

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 986

Introduced by Assembly Member Eng
(Coauthor: Assembly Member Hernandez)

February 22, 2007

~~An act to amend Section 3025 of, to amend the heading of Article 4 (commencing with Section 3070) of Chapter 7 of Division 2 of, and to add Sections 3071, 3072, and 3073 to, the Business and Professions Code, relating to optometry, and making an appropriation therefor.~~
An act to amend Sections 3070, 3075, 3078, and 3152 of, and to add Section 3007 to, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 986, as amended, Eng. Optometrists: regulation.

Existing law, the Optometry Practice Act, creates the State Board of Optometry, and makes it responsible for the registration and regulation of optometrists. *Under the act, the board assesses various fees that are deposited in the State Optometry Fund, and the revenues in that fund, other than penalty and fine revenues, are continuously appropriated to the board. The act requires an optometrist to notify the board of the address of his or her practice and to report to the board any change in the practice's location.* The act makes a violation of its provisions a crime.

This bill would require an optometrist to maintain a patient's records for a minimum of 7 years ~~after from the date of treatment or for 7 years after the date he or she completes treatment of a patient and at least until a minor patient becomes 18 19 years of age.~~ The bill would ~~also require an optometrist to report to the board specified information~~

concerning a judgment, settlement, or an arbitration award of \$3,000 or more in an action alleging fraud, deceit, negligence, incompetence, or recklessness in the practice of optometry. The bill would additionally require a professional liability insurer to report to the board specified information upon paying all or a portion of such a judgment, settlement, or arbitration award against an optometrist *exempt an optometrist from notifying the board of the address of his or her temporary practice, as defined by the board, at specified settings and would require the optometrist to carry evidence of licensure while practicing in those settings and to include the address of his or her primary practice and the temporary practice setting on a receipt provided to the patient. The bill would increase the amount of certain fees assessed by the board and would also specify the amount of various other fees assessed by the board. Because the bill would thereby increase the amount of revenue in the State Optometry Fund that is continuously appropriated, it would make an appropriation.*

Because the bill would *also* specify additional requirements under the Optometry Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 3007 is added to the Business and
- 2 Professions Code, to read:
- 3 3007. An optometrist shall retain a patient's records for a
- 4 minimum of seven years from the date he or she completes
- 5 treatment of the patient. If the patient is a minor, the patient's
- 6 records shall be retained for a minimum of seven years from the
- 7 date he or she completes treatment of the patient and at least until
- 8 the patient reaches 19 years of age.
- 9 SEC. 2. Section 3070 of the Business and Professions Code is
- 10 amended to read:

1 3070. (a) Before engaging in the practice of optometry, each
2 licensed optometrist shall notify the board in writing of the address
3 or addresses where he or she is to engage, or intends to engage, in
4 the practice of optometry and, also, of any changes in his or her
5 place of practice. The practice of optometry is the performing or
6 the controlling of any of the acts set forth in Section 3041.

7 (b) *A licensed optometrist is not required to provide the*
8 *notification described in subdivision (a) if he or she engages in*
9 *the temporary practice of optometry in any of the following*
10 *settings:*

11 (1) *A facility licensed by the State Department of Public Health.*

12 (2) *A public institution, including, but not limited to, a school,*
13 *a community college, and federal, state, and local penal and*
14 *correctional facilities.*

15 (3) *A mobile unit that is operated by a governmental agency or*
16 *by a nonprofit or charitable organization.*

17 (4) *The home of a patient who is not ambulatory.*

18 (5) *The practice location of another optometrist that has been*
19 *reported to the board pursuant to this section if the other*
20 *optometrist is ill or on a temporary leave or for any other reason*
21 *approved by the board. The exception under this paragraph is*
22 *limited to a total period at all temporary practice locations of*
23 *seven calendar days during a 30-day period and 84 days during*
24 *a calendar year.*

25 (c) *Notwithstanding Section 3075, an optometrist engaging in*
26 *the temporary practice of optometry at a location described in*
27 *subdivision (b) shall carry and present upon demand evidence of*
28 *his or her licensure but shall not be required to post his or her*
29 *current license or other evidence of current license status issued*
30 *by the board.*

31 (d) *In addition to the information required by Section 3076, a*
32 *receipt issued to a patient by an optometrist engaging in the*
33 *temporary practice of optometry at a location described in*
34 *subdivision (b) shall contain the address of the optometrist's*
35 *primary practice location and the temporary practice location*
36 *where the services were provided.*

37 (e) *"Temporary practice" shall be defined by the board for*
38 *purposes of this section.*

39 SEC. 3. *Section 3075 of the Business and Professions Code is*
40 *amended to read:*

1 3075. An optometrist shall post in each location where he or
2 she practices optometry, in an area that is likely to be seen by all
3 patients who use the office, his or her current license or other
4 evidence of current license status issued by the board. The board
5 may charge a fee ~~not to exceed twenty-five dollars (\$25) as~~
6 *specified in Section 3152* for each issuance of evidence of current
7 licensure.

8 *SEC. 4. Section 3078 of the Business and Professions Code is*
9 *amended to read:*

10 3078. (a) It is unlawful to practice optometry under a false or
11 assumed name, or to use a false or assumed name in connection
12 with the practice of optometry, or to make use of any false or
13 assumed name in connection with the name of a person licensed
14 pursuant to this chapter. However, the board may issue written
15 permits authorizing an individual optometrist or an optometric
16 group or optometric corporation to use a name specified in the
17 permit in connection with its practice if, and only if, the board
18 finds to its satisfaction all of the following:

19 (1) The place or establishment, or the portion thereof, in which
20 the applicant or applicants practice, is owned or leased by the
21 applicant or applicants, and the practice conducted at that place or
22 establishment, or portion thereof, is wholly owned and entirely
23 controlled by the applicant or applicants. However, if the applicant
24 or applicants are practicing optometry in a community clinic, as
25 defined in subdivision (a) of Section 1204 of the Health and Safety
26 Code, this subdivision shall not apply.

27 (2) The name under which the applicant or applicants propose
28 to operate is in the judgment of the board not deceptive or inimical
29 to enabling a rational choice for the consumer public and contains
30 at least one of the following designations: “optometry” or
31 “optometric.” However, if the applicant or applicants are practicing
32 optometry in a community clinic, as defined in subdivision (a) of
33 Section 1204 of the Health and Safety Code, this subdivision shall
34 not apply. In no case shall the name under which the applicant or
35 applicants propose to operate contain the name or names of any
36 of the optometrists practicing in the community clinic.

37 (3) The names of all optometrists practicing at the location
38 designated in the application are displayed in a conspicuous place
39 for the public to see, not only at the location, but also in any
40 advertising permitted by law.

1 (4) No charges that could result in revocation or suspension of
2 an optometrist's license to practice optometry are pending against
3 any optometrist practicing at the location.

4 (b) Permits issued under this section by the board shall expire
5 and become invalid unless renewed at the times and in the manner
6 provided in Article 7 (commencing with Section 3145) for the
7 renewal of licenses issued under this chapter. ~~The board may charge~~
8 ~~an annual fee, not to exceed ten dollars (\$10) for the issuance or~~
9 ~~renewal of each permit.~~

10 (c) A permit issued under this section may be revoked or
11 suspended at any time that the board finds that any one of the
12 requirements for original issuance of a permit, other than under
13 paragraph (4) of subdivision (a), is no longer being fulfilled by the
14 individual optometrist, optometric corporation, or optometric group
15 to whom the permit was issued. Proceedings for revocation or
16 suspension shall be governed by the Administrative Procedure
17 Act.

18 (d) If the board revokes or suspends the license to practice
19 optometry of an individual optometrist or any member of a
20 corporation or group to whom a permit has been issued under this
21 section, the revocation or suspension shall also constitute
22 revocation or suspension, as the case may be, of the permit.

23 *SEC. 5. Section 3152 of the Business and Professions Code is*
24 *amended to read:*

25 3152. The amount of fees and penalties prescribed by this
26 chapter shall be established by the board in amounts not greater
27 than those specified in the following schedule:

28 (a) The fee for applicants applying for a license shall not exceed
29 two hundred seventy-five dollars (\$275).

30 (b) The fee for renewal of an optometric license shall not exceed
31 ~~three~~ *five* hundred dollars ~~(\$300)~~ (\$500).

32 (c) The annual fee for the renewal of a branch office license
33 shall not exceed seventy-five dollars (\$75).

34 (d) The fee for a branch office license shall not exceed
35 seventy-five dollars (\$75).

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

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

- 1 (g) The delinquency fee for renewal of an optometric license
- 2 shall not exceed ~~twenty-five~~ fifty dollars ~~(\$25)~~ (\$50).
- 3 (h) *The application fee for a certificate to treat lacrimal*
- 4 *irrigation and dilation shall not exceed fifty dollars (\$50).*
- 5 (i) *The application fee for a certificate to treat primary open*
- 6 *angle glaucoma shall not exceed fifty dollars (\$50).*
- 7 (j) *The fee for approval of a continuing education course shall*
- 8 *not exceed one hundred dollars (\$100).*
- 9 (k) *The fee for issuance of a statement of licensure shall not*
- 10 *exceed forty dollars (\$40).*
- 11 (l) *The fee for biennial renewal of a statement of licensure shall*
- 12 *not exceed forty dollars (\$40).*
- 13 (m) *The delinquency fee for renewal of a statement of licensure*
- 14 *shall not exceed twenty dollars (\$20).*
- 15 (n) *The application fee for a fictitious name permit shall not*
- 16 *exceed fifty dollars (\$50).*
- 17 (o) *The renewal fee for a fictitious name permit shall not exceed*
- 18 *fifty dollars (\$50).*
- 19 (p) *The delinquency fee for renewal of a fictitious name permit*
- 20 *shall not exceed twenty-five dollars (\$25).*

21 ~~SECTION 1. Section 3025 of the Business and Professions~~
 22 ~~Code is amended to read:~~

23 ~~3025. The board may make and promulgate rules and~~
 24 ~~regulations governing procedure of the board, the admission of~~
 25 ~~applicants for examination for certificates of registration as~~
 26 ~~optometrists, and the practice of optometry. The board may also~~
 27 ~~adopt regulations pertaining to the requirements of Sections 3072~~
 28 ~~and 3073. All rules and regulations shall be in accordance with~~
 29 ~~and not inconsistent with the provisions of this chapter. The rules~~
 30 ~~and regulations shall be adopted, amended, or repealed in~~
 31 ~~accordance with the provisions of the Administrative Procedure~~
 32 ~~Act.~~

33 ~~SEC. 2. The heading of Article 4 (commencing with Section~~
 34 ~~3070) of Chapter 7 of Division 2 of the Business and Professions~~
 35 ~~Code is amended to read:~~

36
 37 **Article 4. Regulation**

38
 39 ~~SEC. 3. Section 3071 is added to the Business and Professions~~
 40 ~~Code, to read:~~

1 ~~3071.—An optometrist shall retain a patient’s health service~~
2 ~~records for a minimum of seven years from the date he or she~~
3 ~~treated the patient. If the patient is a minor, the patient’s health~~
4 ~~service records shall be retained for a minimum of seven years~~
5 ~~from the date the patient reaches 18 years of age.~~

6 ~~SEC. 4.—Section 3072 is added to the Business and Professions~~
7 ~~Code, to read:~~

8 ~~3072. (a) An optometrist shall report to the board in writing~~
9 ~~within 30 days of the date he or she has knowledge that any of the~~
10 ~~following has been entered against him or her in an action alleging~~
11 ~~fraud, deceit, negligence, incompetence, or recklessness by the~~
12 ~~optometrist in the practice of optometry:~~

13 ~~(1) A judgment, settlement, or arbitration award in a civil action,~~
14 ~~if its amount or value is three thousand dollars (\$3,000) or more.~~

15 ~~(2) A judgment, settlement, or arbitration award in an~~
16 ~~administrative action, if its amount or value is three thousand~~
17 ~~dollars (\$3,000) or more.~~

18 ~~(b) The report required by subdivision (a) shall be signed by~~
19 ~~the optometrist and shall set forth all of the following information:~~

20 ~~(1) The title of the case.~~

21 ~~(2) The court or the name of the administrative agency where~~
22 ~~the case was filed.~~

23 ~~(3) The docket number of the case.~~

24 ~~(4) The claim or file number of the case.~~

25 ~~(5) The date on which the event that is the basis for the court~~
26 ~~or administrative action occurred and a description of the event.~~

27 ~~(c) An optometrist shall promptly respond to oral or written~~
28 ~~inquiries from the board concerning the report, including inquiries~~
29 ~~made by the board in conjunction with the renewal of the~~
30 ~~optometrist’s license.~~

31 ~~(d) Violation of this section by an optometrist shall be grounds~~
32 ~~for disciplinary action. The board may impose a civil penalty of~~
33 ~~not less than one hundred dollars (\$100) and not more than one~~
34 ~~thousand dollars (\$1,000) as an intermediate sanction for the~~
35 ~~violation of this section in lieu of revoking the optometrist’s~~
36 ~~license. If an optometrist knowingly and intentionally violates this~~
37 ~~section, the board may impose a civil penalty of not more than~~
38 ~~twenty thousand dollars (\$20,000) as an intermediate sanction in~~
39 ~~lieu of revoking the optometrist’s license.~~

1 ~~(e) Notwithstanding any other provision of law, reporting of~~
2 ~~information by an optometrist as required by this section shall not~~
3 ~~constitute a violation of a confidential settlement agreement or~~
4 ~~any other confidentiality agreement between the parties in the~~
5 ~~action.~~

6 ~~SEC. 5. Section 3073 is added to the Business and Professions~~
7 ~~Code, to read:~~

8 ~~3073. (a) Within 30 days of payment of all or any portion of~~
9 ~~a judgment, settlement, or arbitration award described in Section~~
10 ~~3072 against an optometrist in which the amount or value of the~~
11 ~~judgment, settlement, or arbitration award is three thousand dollars~~
12 ~~(\$3,000) or more, an insurer providing professional liability~~
13 ~~insurance to that optometrist shall report to the board all of the~~
14 ~~following information:~~

- 15 ~~(1) The name of the optometrist.~~
- 16 ~~(2) The claim or file number for the matter.~~
- 17 ~~(3) The amount or value of the judgment, settlement, or~~
18 ~~arbitration award, and the amount paid by the insurer.~~
- 19 ~~(4) The name of the person to whom the insurer made the~~
20 ~~payment in the matter.~~

21 ~~(b) Notwithstanding any other provision of law, reporting of~~
22 ~~information by an insurer as required by this section shall not~~
23 ~~constitute a violation of a confidential settlement agreement or~~
24 ~~any other confidentiality agreement between the parties in the~~
25 ~~action.~~

26 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
27 ~~Section 6 of Article XIII B of the California Constitution because~~
28 ~~the only costs that may be incurred by a local agency or school~~
29 ~~district will be incurred because this act creates a new crime or~~
30 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
31 ~~for a crime or infraction, within the meaning of Section 17556 of~~
32 ~~the Government Code, or changes the definition of a crime within~~
33 ~~the meaning of Section 6 of Article XIII B of the California~~
34 ~~Constitution.~~