

The Florida Senate  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

**BILL:** CS/SB 520

**INTRODUCER:** Health Policy Committee and Senators Young and Campbell

**SUBJECT:** Optometry

**DATE:** February 22, 2018      **REVISED:** \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Rossitto-Van Winkle	Stovall	HP	Fav/CS
2. Loe	Hansen	AP	Favorable
3. Rossitto-Van Winkle	Phelps	RC	Pre-meeting

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 520 eliminates the requirement in current law that any person desiring an optometry license in Florida must file an application for licensure and subsequently take and successfully pass the licensure exam. Under the bill, an applicant may submit an application and proof of having successfully passed the licensure examination within three years before the date of the application or after the submission of the application. This process applies to a new licensee in the practice of optometry as well as to a person who is licensed to practice optometry in another state who desire licensure in Florida.

The bill requires the Board of Optometry (board) to approve the licensure examination and clarifies that the board may, by rule, offer a practical examination in addition to a written examination.

The bill may increase state expenditures by an indeterminate amount. The Department of Health (DOH) may experience an increase in workload if the board elects to offer a practical examination in addition to a written examination; however, these costs can be absorbed within existing resources.

The bill takes effect on July 1, 2018.

## II. Present Situation:

### The Practice of Optometry

The DOH is responsible for the regulation of optometrists in Florida for the preservation of the health, safety, and welfare of the public. The board was established to ensure that every person engaged in the practice of optometry meets minimum requirements for safe practice.<sup>1</sup>

Optometry is the diagnosis of conditions of the human eye and its appendages.<sup>2</sup> The practice of optometry includes the employment of any objective or subjective means or methods to assist in the diagnosis of conditions of the human eyes and its appendages, including:

- The administration of ocular pharmaceutical agents for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological, or anatomic anomalies of the human eyes and their appendages; and
- The prescribing and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods, including ocular pharmaceutical agents,<sup>3</sup> for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.<sup>4</sup>

Licensed optometrists who are not certified may only use topical anesthetics for the purpose of glaucoma examinations and are otherwise prohibited from administering or prescribing ocular pharmaceutical agents.<sup>5</sup> A licensed optometrist is required to post in his or her practice location a sign, which states: "I am a Licensed Practitioner, not a Certified Optometrist, and I am not able to prescribe ocular pharmaceutical agents."<sup>6</sup>

All optometrists initially licensed after July 1, 1993,<sup>7</sup> are now required to be certified and may administer and prescribe ocular pharmaceutical agents for the diagnosis and treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.<sup>8</sup>

### Licensure and Certification

Pursuant to ch. 456, F.S., the general provisions applicable to all professions regulated by the Division of Medical Quality Assurance within the DOH, the DOH must provide for the

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<sup>1</sup> Section 463.001, F.S., and The Department of Health, *Florida Board of Optometry*, available at: <http://florasoptometry.gov/>, (last visited Nov. 8, 2017).

<sup>2</sup> Section 463.002(10), F.S. "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus.

<sup>3</sup> Section 463.002(5), F.S. "Ocular pharmaceutical agent" means a pharmaceutical agent that is administered topically or orally for the diagnosis or treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.

<sup>4</sup> Section 463.002(7), F.S.

<sup>5</sup> Section 463.0055(1)(a), F.S.

<sup>6</sup> Section 463.002(3), F.S.

<sup>7</sup> Section 463.002(3), F.S. The 1986 Legislature amended ch. 463, F.S., to require that anyone applying for an optometrist license after July 1, 1993, become a Certified Optometrist. The legislation required all applicants after that date to meet additional education and examination requirements. See also the Department of Health, Board of Optometry, *Licensing and Registration*, available at <http://florasoptometry.gov/licensing/>, (last visited Nov. 8, 2017).

<sup>8</sup> Sections 463.002(4) and 463.0055, F.S.

development, preparation, administration, scoring, score reporting, and evaluation of all examinations in consultation with the appropriate board. For each examination developed by the DOH or a contracted vendor, the board must specify by rule:

- The general areas to be covered by each examination;
- The relative weight to be assigned in grading each area tested; and
- The score necessary to achieve a passing grade.<sup>9</sup>

The board and the DOH may not administer a state-developed written examination if a national examination has been certified by the DOH.<sup>10</sup> The board may administer a state-developed practical or clinical examination, if required by the applicable practice act, if all costs are paid by the candidate. If a national practical or clinical examination is available and certified by the DOH, the board may administer the national examination.<sup>11</sup>

Currently, any person desiring to be a certified optometrist in Florida must apply to the DOH to take the licensure and certification examinations.<sup>12</sup> To be certified as an optometrist the applicant must:

- Submit a completed application form;
- Submit an application and examination fee;
- Be at least 18 years of age;
- Graduate from a school or college of optometry approved by the board;
- Provide proof of at least 110 hours of transcript quality course work and clinical training in general and ocular pharmacology;
- Have completed at least one year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience;
- Successfully pass all four parts of the Florida Licensure Examination, consisting of:
  - Part I – the Applied Basic Science (ABS) portion of the examination developed by the National Board of Examiners in Optometry (NBEO);
  - Part II – the Patient Assessment and Management (PAM) portion of the examination developed by the NBEO which includes an embedded Treatment and Management of Ocular Disease examination;
  - Part III – the Clinical Skills Examination (CSE) portion of the examination developed by the NBEO; and
  - Part IV – a written examination on applicable Florida laws and rules governing the practice of optometry; and
- If the applicant is, or has ever been, licensed in another state, he or she must also submit a licensure verification from each state.<sup>13</sup>

An applicant who fails to achieve a passing score on Part I, Part II, Part III, or Part IV of the licensure examination may retake any part. Reexamination is limited to an 18-month period from

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<sup>9</sup> Section 456.017(1)(a) and (b), F.S.

<sup>10</sup> Section 456.017(1)(c)2., F.S.

<sup>11</sup> Section 456.017, F.S.

<sup>12</sup> Section 463.006(1), F.S.

<sup>13</sup> The Department of Health, Board of Optometry, *Licensure Requirements*, available at: <http://floridasoptometry.gov/licensing/certified-optometrist/>, (last visited November 8, 2017).

the date of the original failure. The board may grant an extension of one year to allow an additional retake based on a medical disability substantiated by documentation from the applicant's physician.<sup>14</sup>

Florida schools of optometry, and several out of state colleges, include the 4-part examination in the school curriculum and spread the four parts over the course of the four years of education and training required by the program.<sup>15</sup>

Prior to April 14, 2017, the DOH and board had, by rule,<sup>16</sup> accepted licensure applicants' passing scores on Part I, Part II, Part III, and Part IV of the licensure examination that had been obtained within the seven-year period immediately preceding licensure application. This practice was challenged in 2016<sup>17</sup> at the Division of Administrative Hearings, and the administrative law judge found that the petitioners had demonstrated that the rule's look-back period for test scores was an invalid exercise of delegated authority in violation of section 120.52(8)(b) and (c), F.S.; "and that should this result be onerous, the answer [was] a legislative change."<sup>18</sup> As a result of this decision, graduating students applying for licensure in Florida were required to retake examinations they had previously taken and passed while in school or college, and all out-of-state applicants were required to retake the examination.<sup>19</sup>

### **Renewal of Licensure and Certification**

A licensed optometrist must renew his or her license every two years, pay a renewal fee not to exceed \$300, and demonstrate his or her professional competence by completing 30 hours of continuing education during the preceding two-year period before license renewal. Certified optometrists must also complete 30 hours of continuing education during the preceding two years, but their hours must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.<sup>20</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 463.006, F.S., to eliminate the requirement that applicants for licensure must take, and successfully pass, the licensure examinations after an application for licensure is submitted. The bill permits an applicant for licensure to submit an application for licensure that includes proof of specific items, and to also submit proof that he or she has successfully passed all parts of the licensure examination within three years prior to the date of application or after submission of the application. This allows graduates from a board approved, accredited school or college, and some out-of-state practitioners from taking the licensure examination a second time if the applicant successfully passed the examination within the prior three years.

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<sup>14</sup> Rule 64B13-4.002, F.A.C.

<sup>15</sup> See Department of Health, *Senate Bill 520 Analysis* (Oct. 12, 2017) (on file with the Senate Committee on Health Policy).

<sup>16</sup> Rule 64B13-4.001, F.A.C.

<sup>17</sup> See Department of Administrative Hearings, *Final Order, Yontz & Johnson, v. DOH*, Case No. 16-6663RX (April 14, 2017), available at <https://www.doah.state.fl.us/ROS/2016/16006663.pdf> (last visited Dec. 5, 2017).

<sup>18</sup> Id. at page 42.

<sup>19</sup> *Supra* note 15.

<sup>20</sup> Section 463.007, F.S.

The bill requires the board to approve the licensure examination that meets certain requirements, and clarifies that the board may offer a practical examination in addition to a written examination.

**Section 2** amends s. 463.0057, F.S., to make a conforming cross-reference change.

**Section 3** provides the bill takes effect July 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

New licensees to the optometry profession, as well as some optometrists licensed in other states seeking licensure in Florida, may avoid the cost of retaking the required examinations if they successfully passed the examinations within three years prior to submitting an application. The estimated cost of the examination, not including travel and overnight accommodations to North Carolina, the only location Part III is given, is approximately \$2,500.<sup>21</sup>

C. Government Sector Impact:

The DOH may incur additional expenses in the development, preparation, administration, scoring, score reporting and evaluation of the examinations if the board elects to offer its own practical examination; however, these costs can be absorbed within its existing resources.

**VI. Technical Deficiencies:**

None.

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<sup>21</sup> *Supra* note 15.

**VII. Related Issues:**

Lines 31-35 of the bill contains existing statutory language that establishes caps for fees required for the licensure and certification of optometrists in Florida. The Department of Health no longer offers a state examination; therefore, fees required related to examinations are no longer collected, and the current statutory language can be deleted. The existing statutory language does not establish caps for a licensure application fee or a licensure fee. The current statutory language should be revised to include these fees in order to comply with section 456.025, F.S.

The bill permits three years to lapse since successful passage of the required licensure examination, either prior to the date of application or after the submission of an application, for licensure as an optometrist. It is not clear if the intent of this requirement is to limit the time period to three years or six years based on how the language is currently drafted. This language should be amended to clarify the intent of the restriction on the time permitted to lapse to qualify for licensure. Nonetheless, the restriction on the time permitted to lapse to qualify for licensure could deter the licensure of experienced optometrists who wish to move to Florida and continue practicing if more time has lapsed since they initially passed the examination. The restriction on the time permitted to lapse to qualify for licensure could be removed by incorporating similar language contained in the chiropractic practice act,<sup>22</sup> or the time frame could be extended to allow more time to lapse prior to requiring an optometrist licensed in another state to retake the licensure examination.

**VIII. Statutes Affected:**

This bill substantially amends sections 463.006 and 463.0057, of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Policy on December 5, 2017:**

The original bill amended s. 463.006, F.S., to authorize an optometry student, attending a board approved, accredited school of optometry, to submit his or her application for licensure and certification during the 24 months preceding his or her graduation. The CS removes this language and permits a graduate from a board-approved, accredited school or college, and certain out-of-state optometrists seeking licensure in Florida, to submit an application for licensure and proof that the applicant has passed all parts of the licensure examination within three years before the date of application or after the application submission. The CS also requires the board to approve the licensure examination.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>22</sup> Section 460.406(5), F.S.