

ACT 301

S.B. NO. 1522

A Bill for an Act Relating to Dispensing Opticians.

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

SECTION 1. Chapter 458, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§458- **Dispensing optician identification tags.** Each licensed dispensing optician may wear an identification tag for the purpose of identifying to the customer that the person is a licensed dispensing optician.”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, [board of dispensing opticians,] board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 3. Section 458-1, Hawaii Revised Statutes, is amended to read as follows:

“**§458-1 Dispensing optician defined.** An individual [or firm] is deemed to be engaged in the occupation [or business] of dispensing optician when the individual [or firm] prepares and dispenses lenses, spectacles, eyeglasses, or appurtenances thereto to the intended wearer thereof on written prescription from physicians or optometrists duly licensed to practice their professions, and in accordance with the prescriptions interprets, measures, adapts, fits, and adjusts the lenses, spectacles, eyeglasses, or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes.”

SECTION 4. Section 458-3, Hawaii Revised Statutes, is amended to read as follows:

“**§458-3 Powers and duties; meetings.** In addition to any other powers and duties authorized by law, the [board,] director of commerce and consumer affairs, subject to chapter 91, may adopt, 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 shall 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.] The director shall appoint an advisory committee to serve as experts to the department in licensing matters.”

SECTION 5. Section 458-6.5, Hawaii Revised Statutes, is amended to read as follows:

“**§458-6.5 License [to engage in the occupation of dispensing optician]; application; [issuance.] qualifications.** (a) [Before engaging in the occupation of dispensing optician, an] An individual [must] shall be licensed as a dispensing optician [by the board.] to engage in the occupation of dispensing optician.

(b) [To apply for a license to engage in the occupation of dispensing optician, an individual must have completed one of the following:] The applicant shall provide evidence of having:

- (1) The equivalent of a high school education and two years of opticianry 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] A current and valid license as a dispensing optician in another state or territory of the United States and passage of the national examinations specified in subsection (c).

The applicant shall submit to the [board] director an application for a license on a form prescribed by the [board,] director, 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 and the National Contact Lens Registry Examination in another jurisdiction shall not be required to retake these examinations and shall be issued a license upon successful completion of the practical examination.] The applicant shall provide evidence of having passed the following examinations:

- (1) The National Opticianry Competency Examination;
- (2) The National Contact Lens Registry Examination; and
- (3) A nationally standardized practical examination may be required by the director as a prerequisite for dispensing optician licensure.

Any applicant who has previously passed both the National Opticianry Competency Examination and the National Contact Lens Registry Examination in a state or territory of the United States shall not be required to retake these examinations provided that the applicant's passing scores have been certified."

SECTION 6. Section 458-8, Hawaii Revised Statutes, is amended to read as follows:

"§458-8 Expiration and renewal. [Certificates and licenses] (a) A license issued under this chapter, unless sooner suspended or revoked, shall expire on July 1 of each even-numbered year, but may be biennially renewed by the [certificate or] license [holders] holder in good standing upon the payment of a biennial renewal fee. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration.

(b) 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. A person whose license has been forfeited and who fails to restore the license as provided in this section shall apply as a new applicant."

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

"§458-9 Revocation or suspension of [certificates or] licenses. In addition to any other actions authorized by law, the [board,] director, in conformity with

chapter 91, may revoke or suspend any [certificate or] license issued under this chapter for any cause authorized by law, including but not limited to 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 8. Section 458-10, Hawaii Revised Statutes, is amended to read as follows:

“**§458-10 Subpoenas,¹ oaths.** In all proceedings before the [board,] director, the [board and each member thereof] director shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, as are possessed by circuit courts. In case of disobedience by any person or persons of any order of the [board or a member of the board] director or any subpoena issued by [it or the member] the director or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge on application by the [board or member thereof] director shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein.”

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

“**§458-11 Reinstatement.** The [board] director may reinstate 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 10. 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] occupation of dispensing optician without first having been issued a [certificate of] dispensing optician license under this chapter[, or to engage in the business of dispensing optician without employing a 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 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;
 - (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 458-12.5;
 - (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 paragraph shall be revoked[.]; or

- (6) For a dispensing optician to permit any unlicensed person to take facial measurements, fit or adjust lenses or frames or duplicate frames unless the unlicensed person is acting under the direct personal supervision of a licensed dispensing optician. "Direct personal supervision" means the licensed optician is present on the premises of the optical dispensing establishment and is available for consultation by the unlicensed person."

SECTION 11. Section 458-2, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 458-6.6, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 458-6.8, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 458-7, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 458-12.5, Hawaii Revised Statutes, is repealed.

SECTION 16. All rules, guidelines, and other material adopted or developed by the board of dispensing opticians shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the board of dispensing opticians in those rules, guidelines, and other material is amended to refer to the director of commerce and consumer affairs as appropriate.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Upon the effective date of this Act the current members of the board of dispensing opticians shall be appointed by the director to the advisory committee for dispensing opticians and shall be allowed to serve out their board member term of appointment. As the member's term expires the director shall ensure the advisory committee for dispensing opticians continues to have experts that are available for the purposes of section 26-9, Hawaii Revised Statutes.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 20. This Act shall take effect upon its approval.

(Approved June 21, 1997.)

Notes

1. Prior to amendment “;” appeared here.
2. Edited pursuant to HRS §23G-16.5.