



ISSUE MEMORANDUM

DATE	October 22, 2021
TO	Legislation and Regulation Committee
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item # 6 - Update, Discussion and Possible Action on Tracked 2021 Legislation

The 2020-2021 legislative session concluded on September 10, 2021. Staff has tracked legislation listed below as a result of Board action in 2020. Set out below are summaries of each bill with staff comments and action taken, if any. All tracked bills were passed by the Legislature and signed into law by the Governor.

Staff requests LRC discussion and direction on implementation of any bills listed below. Please see comments for further information.

a. AB-407 (Salas and Low) Optometry: scope of practice. (CSBO – Support)
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB407

Digest: This bill would permit such an assistant to perform nonsubjective auto refraction, to perform preliminary subjective refraction procedures in connection with finalizing subjective refraction procedures performed by an ophthalmologist or optometrist, subject to certain conditions, and to perform A scan and B scan ultrasound testing. This bill would revise what comprises the practice of optometry, including specific practices a certified optometrist may engage in, and would specify exceptions or limitations to that practice. The bill would permit a certified optometrist to use or prescribe topical and oral prescription and nonprescription therapeutic pharmaceutical agents that are not controlled substances and are not antiglaucoma agents or otherwise limited or excluded, as described. The bill would permit a certified optometrist to administer authorized immunizations after meeting the immunization certification requirements.

Status: Signed into law on October 8, 2021, Chapter 652, Statutes of 2021. Effective January 1, 2022.

Comments: Sponsored by COA. Several provisions coincide with AB 691, also signed into law. This bill makes additions to the scope of practice for an optometrist, such as expanded pharmaceutical treatments and diagnostic tests and procedures. Further, assistants under the direct supervision of a licensee are now able to perform additional refractive tests upon completion of 45 hours of training, as monitored by the optometrist.

Staff is currently reviewing implementation options for the bill, but changes to BreEZe and enforcement process modifications will likely need to take place. Additionally, the

deeper scope of practice will allow for additional opportunities for continuing education to be offered in those subject areas.

b. AB-691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations (CSBO- Support)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB691

Digest: This bill expands the authorization for a TPA-certified optometrist to perform procedures to include a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) necessary to detect the presence of SARS-CoV-2. The bill would establish the substance of an application form for the immunization certification and expand the certificate to cover the administration of immunizations for SARS-CoV-2. Under the bill, the form would include required declarations under penalty of perjury, thereby imposing a state-mandated local program by expanding the crime of perjury. The bill would establish an application fee for the immunization certification.

Status: Signed into law on October 8, 2021, Chapter 654, Statutes of 2021. Effective and in law.

Comments: Several provisions coincide with AB 407, also signed into law. Staff projects an increased licensing workload, with approximately 700 current licensees may register under this bill. The bill establishes a \$50 certification fee, which would see \$35,000 in initial revenue for the Board. New optometry school graduates, who already have this training and are applying for licensure, would also take advantage. With 300 new applicants a year, the Board would see \$15,000 a year in potential revenue ongoing.

Staff has begun implementation of the bill. An immunization form, based on the text, is currently being developed and modifications to the BreEZe system are in the design phase.

c. AB-1534 (Committee on Business and Professions) California State Board of Optometry: optometry: opticianry. (CSBO – Support)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1534

Digest: This bill sets out numerous changes, including the following:

1. Extends the Board's operations until January 1, 2026.
2. Revises the definition of a dispensing optician to mean an individual or entity that is registered with the board as a spectacle lens dispenser, contact lens dispenser, nonresident ophthalmic lens dispenser, or registered dispensing ophthalmic business;
3. Authorizes the board to take action against any registrant who is charged with unprofessional conduct and deny an application for registration if the applicant has committed unprofessional conduct, including, but not limited to, violating these provisions, gross negligence, incompetence, and fraud;

4. Revises and re-casts the Non-Resident Contact Lens Sellers Act to now allow non—resident sellers to now sell spectacle lens;
5. Allows a physician and surgeon, as defined, to execute a lease or other written agreement with an optometrist, according to specified conditions contained in a written agreement establishing the landlord-tenant relationship, and would specify that an optometrist, a registered dispensing optician, a physician and surgeon, an optical company, or a health plan may also enter into a sublease with an optometrist;
6. Make various changes to licensing for opticianry registrations, including additional timeline and reporting requirements;
7. Creates definitions and scope of practice for opticians;
8. Strengthens the enforcement process for optical businesses, including adding a comprehensive list of actionable violations;
9. Increases fine limits to up to \$35,000 per violation;
10. Requires an owner and operator who has obtained approval from the Board and wishes to operate a mobile optometric office to apply for a permit before beginning operation of each mobile optometric office and would prescribe a permit fee.

Status: Signed into law on October 7, 2021, Chapter 630, Statutes of 2021. Effective January 1, 2022.

Comments: This is the Board's Sunset Bill for 2021. Staff is pursuing additional staff resources for implementation. This bill will require changes to enforcement and licensing processes and revision of several pending rulemaking packages.

D. SB-509 (Wilk) Optometry: COVID-19 pandemic: temporary licenses (CSBO-Support)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB509

Digest: This bill would establish provisions for temporary licensure. The bill would require the board to issue a temporary license to practice optometry to any person who applies for and is eligible for licensure under existing law, but who is unable to immediately take the required examination for licensure due to the state of emergency. The bill would require that a temporary licensee practice under the direct supervision of a supervising optometrist, as described. The bill would require the supervising optometrist to submit to the board any violations of the act committed by the temporary licensee within a certain timeframe. The bill would provide that the board is not required to adopt regulations to carry out these provisions. The bill would require the board to enforce and administer its enforcement provisions against holders of a temporary license.

Status: Signed into law September 22, 2021, Chapter 219, Statutes of 2021. Effective and in law.

Comments: Sponsored by COA. Staff estimates this bill will bring significant additional workload to the licensing and enforcement units and is pursuing additional resources to

assist. Impact of the bill is still being assessed. Staff has begun implementation of the bill, including creation of forms for temporary licensee and supervisor based on the statute, process changes and BreEZe work.