

ACT 300

H.B. NO. 498

A Bill for an Act Relating to Dispensing Opticians.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (d) to read as follows:

“(a) The following chapters are hereby repealed effective December 31, 1987:

- [(1)] Chapter 458 (Board of Dispensing Opticians)
- [(2)] (1) 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)

(d) The following chapters are hereby repealed effective December 31, 1990: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 458 (Board of Dispensing Opticians)
- [(4)] (5) Chapter 460J (Pest Control Board)
- [(5)] (6) Chapter 462A (Pilotage)
- [(6)] (7) Chapter 438 (Board of Barbers)”

SECTION 2. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, [458,] 459, 460, 461, 466, 471, and 605 and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415.”

SECTION 3. Section 458-3, Hawaii Revised Statutes, is amended to read as follows:

“§458-3 Organization; meetings, records. The board of dispensing opticians shall annually elect from its members a chairman and a vice-chairman. The board shall keep a complete record of its proceedings. The board, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs may make, amend, and repeal rules for the administration of this chapter.

The board shall meet a minimum of four times a year, at quarterly intervals. Each member is required to attend at least one-half of all board

meetings in a year. Any member not attending at least one-half of all board meetings in a year shall forfeit that member's seat on the board."

SECTION 4. Section 458-4, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 458-5, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 458-6, Hawaii Revised Statutes, is repealed.

SECTION 7. Chapter 458, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§458- License to engage in the occupation of dispensing optician; application; issuance. (a) Before engaging in the occupation of dispensing optician, an individual must be licensed as a dispensing optician by the board.

(b) To apply for a license to engage in the occupation of dispensing optician an individual must have completed one of the following:

- (1) The equivalent of a high school education and three years of work experience as an opticianry apprentice as required by the board's administrative rules;
- (2) Graduation from an opticianry course accredited by the Commission on Opticianry Accreditation; or
- (3) Previous licensure in another jurisdiction which required successful completion of the national examinations specified in subsection (c).

The applicant shall submit to the board an application for a license in a form approved by the board, which shall include the applicant's experience and signature, and an application fee.

(c) Before being licensed to engage in the occupation of dispensing optician, an individual must pass the National Opticianry Competency Examination, the National Contact Lens Registry Examination, and a practical examination. The board shall issue a license to an individual who passes all three of these examinations. If the applicant fails to pass any one of the examinations, the individual shall not be licensed. Any applicant who has previously passed both the National Opticianry Competency Examination in another jurisdiction and the National Contact Lens Registry Examination shall not be required to retake these examinations and shall be issued a license upon successful completion of the practical examination."

SECTION 8. Chapter 458, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§458- Certificate to engage in the business of dispensing optician; application; issuance. (a) Before engaging in the business of dispensing optician, a firm, including a sole proprietorship for which the proprietor is to be a licensed dispensing optician, shall first be issued a certificate of dispensing optician by the board.

(b) Each application shall be on forms prescribed by the board and shall contain:

- (1) The name of the licensed dispensing optician who will be employed at that business address;
- (2) The names and experience of each person who will take facial measurements, fit or adjust lenses or frames, or duplicate lenses; and
- (3) Such other information as the board requires. The application shall bear the signature of the proprietor if the applicant is a sole proprietorship, partner if the applicant is a partnership, or a

president or secretary if the applicant is a corporation, and shall contain the name under which the applicant proposes to do business and the business address. Separate applications shall be made for each place of business, and each application shall be accompanied by the application and registration fees.

(c) The board shall establish the procedures for issuing certificates of dispensing opticians and qualifications of firms applying to engage in the business of dispensing optician. Upon approval of an application for a certificate of dispensing optician and payment of a certificate fee, the board shall issue a certificate of dispensing optician within sixty days. A separate certificate shall be required for each address where the business is to be conducted. No application for certificate of dispensing optician shall be approved unless a licensed dispensing optician is to be employed at the place of business. The certificate shall authorize the applicant to engage in the business of dispensing optician. The certificate shall at all times be displayed in a conspicuous place at the place of business. The certificate shall not be transferable."

SECTION 9. Section 458-7, Hawaii Revised Statutes, is amended to read as follows:

"§458-7 Reports to board; required experience of employees. Each holder of a certificate of dispensing optician shall file with the board [of dispensing opticians] a report containing the names and experience of each person employed by the certificate holder, who, in the course of the person's employment, takes facial measurements, fits or adjusts lenses or frames, or duplicates lenses, together with such other information as the board requires. No certificate holder shall cause any person to take facial measurements, fit or adjust lenses or duplicate frames unless such persons are acting under the direct personal supervision of a [certificate holder.] licensed dispensing optician."

SECTION 10. Section 458-8, Hawaii Revised Statutes, is amended to read as follows:

"§458-8 Expiration and renewal. Certificates and licenses issued under this chapter, unless sooner suspended or revoked, expire on July 1 of each even-numbered year, but may be biennially renewed by the certificate or license holders in good standing upon the payment of a biennial renewal fee. The holder of an expired certificate or license may have the same restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee."

SECTION 11. Section 458-9, Hawaii Revised Statutes, is amended to read as follows:

"§458-9 Revocation or suspension of certificates[.] or licenses. After notice and hearing, as in this chapter provided, the board [of dispensing opticians] may revoke or suspend any certificate or license issued under this chapter for fraud or dishonesty in obtaining the certificate[.] or license, for dishonesty, fraud, gross negligence, or incompetency in the occupation or business of dispensing optician, or for violation of this chapter."

SECTION 12. Section 458-11, Hawaii Revised Statutes, is amended to read as follows:

"§458-11 Reinstatement. The board [of dispensing opticians] may reissue without examination the license or certificate of any dispensing

optician issued under this chapter which has been revoked or may modify the suspension of any such license or certificate which has been suspended.”

SECTION 13. Section 458-12, Hawaii Revised Statutes, is amended to read as follows:

“§458-12 Fees. All fees [received by the board of dispensing opticians] required under this chapter shall be [as provided in] set by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 14. Chapter 458, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§458- Dispensing contact lenses; notice. (a) Upon dispensing contact lenses, the dispensing optician shall give the client a written notice on a board approved form that the client should return to the prescribing ophthalmologist or optometrist to ensure that the client has received contact lenses of the proper fit and prescription.

(b) The form approved by the board shall be written clearly and coherently using words with common or ordinary meanings, shall be printed using eight-point or larger type with at least one point of leading between lines, and shall use paper and ink of sufficient quality and contrast to be easily legible.”

SECTION 15. Section 458-13, Hawaii Revised Statutes, is amended to read as follows:

“§458-13 Acts prohibited. It shall be unlawful to do any of the following:

- (1) To engage in the business of dispensing optician without first having been issued a certificate of dispensing optician under this chapter, or to engage in the business of dispensing optician without employing a [certificate holder] licensed dispensing optician at each place of business;
- (2) To advertise in any manner that would tend to mislead or deceive the public;
- [(3)] To furnish the services of an optometrist, physician, or surgeon or directly or indirectly employ or maintain on or near the premises used for optical dispensing any optometrist, physician, or surgeon, or the practitioner of any other profession for the purpose of any examination or treatment of the eyes;
- (4) [(3)] To dispense, furnish, or supply the services and appliances relating to the business of dispensing optician to the intended wearer or user thereof, except upon a prescription issued by a licensed physician, surgeon, or optometrist; provided that duplications, replacements, reproductions, and repetitions, without change in the refractive value may be done without prescription by individuals or firms holding a license or certificate of dispensing optician issued under this chapter;
- [(5)] [(4)] To fit or duplicate, or offer, undertake, or attempt to fit or duplicate hard and soft contact lenses or artificial eyes except under the written orders and personal supervision of an ophthalmologist or optometrist[;] or fail to provide notice as required by section 458- ;
- [(6)] [(5)] For a dispensing optician to grant, allow, credit, or pay, directly or indirectly, openly or secretly, any price differential,

rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, to any oculist, optometrist, physician, surgeon, or practitioner of any other profession (A) for or on account of the referring or sending by any oculist, optometrist, physician, surgeon, or practitioner to the dispensing optician of any person for the rendition of any of the services performed or articles or appliances furnished by a dispensing optician as described in section 458-1, or (B) for or on account of the rendition of any services or the furnishing of any articles or appliances to a person so referred or sent by any oculist, optometrist, physician, surgeon, or practitioner. Every scheme, agreement, undertaking, arrangement, or device shall also be deemed in violation of section 481-7. The certificate or license of every dispensing optician who violates this [subsection] paragraph shall be revoked."

SECTION 16. 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 and unsuspended license under and as provided in this chapter. This chapter shall not apply to, or prohibit, a duly licensed physician from practicing optometry as in this chapter defined, nor shall it prohibit a duly licensed physician 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 any dispensing optician licensed under chapter 458 from [doing the mechanics of repairing, replacing, or duplicating of any ophthalmic lenses, frames, fittings, or other optic materials,] performing the activities authorized by the license, 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 services as provided in chapter 424.

An "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 17. Statutory material to be repealed is bracketed. New statutory material is underscored¹.

SECTION 18. This Act shall take effect on July 1, 1987; provided that section 14 shall take effect on January 1, 1988.

(Approved June 25, 1987.)

Note

1. Edited pursuant to HRS §23G-16.5.