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SENATE DRS15148-LUF-73 (03/04)

Short Title: Amend Dispensing Opticians Laws/Fees. (Public)

Sponsors: Senators Hartsell and Blue (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND LAWS PERTAINING TO DISPENSING OPTICIANS AND TO
3 RAISE THE CEILING ON FEES AUTHORIZED BY THE NORTH CAROLINA STATE
4 BOARD OF OPTICIANS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 90-236.1 reads as written:
7 "§ 90-236.1. Requirements for filling ~~contact lens~~ prescriptions.

8 ~~No person, firm or corporation licensed or registered under this Article shall fill a~~
9 ~~prescription or dispense lenses, other than spectacle lenses, unless the prescription specifically~~
10 ~~states on its face that the prescriber intends it to be for contact lenses and includes the type and~~
11 ~~specifications of the contact lenses being prescribed. No person, firm or corporation licensed~~
12 ~~under this Article shall fill a prescription beyond the expiration date stated on the face thereof.~~

13 (a) Separate prescriptions for spectacles and contact lenses shall be issued with the
14 prescriber's specifications and an expiration date stated on the face of every prescription.

15 (b) No person, firm, or corporation licensed under this Article shall fill a spectacle or
16 contact lens prescription beyond the expiration date stated on the face of the prescription.

17 (c) Prescriptions filled pursuant to this section shall be kept on file by the prescriber and
18 the person filling the prescription for at least 24 months after the prescription is filled.

19 (d) Any person, firm or corporation that dispenses contact lenses on the prescription of
20 a practitioner licensed under Articles 1 or 6 of this Chapter shall, at the time of delivery of the
21 lenses, inform the recipient both orally and in writing that ~~he~~ the recipient shall return to the
22 prescriber for insertion of the lens, instruction on lens insertion and care, and to ascertain the
23 accuracy and suitability of the prescribed lens. The statement shall also state that if the recipient
24 does not return to the prescriber after delivery of the lens for the purposes stated above, the
25 prescriber or the dispenser shall not be responsible for any damages or injury resulting from the
26 prescribed lens, except that this sentence does not apply if the dispenser and the prescriber are
27 the same person. The statement shall be signed by the recipient, and the recipient and the
28 dispenser shall each retain a copy.

29 (e) Any person, firm or corporation dispensing, furnishing or supplying contact lenses
30 in interstate commerce or at retail to recipients in this State, other than a practitioner licensed
31 under Article 1 or Article 6 of this Chapter, is deemed a "dispensing optician" under
32 G.S. 90-235 and is subject to the provisions of this Article."

33 SECTION 2. G.S. 90-238 reads as rewritten:
34 "§ 90-238. North Carolina State Board of Opticians created; appointment and
35 qualification of members.



1 The North Carolina State Board of Opticians is created. The Board's duty is to carry out the
2 purposes and enforce the provisions of this Article. The Board shall consist of seven members
3 appointed by the Governor as follows:

- 4 (1) Five licensed dispensing opticians, each of whom are residents of this State
5 and shall serve three-year terms;
- 6 (2) Two residents of North Carolina who are not licensed as dispensing
7 opticians, physicians, or optometrists, who shall serve three-year terms.

8 Each member of the Board shall serve until the member's successor is appointed and
9 qualifies. No person shall serve on this Board for more than two complete consecutive terms.
10 Before beginning office, each member of the Board shall take all oaths prescribed for other
11 State officers in the manner provided by law, which oaths shall be filed in the office of the
12 Secretary of State. The Governor may remove any member of the Board for good cause shown,
13 may appoint members to fill unexpired terms, and must make optician appointments from a list
14 of three nominees for each vacancy submitted by the Board as a result of an election conducted
15 by the Board each year and open to all licensees. In naming candidates for election, the Board
16 must ensure that its candidates reflect the composition of the State with regards to gender,
17 ethnic, racial, and age composition. If the Board fails to fulfill its requirements under this
18 section, the Governor may appoint a licensed optician to fill a vacancy on the Board."

19 **SECTION 3.** G.S. 90-240(e) reads as rewritten:

20 "(e) The Board may include as part or all of the examination, any nationally prepared
21 and recognized examination, and will periodically review and validate any exam in use by the
22 Board. The Board will credit an applicant with the score on any national test ~~taken successfully~~
23 completed in the ~~last three years~~ immediately preceding the examination application, to the
24 extent ~~such the~~ test may be included in the North Carolina exam."

25 **SECTION 4.** G.S. 90-241(a)(4) reads as rewritten:

26 "(a) The Board shall grant a license without examination to any applicant who:

27 ...

- 28 (4) Has engaged in the practice of opticianry and holds a license for both
29 spectacles and contact lenses in the other state for four years immediately
30 preceding the application to the Board.

31"

32 **SECTION 5.** G.S. 90-243 reads as rewritten:

33 "**§ 90-243. Registration of places of ~~business, apprentices, business and trainees.~~**

34 The Board may adopt rules (i) requiring, as a condition of dispensing, the registration of
35 places of business where the business engages in the practice of ophthalmic dispensing is
36 engaged in, or training and (ii) for registration of apprentices and interns who are working
37 under direct supervision of a licensed ~~optician-optician, optometrist, or ophthalmologist for the~~
38 purposes of training. The Board may also require that any information furnished to it as
39 required by law or regulation be furnished under oath."

40 **SECTION 6.** G.S. 90-244 reads as rewritten:

41 "**§ 90-244. Display, use, and renewal of license ~~of or~~ registration.**

42 (a) Every person to whom a license has been granted under this Article shall display the
43 same in a conspicuous and public part of the office or establishment wherein he is engaged as a
44 dispensing optician. ~~The Board may adopt regulations concerning the display of registrations of~~
45 ~~places of business and of apprentices and interns.~~

46 (b) A license issued by the Board automatically expires on the first day of January of
47 each year. A license shall be reinstated without ~~penalty~~ any additional fee from January 1
48 through January 15 immediately following expiration. After January 15, a license shall be
49 reinstated by payment of the renewal fee and a ~~penalty~~ processing fee of fifty dollars (\$50.00).
50 Licenses that remain expired two years or more shall not be reinstated.

(c) A license may be placed in inactive status by written notification to the Board. An inactive fee of fifty dollars (\$50.00) shall be paid by January 15 of each year. After January 15, an inactive license can continue to be termed inactive with payment of the inactive fee and a processing fee of twenty-five dollars (\$25.00). Inactive licenses that remain delinquent for one year may not be returned to active status.

(d) Any licensee found practicing with an expired or inactive license is subject to Board disciplinary actions.

(e) Every trainee to whom or business to which a registration has been granted under this Article shall display the same in a conspicuous and public part of the office or establishment wherein opticianry is being practiced. Registrations issued by the Board, other than those for interns, automatically expire on the first day of July of each year.

(f) The Board may adopt regulations concerning the display of registrations in places of business and by apprentices and interns."

SECTION 7. G.S. 90-245 reads as rewritten:

"§ 90-245. Collection of fees.

The ~~secretary~~ administrator of the Board is hereby authorized and empowered to collect in the name and on behalf of this Board the fees prescribed by this Article and shall turn over to the State Treasurer all funds collected or received under this Article, which funds shall be credited to the North Carolina State Board of Opticians, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this Article. Nothing in this Article shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from the fees collected under the provisions of this Article and received by the State Treasurer in the manner aforesaid."

SECTION 8. G.S. 90-246 reads as rewritten:

"§ 90-246. Fees.

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the Board is hereby authorized to charge and collect fees established by its rules not to exceed the following:

- (1) Each examination ~~\$200.00~~ \$300.00
- (2) Each initial or duplicate license \$ 50.00
- (3) Each renewal of license..... ~~\$100.00~~ \$250.00
- (4) Each license issued to a practitioner of another state to practice in this State..... ~~\$200.00~~ \$300.00
- (5) Each registration of an optical place of business and renewals thereof..... ~~\$ 50.00~~ \$100.00
- (6) Each application for registration as an opticianry apprentice or intern, and renewals thereof \$ 25.00 \$100.00
- (7) Repealed by Session Laws 1997-424, s. 4.
- (8) Each registration of a training establishment ~~\$ 25.00~~ \$50.00
- (9) Each license verification ~~\$ 10.00~~ \$50.00
- (10) Each inactive license and renewals thereof..... \$100.00.

Any fee increase implemented in rules adopted by the Board shall not exceed twenty-five percent (25%) of the fee amount set in this section at the time the fee is increased."

SECTION 9. G.S. 90-248 reads as rewritten:

"§ 90-248. Compensation and expenses of Board ~~members and secretary~~ members.

Each member of the Board shall receive for his or her services for time actually in attendance upon Board meetings and affairs of the Board only, the amount of per diem provided by G.S. 138-5 and shall be reimbursed for subsistence, mileage and necessary expenses incurred in the discharge of such duties at the same rates as set forth in G.S. 138-6 and G.S. 138-7."

1 **SECTION 10.** G.S. 90-249 reads as rewritten:

2 "**§ 90-249. ~~Powers~~ Authority and powers of the Board.**

3 (a) The Board shall have the power to make rules, not inconsistent with this Article and
4 the laws of the State of North Carolina, with respect to the following areas of the business of
5 opticianry in North Carolina:

6 (1) Misrepresentation to the public.

7 (2) Baiting or deceptive advertising.

8 (3) Continuing education of licensees.

9 (4) Location of registrants in the State.

10 (5) Registration of established optical places of business, but no rule restricting
11 type or location of a business may be enacted.

12 (6) Requiring photographs for purposes of identification of persons subject to
13 this Article.

14 (7) Content of licensure examination and reexamination.

15 (8) Revocation, suspension, and reinstatement of licenses, probation, and
16 reprimands of licensees, and other penalties.

17 (9) Fees within the limits of G.S. 90-246.

18 (10) Accreditation of schools of opticianry.

19 (11) Registration and training of apprentices and interns.

20 (12) Licenses and examinations pursuant to G.S. 90-241.

21 (a1) The Board may order that any records concerning the practice of opticianry and
22 relevant to a complaint received by the Board or an inquiry or investigation conducted by or on
23 behalf of the Board shall be produced by the custodian of the records to the Board or for
24 inspection and copying by representatives of or counsel to the Board. An optician licensed by
25 the Board or an agency employing an optician licensed by the Board shall maintain records for
26 a minimum of five years from the date the optician terminates services to the client and the
27 client services record is closed. An optician licensed by the Board shall cooperate fully and in a
28 timely manner with the Board and its designated representatives in an inquiry or investigation
29 of the records conducted by or on behalf of the Board.

30 (a2) The Board shall have the power to employ or retain professional personnel,
31 including legal counsel, subject to G.S. 114-2.3, or clerical or other special personnel deemed
32 necessary to carry out the provisions of this Chapter.

33 (a3) Records, papers, and other documents containing information collected and
34 compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview
35 conducted in connection with certification, licensure, or a disciplinary matter shall not be
36 considered public records within the meaning of Chapter 132 of the General Statutes. Any
37 notice or statement of charges, notice of hearing, or decision rendered in connection with a
38 hearing shall be a public record. Information that identifies a patient who has not consented to
39 the public disclosure of services rendered to him by a person certified or licensed under this
40 Chapter shall be deleted from the public record. All other records, papers, and documents
41 containing information collected and compiled by or on behalf of the Board shall be public
42 records, but any information that identifies a patient who has not consented to the public
43 disclosure of services rendered to him shall be deleted.

44 (b) through (d) Repealed by Session Laws 1997-424, s. 5."

45 **SECTION 11.** G.S. 90-249.1 reads as rewritten:

46 "**§ 90-249.1. Disciplinary actions.**

47 (a) The Board may suspend, revoke, ~~or~~ refuse to issue, renew, or reinstate any ~~license~~
48 license, or deny any application for registration of a business or trainee for any of the
49 following:

50 (1) Offering to practice or practicing as a dispensing optician without a license.

- 1 (2) Aiding or abetting an unlicensed person in offering to practice or practicing
- 2 as a dispensing optician.
- 3 (3) Selling, transferring, or assigning a license.
- 4 (4) Engaging in fraud or misrepresentation to obtain or renew a license.
- 5 (5) Engaging in false or misleading advertising.
- 6 (6) Advertising in any manner that conveys or intends to convey the impression
- 7 that eyes are examined by persons licensed under this Article or optical
- 8 places of business registered under this Article.
- 9 (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence,
- 10 incompetence, or gross misconduct.
- 11 (8) Being convicted of a crime involving fraud or moral turpitude.
- 12 (9) Violating any provision of this Article or the rules adopted by the Board.

13 (b) In addition or as an alternative to taking any of the actions permitted in subsection
14 (a) of this section, the Board may assess a licensee or registrant a civil penalty of not more than
15 ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) for ~~the each~~ violation of any
16 section of this Article. In any case in which the Board is authorized to take any of the actions
17 permitted in subsection (a) of this section, the Board may instead accept an offer in
18 compromise of the charges whereby the accused licensee or registrant shall pay to the Board a
19 civil penalty of not more than ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) for
20 each violation. All civil penalties collected by the Board shall be remitted to the school fund of
21 the county in which the violation occurred.

22 (c) In determining the amount of a civil penalty, the Board may consider:

- 23 (1) The degree and extent of harm caused by the violation to public health and
- 24 safety or the potential for harm.
- 25 (2) The duration and gravity of the violation.
- 26 (3) Whether the violation was willful or reflects a continuing pattern.
- 27 (4) Whether the violation involved elements of fraud or deception.
- 28 (5) Prior disciplinary actions against the licensee.
- 29 (6) Whether and to what extent the licensee profited from the violation.

30 (d) Any person, including the Board and its staff, may file a complaint with the Board
31 alleging that a licensee or registrant committed acts in violation of subsection (a) of this
32 section. The Board may, without holding a hearing, dismiss the complaint as unfounded or
33 trivial. Any hearings held pursuant to this section shall be conducted in accordance with
34 Chapter 150B of the General Statutes.

35 (e) The costs of disciplinary actions, including investigatory activities or hearings, may
36 be assessed against any licensee or trainee who or business that consents to or is found guilty of
37 any violation of this section."

38 **SECTION 12.** G.S. 90-250 reads as rewritten:

39 "**§ 90-250. Sale of optical glasses.**

40 No optical glass or other kindred products or instruments of ~~vision~~ vision, including
41 fashion, cosmetic, or theatre contact lenses, shall be dispensed, ~~ground~~ ground, or assembled in
42 connection with a given formula prescribed by a licensed physician or optometrist except under
43 the supervision of a licensed dispensing optician and in a registered optical establishment or
44 office. Provided, however, that the provisions of this section shall not prohibit persons or
45 corporations from selling completely assembled spectacles without advice or aid as to the
46 selection thereof as merchandise from permanently located or established places of business."

47 **SECTION 13.** G.S. 90-254 reads as rewritten:

48 "**§ 90-254. General penalty for violation.**

49 (a) Any person, firm or corporation who shall violate any provision of this Article for
50 which no other penalty has been provided shall, upon conviction, be ~~fin~~ not more than two

1 ~~hundred dollars (\$200.00) or imprisoned for a period of not more than 12 months, or both, in~~
2 ~~the discretion of the court, subject to punishment provided in G.S. 14-3(a)(1).~~

3 (b) Whenever it appears to the Board that any person, firm or corporation is violating
4 any of the provisions of this Article or of the rules and regulations of the Board promulgated
5 under this Article, the Board may apply to the superior court for a restraining order and
6 injunction to restrain the violation; and the superior courts have jurisdiction to grant the
7 requested relief, irrespective of whether or not criminal prosecution has been instituted or
8 administrative sanctions imposed by reasons of the violation. The venue for actions brought
9 under this subsection shall be the superior court of any county in which such acts are alleged to
10 have been committed or in the county where the defendants in such action reside."

11 **SECTION 14.** This act is effective when it becomes law.