

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-424
SENATE BILL 861

AN ACT AMENDING THE DISPENSING OPTICIANS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-237 reads as rewritten:

"§ 90-237. Qualifications for dispensing opticians.

In order to be issued a license as a registered licensed optician by the North Carolina State Board of Opticians, the applicant:

- (1) Shall not have violated this Article or the rules of the ~~Board;~~ Board.
- (2) Shall be at least 18 years of age and a high school graduate or ~~equivalent;~~ equivalent.
- (2a) Shall be of good moral character.
- (3) Shall have passed an examination conducted by the Board to determine his or her fitness to engage in the business of a dispensing ~~optician;~~ and optician.
- (4) Shall have completed a six-month internship by working full time under the supervision of a licensed optician, ~~optometrist~~ optometrist, or physician trained in ophthalmology, in order to demonstrate proficiency in the areas of measurement of the face, and fitting and adjusting glasses and frames to the face, lens recognition, lens design, and prescription interpretation."

Section 2. G.S. 90-241 reads as rewritten:

"§ 90-241. Waiver of written examination requirements.

(a) ~~The Board shall grant a license without examination to any applicant who holds a currently valid license as a dispensing optician issued by another state, is in good standing in such other state, has engaged in practice in such other state as a licensee for four years immediately preceding the application in this State, is at least 18 years of age, and has not violated this Article or the rules of the Board. who:~~

- (1) Is at least 18 years of age.
- (2) Is of good moral character.
- (3) Holds a license in good standing as a dispensing optician in another state.
- (4) Has engaged in the practice of opticianry in the other state for four years immediately preceding the application to the Board.
- (5) Has not violated this Article or the rules of the Board.

(b) The Board ~~will~~ shall grant admission to the next examination and grant license upon attainment of a passing score on the examination to ~~persons from other states who are not licensed but who have worked~~ a person who has worked, in a state that does not license opticians, in opticianry for four years immediately preceding the application to the Board performing tasks and taking the curriculum equivalent to the North Carolina apprenticeship, and who meet-meets the requirements of G.S. 90-237, subsections (1), (2) and (3). G.S. 90-237(1) through (3).

(c) Any person desiring to secure a license under this section shall make application therefor in the manner and form prescribed by the rules ~~and regulations of~~ the Board and shall pay the fee prescribed in G.S. 90-246.

~~(d) Upon receipt of the application described in subsection (c) above, the Board may issue a temporary license to engage in opticianry in this State. Persons issued a temporary license under this subsection may engage in opticianry in this State for not more than 60 days while awaiting a final decision on licensure by the Board. The Board shall make a final decision on licensure under this subsection not later than 60 days after receipt of the initial application. If the Board does not approve licensure under this subsection, the applicant, if operating under a temporary license, shall immediately surrender it to the Board and cease the practice of opticianry in this State."~~

Section 3. G.S. 90-244(b) reads as rewritten:

"(b) A license issued by the Board automatically expires on the first day of January of each year. A license ~~may~~ shall be reinstated without penalty ~~during the month from January 1 through January 15 immediately following expiration. After the end of the month, expiration.~~ After January 15, a license may shall be reinstated by payment of the renewal fee and a penalty of five dollars (\$5.00) per month not to exceed the license fee itself. fifty dollars (\$50.00). Licenses which that remain expired two years or more may shall not be reinstated."

Section 4. 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 ~~and regulations~~ not to exceed the following:

(1)	Each examination	\$125.00	<u>\$200.00</u>
(2)	Each initial license	\$25.00	<u>\$50.00</u>
(3)	Each renewal of license	60.00	<u>\$100.00</u>
(4)	Each license issued to a practitioner of another state to practice in this State	\$100.00	<u>\$200.00</u>
(5)	Each registration of an optical place of business	\$25.00	<u>\$50.00</u>
(6)	Each application for registration as an opticianry apprentice or intern, and renewals thereof	\$25.00	
(7)	Temporary license issued pursuant to G.S. 90-241(d)	\$25.00.	

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| (8) <u>Each registration of a training establishment</u> | \$25.00 |
| (9) <u>Each license verification</u> | \$10.00. |

Section 5. G.S. 90-249 reads as rewritten:

"§ 90-249. Powers of the Board.

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

- (1) Misrepresentation to the ~~public;~~ public.
- (2) Baiting or deceptive ~~advertising;~~ advertising.
- (3) Continuing education of ~~licensees;~~ licensees.
- (4) Location of registrants in the ~~State;~~ State.
- (5) Registration of established optical places of business, ~~provided but no rule restricting type or location of a business may be enacted;~~ enacted.
- (6) Requiring photographs for purposes of identification of persons subject to this ~~Article;~~ Article.
- (7) Content of licensure examination and ~~reexamination;~~ reexamination.
- (8) Revocation, suspension, and reinstatement of ~~license and reprimands;~~ licenses, probation, and reprimands of licensees, and other penalties.
- (9) Fees within the limits of ~~G.S. 90-246;~~ G.S. 90-246.
- (10) Accreditation of schools of ~~opticianry;~~ opticianry.
- (11) Registration and training of apprentices and ~~interns;~~ interns.
- (12) ~~License without examination and issuance of temporary license.~~ Licenses and examinations pursuant to G.S. 90-241.

(b) ~~The Board shall have the power to revoke, suspend or issue a reprimand with regard to any license granted by it under this Article for misconduct, gross negligence, incompetence, or violation of this Article or the rules of the Board promulgated hereunder. It shall be grounds for revocation of a license to advertise in any manner which conveys or intends to convey the impression to the public that the eyes are examined by persons licensed under this Article. Other than as expressly provided in this Article, the Board shall neither adopt nor enforce any rule, regulation or policy which prohibits advertising.~~

(c) ~~Any person whose license has been revoked for any cause may, after the expiration of 90 days, and within two years from the date of revocation, apply to the Board to have the same reinstated, and upon a showing satisfactory to the Board, the license may be restored to such person.~~

(d) ~~The procedure for revocation and suspension of a license or refusal to grant license or permission to sit for the examination shall be in accordance with the provisions of Chapter 150B of the General Statutes."~~

Section 6. Article 17 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-249.1. Disciplinary actions.

(a) The Board may suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

- (1) Offering to practice or practicing as a dispensing optician without a license.
- (2) Aiding or abetting an unlicensed person in offering to practice or practicing as a dispensing optician.
- (3) Selling, transferring, or assigning a license.
- (4) Engaging in fraud or misrepresentation to obtain or renew a license.
- (5) Engaging in false or misleading advertising.
- (6) Advertising in any manner that conveys or intends to convey the impression that eyes are examined by persons licensed under this Article or optical places of business registered under this Article.
- (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, incompetence, or gross misconduct.
- (8) Being convicted of a crime involving fraud or moral turpitude.
- (9) Violating any provision of this Article or the rules adopted by the Board.

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

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

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

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

Section 7. G.S. 90-238 reads as rewritten:

"§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.

~~There is hereby created a~~ The North Carolina State Board of Opticians whose duty it shall be ~~is created.~~ The Board's duty is to carry out the purposes and enforce the provisions of this Article. The Board shall consist of seven members appointed by the Governor as follows:

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

Each member of the Board shall serve until ~~his~~ the member's successor is appointed and ~~qualifies; provided that no~~ qualifies. No person shall serve on this Board for more than two complete consecutive terms. ~~Each~~ Before beginning office, each member of the ~~Board, before entering upon his duties,~~ Board shall take all oaths prescribed for other State officers in the manner provided by law, which oaths shall be filed in the office of the Secretary of State. The ~~Governor, at his option,~~ Governor may remove any member of the Board for good cause shown, may appoint members to fill unexpired terms, and must make optician appointments from a list of three nominees for each vacancy submitted by the Board as a result of an election conducted by the Board ~~in~~ May of each year and open to all licensees."

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:17 p.m. this 22nd day of August, 1997