

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 600
HOUSE BILL 293

AN ACT TO AMEND CHAPTER 90, ARTICLE 17, OF THE GENERAL STATUTES
RELATING TO DISPENSING OPTICIANS.

The General Assembly of North Carolina enacts:

Section 1. Article 17 of Chapter 90 of the General Statutes is amended by adding a new section to read as follows:

"§ 90-236.1. Requirements for filling contact lens prescriptions. — No person, firm or corporation licensed or registered under this Article shall fill a prescription or dispense lenses, other than spectacle lenses, unless the prescription specifically states on its face that the prescriber intends it to be for contact lenses and includes the type and specifications of the contact lenses being prescribed. No person, firm or corporation licensed under this Article shall fill a prescription beyond the expiration date stated on the face thereof.

Any person, firm or corporation that dispenses contact lenses on the prescription of a practitioner licensed under Articles 1 or 6 of this Chapter shall, at the time of delivery of the lenses, inform the recipient both orally and in writing that he return to the prescriber for insertion of the lens, instruction on lens insertion and care, and to ascertain the accuracy and suitability of the prescribed lens. The statement shall also state that if the recipient does not return to the prescriber after delivery of the lens for the purposes stated above, the prescriber shall not be responsible for any damages or injury resulting from the prescribed lens, except that this sentence does not apply if the dispenser and the prescriber are the same person.

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

Sec. 2. G.S. 90-237 is rewritten as follows:

"§ 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;
- (2) Shall be at least 18 years of age and a high school graduate or equivalent;
- (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
- (4) Shall have completed a six-month internship by working full time under the supervision of a licensed optician, 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."

Sec. 3. G.S. 90-238 is rewritten as follows:

"§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members. — There is hereby created a North Carolina State Board of Opticians whose duty it shall be 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, optometrists, who shall serve three-year terms.

Each member of the board shall serve until his successor is appointed and qualifies; provided that no person shall serve on this board for more than two complete consecutive terms. Each member of the board, before entering upon his duties, 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, 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."

Sec. 4. G.S. 90-239 is amended on lines 3 and 4 by deleting the words "one of its members as president and one as secretary and treasurer" and inserting in lieu thereof the words "from among its members a chairman, vice-chairman, a secretary and a treasurer. The board may combine the offices of secretary and treasurer".

Sec. 5. G.S. 90-239 is amended on line 6 by inserting after the language "duties," the language "may employ agents to carry out the purposes of this Article,".

Sec. 6. G.S. 90-239 is amended on line 9 by deleting the word "president" and inserting in lieu thereof the word "chairman".

Sec. 7. G.S. 90-239 is amended at the end of the 9th line by inserting a new sentence as follows: "Special meetings may be called by the chairman or upon request of three members."

Sec. 8. G.S. 90-240 is rewritten as follows:

"§ 90-240. Examination. — (a) Applicants to take the examination for dispensing opticians shall be high school graduates or the equivalent who:

- (1) have successfully completed a two-year course of training in an accredited school of opticianry with a minimum of 1600 hours or
- (2) have completed three and one-half years of apprenticeship while registered with the board under a licensed dispensing optician, with time spent in a recognized school credited as part of the apprenticeship period or
- (3) have completed three and one-half years of apprenticeship while registered with the board under the direct supervision of an optometrist or a physician specializing in ophthalmology, provided the supervising optometrist or physician elects to operate the apprenticeship under the same requirements applicable to dispensing opticians.

(b) The examination shall be confined to such knowledge as is reasonably necessary to engage in preparation and dispensing of optical devices and shall include the following:

- (1) The skills necessary for the proper analysis of prescriptions;
- (2) The skills necessary for the dispensing of eyeglasses and contact lenses; and
- (3) The processes by which the products offered by dispensing opticians are manufactured.

(c) The examination shall be given at least twice each year at sites and on dates that are publicly announced 60 days in advance.

(d) Each applicant shall, upon request, receive his or her examination score on each section of the examination.

(e) The board may include as part or all of the examination, any nationally prepared and recognized examination, and will periodically review and validate any exam in use by the board. The board will credit an applicant with the score on any national test taken in the last three years to the extent such test may be included in the North Carolina exam.

(f) An applicant for admission on the basis of apprenticeship shall have worked full time under the supervision of a licensed dispensing optician, optometrist or physician trained in ophthalmology. An apprentice shall have obtained experience in ophthalmic fabricating and

manufacturing techniques and processes for no less than six months and shall have gained experience in the other activities defined as dispensing herein."

Sec. 9. G.S. 90-241 is rewritten as follows:

"§ 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.

(b) The board will 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 in opticianry for four years performing tasks equivalent to the North Carolina apprenticeship, and who meet the requirements of G.S. 90-237, subsections 1, 2 and 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."

Sec. 10. G.S. 90-242 is repealed.

Sec. 11. G.S. 90-243 is rewritten to read as follows:

"§ 90-243. Registration of places of business, apprentices. — The board may adopt rules requiring, as a condition of dispensing, the registration of places of business where ophthalmic dispensing is engaged in, and for registration of apprentices and interns who are working under direct supervision of a licensed optician. The board may also require that any information furnished to it as required by law or regulation be furnished under oath."

Sec. 12. G.S. 90-244 is rewritten as follows:

"§ 90-244. Display, use, and renewal of license or registration. — (a) Every person to whom a license has been granted under this Article shall display the same in a conspicuous part of the office or establishment wherein he is engaged as a dispensing optician. The board may adopt regulations concerning the display of registrations of places of business and of apprentices and interns.

(b) A license issued by the board automatically expires on the 1st day of January of each year. A license may be reinstated without penalty during the month following expiration. After the end of the month, a license may be reinstated by payment of a penalty of five dollars (\$5.00) per month not to exceed the license fee itself. Licenses which remain expired two years or more may not be reinstated."

Sec. 13. G.S. 90-246 is rewritten as follows:

"§ 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:

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| (1) | Each examination | \$100.00 |
| (2) | Each initial license | 10.00 |
| (3) | Each renewal of license | 60.00 |

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| (4) | Each license issued to a practitioner of another state to practice in this State | 75.00 |
| (5) | Each registration of an optical place of business | 20.00 |
| (6) | Each application for registration as an opticianry apprentice or intern, and renewals thereof | 20.00 |
| (7) | Temporary license issued pursuant to G.S. 90-241(d) | 20.00." |

Sec. 14. G.S. 90-247 is repealed.

Sec. 15. G.S. 90-248 is rewritten as follows:

"§ 90-248. Compensation and expenses of board members and secretary. — 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."

Sec. 16. G.S. 90-249 is rewritten as follows:

"§ 90-249. Powers of the board. — (a) The board shall have the power to make rules and regulations, 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;
- (2) Baiting or deceptive advertising;
- (3) Continuing education of licensees;
- (4) Location of registrants in the State;
- (5) Registration of established optical places of business, provided no rule restricting type or location of a business may be enacted;
- (6) Requiring photographs for purposes of identification of persons subject to this Article;
- (7) Content of licensure examination and re-examination;
- (8) Revocation, suspension, and reinstatement of license and reprimands;
- (9) Fees within the limits of G.S. 90-246;
- (10) Accreditation of schools of opticianry;
- (11) Registration and training of apprentices and interns;
- (12) License without examination and issuance of temporary license.

(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 150A of the General Statutes."

Sec. 17. G.S. 90-252 is rewritten as follows:

"§ 90-252. Engaging in practice without license. — Any person, firm or corporation owning, managing or conducting a store, shop or place of business and not having in its employ and on duty, during all hours in which acts constituting the business of opticianry are carried on, a licensed dispensing optician engaged in supervision of such store, office, place of business or optical establishment, or representing to the public, by means of advertisement or otherwise or

by using the words, 'optician, licensed optician, optical establishment, optical office, ophthalmic dispenser', or any combination of such terms within or without such store representing that the same is a legally established optical place of business duly licensed as such and managed or conducted by persons holding a dispensing optician's license, when in fact such permit is not held by such person, firm or corporation, or by some person employed by such person, firm or corporation and on the premises and in charge of such optical business, shall be guilty of a misdemeanor and may, upon conviction, be fined not less than one hundred dollars (\$100.00) or be imprisoned for not more than 12 months, or both, in the discretion of the court."

Sec. 18. G.S. 90-253 is rewritten as follows:

"§ 90-253. Exemptions from Article. — Nothing in this Article shall be construed to apply to optometrists, or physicians trained in ophthalmology who are authorized to practice under the laws of this State, or to an unlicensed person working within the practice and under the direct supervision of the optometrist or physician trained in ophthalmology. An apprentice or intern registered with the board and working under direct supervision of a licensed optician, optometrist or physician trained in ophthalmology will not be deemed to have engaged in opticianry by reason of performing acts defined as preparation and dispensing, provided the apprentice is in compliance with the rules of the board respecting the training of apprentices.

As used in this section, 'supervision' means the provision of general direction and control through immediate personal on-site inspection and evaluation of all work constituting the practice of opticianry and the provision of consultation and instruction by a licensed dispensing optician, except that on-site supervision is not required for minor adjustments or repairs to eyeglasses."

Sec. 19. G.S. 90-254 is amended by addition of a second paragraph as follows:

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

Sec. 20. G.S. 90-255 is rewritten as follows:

"§ 90-255. Rebates. — It shall be unlawful for any person, firm or corporation to offer or give any gift or premium or discount, directly or indirectly, or in any form or manner participate in the division, assignment, rebate or refund of fees or parts thereof with any ophthalmologist, optometrist, or wholesaler, for the purpose of diverting or influencing the freedom of choice of the consumer in the selection of an ophthalmic dispenser."

Sec. 21. G.S. 143-34.12 is amended by deleting line 13, which reads as follows:

"Chapter 90, Article 17, entitled 'Dispensing Opticians'."

Sec. 22. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 17th day of June, 1981.