

ACT 224

H.B. NO. 234

A Bill for an Act Relating to Optometry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 459-1, Hawaii Revised Statutes, is amended to read as follows:

“§459-1 Optometry; practice of, defined. The practice of optometry, for the purpose of this chapter, is defined to be the recognition and analysis of visual dysfunction of the human eye; the employment of trial frame [and] or trial lenses, and any objective or subjective means or methods, other than the use of drugs, medicine, or surgery, for the purpose of determining the refractive powers, visual [and] or muscular anomalies of human eyes; [and] or the prescribing [or employment], fitting, or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular [insufficiencies] anomalies of human eyes. Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or [holds himself out as being] claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked [certificate of registration] and unsuspended license as provided in this chapter; provided[,] that an orthoptist may give visual training, including exercises, under the supervision of [an oculist] a physician or optometrist.”

SECTION 2. Section 459-2, Hawaii Revised Statutes, is amended to read as follows:

“§459-2 Optometry; unauthorized practice, unlawful. It shall be unlawful for any person to practice optometry or to append the letters “O.D.” or any other optometric degree to a person’s name with the intent thereby to imply that the individual is a practitioner of optometry, without first securing and holding an unrevoked [certificate of registration] and unsuspended license under[,] and as provided in[,] this chapter [; provided, that this]. This chapter shall not apply to, or prohibit, a duly licensed physician [or surgeon] from practicing optometry as in this chapter defined, nor shall it prohibit a duly licensed physician [or surgeon, oculist,] or optometrist from filling prescriptions or orders, nor shall it prohibit the replacement, duplication, or repair of ophthalmic lenses, contact lenses, frames, or fittings thereof, by persons qualified to write or fill prescriptions or orders under this chapter, nor shall it prohibit or prevent [a certified] any optician licensed under chapter 458 from doing the [mere] mechanics of repairing, replacing, or duplicating of [such] any ophthalmic lenses, frames, fittings, or other optic materials, nor shall it apply to optometric service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of optometrists and of contracting on behalf of optometrists to furnish [such] services as provided in chapter 424.

Any¹ “ophthalmic lens” within the meaning of this chapter means any spectacle lens which has a spherical, cylindrical, or prismatic power or value, and is ground pursuant to a prescription.”

SECTION 3. Section 459-3, Hawaii Revised Statutes, is amended to read as follows:

“§459-3 Board of examiners; members, appointment, qualifications. There shall be a board to be known as the board of examiners in optometry, for the State. The board shall consist of five members, three of whom shall [possess sufficient knowledge of theoretical and practical optics to practice optometry and who have been residents of the State] be licensed optometrists who have actually engaged in the practice of optometry for at least [one year] five years and two of whom shall be public members. The board shall be appointed by the governor in accordance with section 26-34. No member of the board shall be a stockholder, member of the faculty, or on a board of trustees of any school of optometry.”

SECTION 4. Section 459-4, Hawaii Revised Statutes, is amended to read as follows:

“§459-4 Organization; meetings; rules [and regulations]. The members of the board of examiners in optometry shall qualify by taking oath of office before a notary public, or other officer empowered to administer oaths. At the first meeting of the board after each annual appointment, the board shall elect a [president, vice-president, and secretary-treasurer.] chairperson and vice chairperson. The board shall prescribe rules[, regulations, and bylaws,] in harmony with this chapter, [for its own proceedings and government and for the examination of applicants for the practice of optometry. The rules and regulations shall be published and furnished free of charge to and for the use and convenience of applicants for examinations.] as may be necessary to carry out its legal responsibilities and duties, to do all things necessary or incidental to the exercise of the powers and duties as established by these statutes, and to regulate the practice of optometry in the State.”

SECTION 5. Section 459-5, Hawaii Revised Statutes, is amended to read as follows:

“§459-5 Records. The department of commerce and consumer affairs on behalf of the board of examiners in optometry shall preserve a record of all [its proceedings in a book kept for that purpose, showing name, age, place, and duration of residence of each applicant, the time spent in schools of optometry, and in the study and practice of optometry, and the year and school from which degrees were granted.] applications for examination. The [register] record shall also show whether applicants were rejected or licensed, and, if rejected, the reasons therefor.”

SECTION 6. Section 459-6, Hawaii Revised Statutes, is amended to read as follows:

“§459-6 Examinations, time of. Examinations shall be held by the board of examiners in optometry at least once a year with [such] additional examinations as the board desires to hold. The time and place of any examination shall be fixed by the board at least [thirty] forty-five days prior to the date that it is to be held. [One examination shall be held during the third week of July of each year. No examination of applicants shall be held except by the full board.]”

SECTION 7. Section 459-7, Hawaii Revised Statutes, is amended to read as follows:

“§459-7 [Examination; certificate of registration.] Application; examination; reexamination; appeal; renewal; continuing education; license. (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence, verified by oath, that the applicant [is at least eighteen years of age, is a graduate of a high school,] is a graduate of an American optometric college, school, or university [recognized and] approved by the board of examiners in optometry and [the American optometric association,] accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Office of Education, shall take an examination before the board upon complying with the following requirements:

- (1) Applications for examination shall be made out and filed in writing with the executive secretary of the board; and
 - (2) Each application shall be accompanied by an application fee, which shall be retained by the board, and an examination fee.
- (b) Each applicant shall file, in writing, with the executive secretary at least [thirty] forty-five days, but not more than one hundred eighty days, prior to the date selected by the board for the examination, the following credentials:
- (1) A copy of the applicant's diploma or certificate of graduation from an American optometric college [or], school [recognized and approved by the board;], or university approved in accordance with subsection (a); and
 - [(2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of optometric examiners, and the secretary of the state optometric association of that state; and
 - (3)] (2) An unretouched, unmounted, passport sized, recent photograph of the applicant.

(c) The applicants for examination shall be given due notice of the date and place of each examination. [No applicant who fails to obtain an average of seventy per cent in every subject upon which the applicant is examined shall be passed by the board. If an] An applicant[, because of the applicant's failure] who fails to pass an examination [is refused a license, the applicant, within one year,] on the applicant's first attempt, shall be permitted upon payment of a reexamination fee, to take a second or third examination [without additional fee. If an applicant fails the second time, the applicant shall be required to file a new application and to pay a reexamination fee. If an] covering only those parts of the examination which the applicant failed to pass. An applicant who fails to pass the examination on the third [time] attempt or any subsequent [time, the applicant] attempt shall be required in each instance to file a new application, [and to] pay the application and examination fees, and [to] take a complete examination.

An appeal to the circuit court[,] of the circuit within which the applicant resides[,] may be taken from any decision of the board by any applicant who is refused or denied a [certificate] license.

Every candidate who passes an examination shall be [registered] licensed as possessing the qualifications required by this chapter, and shall receive from the board a proper [certificate of registration] license upon payment of a [registration] license fee. [Before any certificate is issued it shall be numbered and recorded on a book kept by the secretary of the board of examiners in optometry.]

(d) Each [registered optometrist] licensee shall pay a biennial license fee [between December 1, and] to the board on or before December 31 of each odd-numbered year[, to the board] for a renewal of the [optometrist's registration certificate] license for the biennium. The failure of any [regular licensed optometrist] licensee to pay the biennial license fee [in advance] and submit proof of satisfying the continuing education program requirements on or before December 31 of each odd-numbered year[, during the time the optometrist's license remains in force,] shall [ipso facto, work] automatically constitute a [revocation and] forfeiture of the license. Any [person whose] license which is so [revoked and] forfeited [shall pay a penalty fee for the restoration of the license, and, in addition, all delinquent biennial license fees. When an application for restoration of a license is made and all delinquent license fees and penalties are paid within three years after the forfeiture no examination shall be required. If this is not done within three years, the license shall not be restored unless the regular examination for applicants is passed.] may be restored upon payment of a penalty fee and all delinquent fees as provided in rules adopted by the director pursuant to chapter 91, and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the period of time the license has been forfeited.

(e) Each [registered optometrist] licensee shall submit proof to the board of examiners that the [optometrist] licensee did, on or before December 31 of each [even-numbered] odd-numbered year, [during the time the license remains in force,] meet the requirement of continuing education in programs as set and approved by the board. The board shall adopt rules for the certification of the administration of the continuing education program."

SECTION 8. Section 459-8, Hawaii Revised Statutes, is amended to read as follows:

"§459-8 Conduct of examinations. [All examinations shall be designed to ascertain the applicant's fitness to practice the profession of optometry. The

written examination shall cover the same body of knowledge as, and be at least equal to, the examination administered by the National Board of Examiners in Optometry.] Each applicant whose application is received by the board before January 1, 1987, shall pass either the written examination given by the National Board of Examiners in Optometry or a written examination given by the board.

Each applicant whose application is received by the board on or after January 1, 1987, shall pass the written examination given by the National Board of Examiners in Optometry. If a written examination is no longer given by the National Board of Examiners in Optometry, the applicant shall pass either another national examination selected by the board, or if no other examination is selected by the board, a written examination prepared by the board.

In addition to satisfying the applicable requirement above, the applicant shall also pass any practical and any written examinations given by the board.

The board shall provide in its rules which parts of the National Board of Examiners examination and the passing scores that the board will accept. The board shall not accept the scores of any National Board of Examiners examination if the examination was taken by the applicant more than five years before the date the application is received by the board. The board shall also provide in its rules the passing scores for any examination (practical or written) given by the board.”

SECTION 9. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

“§459-9 Refusal to permit examination or issue [certificate;] license; revocation and suspension of license; grounds for. The board of examiners in optometry may refuse to admit persons to its examinations or to issue [the certificates] a license or may revoke or suspend, for the period of time as may be determined by the board, a license previously issued, or may impose a penalty as shall be established by the board, for any of the following causes:

- (1) Presentation to the board of any certificate or testimony or information which was untrue in any material respect or illegally or fraudulently obtained, or when fraud or deceit has been practiced in obtaining any license under this chapter or in passing an examination;
- (2) [Other grossly unprofessional or dishonorable conduct] Conduct of a character likely to deceive or defraud the public, or habits of intemperance[,] or drug addiction calculated to destroy the accuracy of the work of an optometrist[;], or professional misconduct, or gross carelessness or negligence, or manifest incapacity in the practice of optometry;
- (3) Advertising in the following manner:
 - (A) By any means whatsoever, directly or indirectly, to offer [lens,] ophthalmic lenses, contact lenses, glasses, or frames or fittings thereof at a discount or as a premium for the purchase of any article of merchandise;
 - (B) By means of false and deceptive statements or by statements which tend to deceive or defraud; or to claim superiority over fellow optometrists; or to publish reports of cases or certificates of same in any public advertising media;
 - (C) In conjunction with any nonlicensed person or groups of individuals by permitting the use of [his] the licensee’s name, professional title, or profession;

- (4) Directly or indirectly accepting or offering employment to practice optometry from, or to any person not having a valid, unrevoked [certificate of registration as an optometrist] and unsuspended license or from any company or corporation;
- (5) Making of a house-to-house canvass either in person or through solicitors or associates for the purpose of selling, advertising, or soliciting the sale of eyeglasses, spectacles, ophthalmic lenses, contact lenses, frames, mountings, eye examinations, or optometric services; peddling of eyeglasses, spectacles, ophthalmic lenses, or contact lenses from house-to-house or on the streets or highways notwithstanding any law for the licensing of peddlers;
- (6) Renting space, subleasing departments, or otherwise occupying space to practice optometry on the premises of a commercial (mercantile) concern. Optometric practices [must] shall be under the [registered optometrist's] licensee's ownership and under [his] the licensee's exclusive control. It [must] shall not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files [must] shall be the sole property of the [optometrist.] licensee. The office [must] shall be definite and apart from the space occupied by any commercial (mercantile) concern so that all signs are separate and distinct from the commercial (mercantile) concern and all entrances to the premises [must] shall be separate and definite in character [such] so that there could be no misleading interpretation that [his] the licensee's practice is in any way associated with a commercial (mercantile) concern;
- (7) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other [such] allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any [such] intended or prospective wearer or user;
- (8) Using any name in connection with [his] the licensee's practice other than the name under which [he] the licensee is licensed to practice, or [failing to comply with the following provisions, to wit: all signs, cards, stationery, or other advertising must clearly identify the individual optometrist using or presenting the same and must be free from any ambiguity or possibility of misinterpretation as to such identity;] using any advertising which fails to clearly identify the individual licensee or which is ambiguous or misleading as to the licensee's identity;
- (9) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performances of the services[.]; or
- (10) Violating this chapter or the rules promulgated by the board."

SECTION 10. Section 459-10, Hawaii Revised Statutes, is amended to read as follows:

"§459-10 [Revocation of certificate.] Advertising, contents of. [The right to practice optometry may be revoked by the board of examiners in optometry

upon proof of the violation of the law in any respect in regard thereto; or for any cause for which the board is authorized to refuse to admit persons to its examinations, as provided in section 459-9.] All advertising by a licensee which contains a price for specified ophthalmic goods or services shall contain the following information when appropriate:

- (1) Whether an advertised price includes single vision or multifocal lenses;
- (2) Whether an advertised price for contact lenses refers to soft or hard lenses;
- (3) Whether an advertised price for ophthalmic goods includes an eye examination;
- (4) Whether an advertised price for ophthalmic goods includes all dispensing fees; and
- (5) Whether an advertised price for eyeglasses includes both frames and lenses.”

SECTION 11. Section 459-14, Hawaii Revised Statutes, is amended to read as follows:

“**§459-14 Penalty.** Any person practicing optometry in violation of this chapter or any rule [shall] may be fined [not less than \$50 nor more than] up to \$500 or be imprisoned [not less than two months nor] not more than six months, or both, for each separate violation, and each day of [such] the violation shall constitute a separate offense.”

SECTION 12. Section 459-9.5, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 14. This Act shall take effect upon its approval.

(Approved June 4, 1985.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.