

ACT 152

H.B. NO. 489

A Bill for an Act Relating to Optometry.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1987:

- (1) Chapter 458 (Board of Dispensing Opticians)
- [(2)] Chapter 459 (Board of Examiners in Optometry)
- (3) [(2)] Chapter 452 (Board of Massage)
- [(4)] [(3)] Chapter 471 (Board of Veterinary Examiners)
- [(5)] [(4)] Chapter 441 (Cemeteries and Mortuaries)
- [(6)] [(5)] Chapter 463 (Board of Detectives and Guards)
- [(7)] [(6)] Chapter 455 (Board of Examiners in Naturopathy)

(b) The following chapters are hereby repealed effective December 31, 1988:

- (1) Chapter 465 (Board of Psychology)
- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 468K (Travel Agencies)
- (4) Chapter 373 (Commercial Employment Agencies)
- (5) Chapter 442 (Board of Chiropractic Examiners)
- (6) Chapter 448 (Board of Dental Examiners)
- (7) Chapter 436E (Board of Acupuncture)

(c) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)
- (6) Chapter 439 (Board of Cosmetology)
- (7) Chapter 454 (Mortgage Brokers and Solicitors)
- (8) Chapter 454D (Mortgage and Collection Servicing Agents)
- (d) The following chapters are hereby repealed effective December 31, 1990:
  - (1) Chapter 447 (Dental Hygienists)
  - (2) Chapter 453 (Board of Medical Examiners)
  - (3) Chapter 457 (Board of Nursing)
  - (4) Chapter 460J (Pest Control Board)
  - (5) Chapter 462A (Pilotage)
  - (6) Chapter 438 (Board of Barbers)
  - (e) The following chapters are hereby repealed effective December 31, 1991:
    - (1) Chapter 448H (Elevator Mechanics Licensing Board)
    - (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
    - (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
    - (4) Chapter 460 (Board of Osteopathic Examiners)
    - (5) Chapter 461 (Board of Pharmacy)
    - (6) Chapter 461J (Board of Physical Therapy)
    - (7) Chapter 463E (Podiatry)
    - (f) The following chapters are hereby repealed effective December 31, 1992:
      - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
      - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
      - (3) Chapter 440 (Boxing Commission)[.]
      - (g) The following chapter is hereby repealed effective December 31, 1993:
        - (1) Chapter 459 (Board of Examiners in Optometry).

SECTION 2. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§459- Definitions. As used in this chapter:

“Board” means the board of examiners in optometry.

“Director” means the director of commerce and consumer affairs.”

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] seven members, [three] five of whom shall be licensed optometrists who have actually engaged in the practice of optometry for at least five years and two of whom shall be public members. One of the five licensed optometrist members shall be from a county other than the city and county of Honolulu. 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 459-7, Hawaii Revised Statutes, is amended to read as follows:

**“§459-7. 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 a graduate of an [American] optometric college, school, or university approved by the board of examiners in optometry and 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] not less than 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, school, or university approved in accordance with subsection (a); and
  - (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. An applicant who fails to pass an examination on the applicant's first attempt, shall be permitted upon payment of a reexamination fee, to take a second or third examination covering only those parts of the examination which the applicant failed to pass. An applicant who fails to pass the examination on the third attempt or any subsequent attempt shall be required in each instance to file a new application, pay the application and examination fees, and 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 license.

Every candidate who passes an examination shall be licensed as possessing the qualifications required by this chapter, and shall receive from the board a proper license upon payment of a license fee.

(d) Each licensee shall pay a biennial license fee to the board on or before December 31 of each odd-numbered year for a renewal of the license for the biennium. The failure of any licensee to pay the biennial license fee and submit proof of satisfying the continuing education program requirements on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license. Any license which is so forfeited 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 licensee shall submit proof to the board of examiners that the licensee did, on or before December 31 of each odd-numbered year, 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.

(f) Certificates of registration shall be endorsed authorizing licensed optometrists to use pharmaceutical agents for examination purposes. A certificate shall certify that an optometrist has complied with the following requirements:

- (1) Successful completion of instruction in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on ocular pharmacology. The systemic effects and reactions to topical pharmaceutical agents used for examinations shall be studied, as well as the emergency management and referral of any adverse reactions that may occur. Instruction shall also include review of systemic and ocular diseases and clinical techniques and instruments used with these pharmaceutical agents for examination purposes. The course of study shall be approved by the board, and shall be offered by an institution which is accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States Office of Education; and
- (2) Successful completion of an examination approved by the board which tests for those subjects outlined in the course of instruction in paragraph (1) [above]."

SECTION 5. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§459- Reciprocity.** The board, by rules, shall provide for licensure of optometrists registered and licensed under the laws of any state or territory of the United States or any other jurisdiction with qualifications for licensure which equal or exceed those of this State."

SECTION 6. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

**"§459-9 Refusal to permit examination or issue 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 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) 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 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] 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 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 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 shall be under the licensee's ownership and under the licensee's exclusive control. It shall not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files shall be the sole property of the licensee. The office 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 shall be separate and definite in character so that there could be no misleading interpretation that the licensee's practice is in any way associated with a commercial (mercantile) concern;
- (7)] (5) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kick-back, or other 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 intended or prospective wearer or user;
- [(8)] (6) Using any name in connection with the licensee's practice other than the name under which the licensee is licensed to practice, or using any advertising which fails to clearly identify the individual licensee or which is ambiguous or misleading as to the licensee's identity;
- [(9)] (7) 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;
- [(10)] (8) Violating this chapter or the rules [promulgated] adopted by the board;
- [(11)] (9) Utilizing pharmaceutical agents without first being certified as provided in section 459-7 or utilizing pharmaceutical agents for purposes other than those specified in section 459-1; or

- [(12)] (10) Failure to refer a patient to an appropriate licensed physician upon discovery, by history or examination, that the patient evidences an ocular abnormality or symptoms of systemic disease requiring further diagnosis and possible treatment by a licensed physician.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 5, 1987.)

**Note**

1. Edited pursuant to HRS §23G-16.5.