prior to the release of the*
3 *prescription, but only if that provider would have required*
4 *immediate payment from the patient had the examination revealed*
5 *that no ophthalmic goods were required.*

6 *For purpose of this section, sufficient information for complete*
7 *and accurate filling of a contact lens prescription shall include, but*
8 *not be limited to, the power, the material or manufacturer or both,*
9 *the base curve or appropriate designation, the diameter when*
10 *appropriate, and a medically appropriate expiration date.*

11 *SEC. 2. Section 2543 of the Business and Professions Code is*
12 *amended to read:*

13 2543. (a) *The right to dispense, sell or furnish prescription*
14 *lenses at retail or to the person named in a prescription is limited*
15 *exclusively to licensed physicians and surgeons, licensed*
16 *optometrists, and registered dispensing opticians as provided in*
17 *this division. This section shall not be construed to affect licensing*
18 *requirements pursuant to Section 111615 of the Health and Safety*
19 *Code.*

20 (b) *It shall be considered a deceptive marketing practice for*
21 *any licensed physician and surgeon, licensed optometrist or*
22 *registered dispensing optician to publish or cause to be published*
23 *any advertisement or sales presentation relating to contact lenses*
24 *that represents directly or by implication that contact lenses may*
25 *be obtained without a valid prescription.*

26 *SEC. 3. Section 2545 of the Business and Professions Code is*
27 *amended to read:*

28 2545. (a) *Whenever any person has engaged, or is about to*
29 *engage, in any acts or practices which constitute, or will constitute,*
30 *an offense against this chapter, the superior court in and for the*
31 *county wherein the acts or practices take place, or are about to take*
32 *place, may issue an injunction, or other appropriate order,*
33 *restraining the conduct on application of the State Board of*
34 *Optometry, the Division of Licensing of the Medical Board of*
35 *California, the Osteopathic Medical Board of California, the*
36 *Attorney General, or the district attorney of the county.*

37 *The proceedings under this section shall be governed by*
38 *Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of*
39 *the Code of Civil Procedure.*



1 (b) Any person who violates any of the provisions of this
2 chapter shall be subject to a fine of not less than one thousand
3 dollars (\$1,000) nor more than two thousand five hundred dollars
4 (\$2,500) per violation. The fees collected pursuant to this section
5 from licensed physicians and surgeons and registered dispensing
6 opticians shall be deposited in the Contact Lens Consumer
7 Protection Fund and shall be available upon appropriation to the
8 Medical Board of California for the purposes of administration
9 and enforcement. The fees collected pursuant to this section from
10 licensed optometrists shall be deposited in the Optometry Fund
11 and shall be available upon appropriation to the State Board of
12 Optometry for purposes of administration and enforcement.

13 SEC. 4. Section 2546.5 of the Business and Professions Code
14 is amended to read:

15 2546.5. In order to obtain and maintain registration, a
16 nonresident contact lens seller shall:

17 (a) Be in good standing and either registered or otherwise
18 authorized in the state in which the selling facility is located and
19 from which the contact lenses are sold.

20 (b) Comply with all directions and requests for information
21 made by the board as authorized under this chapter.

22 (c) Maintain records of contact lenses shipped, mailed, or
23 delivered to patients in California for a period of at least three
24 years.

25 (d) Provide a toll-free telephone service for responding to
26 patient questions and complaints during the applicant's regular
27 hours of operation, but in no event less than six days per week and
28 40 hours per week. The toll-free number shall be included in
29 literature provided with each mailed contact lens prescription. All
30 questions relating to eye care for the lens prescribed shall be
31 referred back to the contact lens prescriber.

32 (e) Provide the following or a substantially equivalent written
33 notification to the patient whenever contact lenses are supplied:

34

35 WARNING: IF YOU ARE HAVING ANY UNEXPLAINED
36 EYE DISCOMFORT, WATERING, VISION CHANGE, OR
37 REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND
38 CONSULT YOUR EYE CARE PRACTITIONER BEFORE
39 WEARING YOUR LENSES AGAIN.

40



1 (f) Disclose in any price advertisement any required
2 membership fees, enrollment fees, and indicate that shipping costs
3 may apply unless the advertisement specifically and clearly states
4 otherwise.

5 (g) *Provide a toll-free telephone number, facsimile line, and*
6 *electronic mail address that are dedicated to prescribers and their*
7 *authorized agents for the purposes of confirmation of contact lens*
8 *prescriptions. These numbers, along with an electronic mail*
9 *address, shall be included in any communication with the*
10 *prescriber when requesting confirmation of a contact lens*
11 *prescription.*

12 (h) *It shall be considered a deceptive marketing practice for*
13 *any nonresident contact lens seller to publish or cause to be*
14 *published any advertisement or sales presentation relating to*
15 *contact lenses that represents directly or by implication that*
16 *contact lenses may be obtained without a valid prescription.*

17 SEC. 5. Section 2546.6 of the Business and Professions Code
18 is amended to read:

19 2546.6. (a) Contact lenses may be sold only upon receipt of
20 a written prescription ~~dated one year or less from the date the~~
21 ~~lenses are supplied, or within any shorter period of time that is~~
22 ~~specified by the prescription~~ and sold in quantities consistent with
23 the prescriber's established expiration date. If the written
24 prescription is not available to the seller, the seller shall confirm
25 the prescription by direct communication with the prescriber or his
26 or her authorized agent prior to selling, *shipping, mailing, or*
27 *delivering* any lens, and maintain a record of the communication.
28 *A prescription shall not be deemed confirmed until the prescriber*
29 *or the prescriber's authorized agent has, by the next business day,*
30 *communicated that the prescription is valid and accurate. If the*
31 *seller receives no communication from the prescriber or their*
32 *authorized agent by the next business day, the seller may fill the*
33 *prescription as requested, but shall indicate when shipping the*
34 *order to the patient that confirmation was not received from the*
35 *provider. For the purposes of this section, "business day" means*
36 *Monday through Friday, excluding Saturdays, Sundays, and*
37 *federal holidays.*

38 (b) *If a provider communicates by the next business day that a*
39 *contact lens prescription is inaccurate or invalid, the prescription*
40 *may not be filled by the seller under any circumstance.*



1 (c) A seller shall not alter any of the specifications of a contact
2 lens prescription or substitute a different manufacturer, brand or
3 other physical property of the lens unless the prescription meets the
4 standards as set forth in subdivision (d).

5 (d) A prescription may be filled by the seller if the contact lens
6 is manufactured by a company, but sold under multiple labels by
7 that same company to individual providers as long as the contact
8 lens prescription and the related parameters are not substituted,
9 changed, or altered for a different manufacturer or brand.

10 SEC. 6. Section 2546.10 is added to the Business and
11 Professions Code, to read:

12 2546.10. Any person who violates any of the provisions of this
13 chapter shall be subject to a fine of not less than one thousand
14 dollars (\$1,000) nor more than two thousand five hundred dollars
15 (\$2,500) per violation. The fees collected pursuant to this section
16 shall be deposited in the Contact Lens Consumer Protection Fund,
17 which is hereby created in the State Treasury, and shall be
18 available upon appropriation to the Medical Board of California
19 for the purposes of administration and enforcement.

20 SEC. 7. Section 3090 of the Business and Professions Code is
21 amended to read:

22 3090. The certificate of registration of any person registered
23 under this chapter, or any former act relating to the practice of
24 optometry, may be revoked or suspended for a fixed period by the
25 board for any of the following:

26 (a) Violating or attempting to violate, directly or indirectly, or
27 assisting in or abetting the violation of, or conspiring to violate,
28 any provision of this chapter or of the rules and regulations
29 adopted by the board pursuant to this chapter and in accordance
30 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
31 Division 3 of Title 2 of the Government Code. The proceedings
32 under this article shall be conducted in accordance with Chapter
33 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
34 2 of the Government Code, and the board shall have all the powers
35 granted therein.

36 (b) Unprofessional conduct.

37 (c) Gross ignorance.

38 (d) Inefficiency in his or her profession.

39 (e) Failure to release a spectacle or contact lens prescription.

40 ~~Professions Code, to read:~~



1 3091. ~~(a) Protection of the public shall be the highest priority~~
2 ~~for the board in exercising its disciplinary authority. The board~~
3 ~~shall, wherever possible, take action that is calculated to aid in the~~
4 ~~rehabilitation of a licensee, but where, due to a lack of continuing~~
5 ~~education or other reasons, restriction on scope of practice is~~
6 ~~indicated, to order restrictions as are indicated by the evidence.~~
7 ~~(b) It is the intent of the Legislature that the board shall seek out~~
8 ~~those licensees who have demonstrated deficiencies in~~
9 ~~competency and take those actions as are indicated, with priority~~
10 ~~given to those measures, including further education, restrictions~~
11 ~~from practice, or other means, that will remove those deficiencies.~~
12 ~~Where rehabilitation and protection are inconsistent, protection~~
13 ~~shall be paramount.~~

