

## ACT 131

H.B. NO. 479

A Bill for an Act Relating to Advertising by Optometrists.

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

SECTION 1. The purpose of this Act is to allow optometrists to advertise in the public media and thereby stimulate competition which would lower the price of optometric services and products. The result is that necessary eye care will be made more economically available in the interests of more adequately serving the consumer. Permitting advertising will not jeopardize quality since the statutory provisions relating to quality are not affected.

SECTION 2. Section 459-9, Hawaii Revised Statutes, is amended as follows:

**“Sec. 459-9 Refusal to permit examination or issue certificate; grounds for.** The board of examiners in optometry may refuse to admit persons to its examinations or to issue the certificates for any of the following causes:

- (1) Presentation to the board of any certificate or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing an examination;
- (2) Other grossly unprofessional or dishonorable 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;
- (3) Advertising in the following manner:
    - (A) By any means whatsoever, directly or indirectly, to offer lens, 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 name, professional title, or profession;
  - (4) Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist 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, lenses, frames, mountings, eye examinations, or optometric services; peddling of eyeglasses, spectacles, or 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 be under the registered optometrist's ownership and under his exclusive control. It must not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files must be the sole property of the optometrist. The office must 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 be separate and definite in character such that there could be no misleading interpretation that his 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 practice other than the name under which he 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;

- (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.’’

SECTION 3. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**Sec. 459- Advertising, contents of.** All advertising by an optometrist 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 4. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 26, 1979.)

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.