

SENATE BILL NO. 174

1/21 Introduced
1/21 Referred to Public Health, Welfare & Safety
1/30 Hearing
2/05 Adverse Committee Report
2/05 Bill Killed

1 *Senate* BILL NO. 174
 2 INTRODUCED BY *Cygan* STEPHENS, Fuller, Steve, Goodman
 3 BY REQUEST OF THE BOARD OF OPTOMETRISTS *Embury*
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAW REGULATING THE PRACTICE OF OPTOMETRY AND THE LICENSURE
 7 OF OPTOMETRISTS; AMENDING SECTIONS 2-15-1846, 37-10-101,
 8 37-10-102, 37-10-201, 37-10-301 THROUGH 37-10-304,
 9 37-10-306, AND 37-10-311, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 2-15-1846, MCA, is amended to read:

13 "2-15-1846. Board of optometrists optometry. (1)

14 There is a board of optometrists optometry.

15 (2) The board consists of four members appointed by
 16 the governor with the consent of the senate. Three members
 17 must be registered optometrists of this state and actually
 18 engaged in the exclusive practice of optometry in this state
 19 during their terms of office. One member must be a
 20 representative of the public who is not engaged in the
 21 practice of optometry.

22 (3) Members shall serve staggered 4-year terms and
 23 must be so appointed that only one term expires in any
 24 calendar year.

25 (4) The board is allocated to the department for

1 administrative purposes only as prescribed in 2-15-121."

2 Section 2. Section 37-10-101, MCA, is amended to read:

3 "37-10-101. Definitions -- practice of optometry. (1)

4 The practice of optometry is the profession constituting the
 5 art and science of visual care and is hereby defined to be
 6 any one of the following acts:

7 (a) the optometric examination or optometric diagnosis
 8 of all of those physiological or anatomical parts or
 9 functions which consummate constitute the process of human
 10 vision to ascertain the presence therein of abnormal
 11 conditions or functions which may be optometrically
 12 diagnosed; corrected, remedied, or relieved;

13 (b) the employment of any optometric means, excluding
 14 the use of surgery, for the purpose of detecting any
 15 condition of the process of vision which may have any
 16 significance in a complete optometric eye and vision
 17 examination, including the employment and administration of
 18 drugs topically applied for examination purposes, limited to
 19 cycloplegics, mydriatics, topical anesthetics, dyes such as
 20 fluorescein, and for emergency use only, miotics;

21 (c) the application or prescription of ophthalmic
 22 spectacle lenses, contact lenses, prisms, orthoptics, visual
 23 training, any physical, mechanical, or physiological
 24 therapy, and the furnishing or application of any prosthetic
 25 or therapeutic devices for the correction or relief of

1 visual anomalies, excluding surgery.

2 (2) Nothing in subsection (1) allows optometrists to
3 treat diseases of the eye.

4 (3) Unless the context requires otherwise, in this
5 chapter:

6 (a) "board" means the board of optometrists optometry
7 provided for in 2-15-1846; and

8 (b) "department" means the department of commerce
9 provided for in Title 2, chapter 15, part 18; and

10 (c) "mechanical work" includes only the manufacture or
11 fabrication of spectacle or contact lenses."

12 Section 3. Section 37-10-102, MCA, is amended to read:

13 "37-10-102. Exemptions. Nothing in this chapter shall
14 be construed to apply to:

15 (1) physicians and surgeons authorized to practice
16 under the laws of the state of Montana;

17 (2) a person employed in the office of and acting
18 under the direct personal supervision of a physician, or
19 surgeon, or optometrist;

20 (3) an optician performing the required mechanical
21 work under an order or prescription signed by a duly
22 licensed or registered physician, surgeon, or optometrist;

23 (4) commissioned officers of the armed forces of the
24 United States performing functions of this chapter in the
25 line of their regular duty; or

1 (5) persons who sell spectacles or eyeglasses without
2 attempting to traffic upon assumed skill in adapting them to
3 the eye."

4 Section 4. Section 37-10-201, MCA, is amended to read:

5 "37-10-201. Organization -- meetings. The board shall
6 annually choose from its members a president and secretary,
7 both of whom may administer oaths and take affidavits. The
8 board shall meet at least once twice each year ~~at Helena or~~
9 ~~some other place designated by the president, on the fourth~~
10 ~~Monday of July and, in addition, whenever and wherever the~~
11 ~~president and secretary call a meeting.~~ The department shall
12 keep a record of the proceedings of the board, which shall
13 be open to public inspection."

14 Section 5. Section 37-10-301, MCA, is amended to read:

15 "37-10-301. Certificate required for practice --
16 unlawful acts -- injunction. (1) It is unlawful for a person
17 to:

18 (a) practice optometry in this state unless he has
19 first obtained a certificate of registration;

20 (b) sell, barter, or offer to sell or barter a
21 certificate of registration issued by the department;

22 (c) purchase or procure by barter a certificate of
23 registration with intent to use it as evidence of the
24 holder's qualification to practice optometry;

25 (d) materially alter with fraudulent intent a

1 certificate of registration;

2 (e) use or attempt to use a certificate of
3 registration which has been purchased, fraudulently issued,
4 counterfeited, or materially altered as a valid certificate
5 of registration;

6 (f) practice optometry under a false or assumed name;

7 (g) willfully make a materially false statement in an
8 application for an examination by the department or for a
9 certificate of registration;

10 (h) advertise by displaying a sign or by otherwise
11 holding himself out to be an optometrist without having at
12 the time a valid certificate of registration;

13 (i) fabricate, replace, or duplicate ophthalmic
14 spectacle lenses with--or without a prescription or--to
15 dispense ophthalmic lenses from prescriptions without having
16 at--the--time--a--valid--certificate--of--registration--as--an
17 optometrist; however, this subsection does not prevent an
18 optical mechanic from a registered optometrist or licensed
19 physician or surgeon;

20 ~~{i}--doing--the--merely--mechanical--work--on--an--ophthalmic~~
21 ~~lens--which--is--ordered--on--a--prescription--signed--by--a~~
22 ~~registered--optometrist--and--is--dispensed--only--by--the~~
23 ~~optometrist--or--a--person--employed--by--the--optometrist--and--who~~
24 ~~does--so--in--the--office--of--and--under--the--direct--personal~~
25 ~~supervision--of--an--optometrist;--or~~

1 ~~{ii}--replacing--or--duplicating--an--existing--lens--for~~
2 ~~glasses;~~

3 {j} prescribe, adapt, fit, duplicate, dispense,
4 modify, sell, or supply a contact lens without having at the
5 time a valid certificate of registration as an optometrist.
6 Nothing in this subsection {j} prevents an optical
7 laboratory or contact lens supplier from providing contact
8 lenses to a registered optometrist or licensed physician or
9 surgeon.

10 ~~{j}{k} take or make measurements for the purpose of~~
11 ~~fitting or adapting ophthalmic spectacle lenses to the human~~
12 ~~eye without having at the time a valid certificate of~~
13 ~~registration. A person who takes or makes measurements or~~
14 ~~uses mechanical devices for this purpose or who, in the sale~~
15 ~~of spectacles, eyeglasses, or lenses, uses in the testing of~~
16 ~~the eyes lenses other than the lenses actually sold is~~
17 ~~practicing optometry. However, this section does not apply~~
18 ~~to the prescriptions of qualified optometrists when sent to~~
19 ~~a recognized optical laboratory;~~

20 ~~{k}{l} measure, for fit, or adapt a contact lens to~~
21 ~~direct, contiguous contact to the human eyeball or use any~~
22 ~~instrumentation or determine any data by performing any type~~
23 ~~of examination or corneal evaluation necessary for the~~
24 ~~fitting or dispensing of contact lenses without having at~~
25 ~~the time a valid certificate of registration as an~~

1 optometrist.

2 (2) When the board has reasonable cause to believe
3 that a person is violating this section or a rule issued
4 under this chapter, it may, in addition to other remedies
5 provided in this chapter, bring an action for injunctive
6 relief in district court in the county where the violation
7 occurs to enjoin the person from engaging in or continuing
8 the violation. The department may employ legal counsel to
9 prosecute these actions. In these actions and on notice and
10 hearing, an order or judgment may be entered awarding a
11 temporary restraining order or final injunction as
12 considered proper by the judge of the district court in the
13 county where the violation occurred."

14 Section 6. Section 37-10-302, MCA, is amended to read:

15 "37-10-302. Examination -- qualifications --
16 application -- issuance of certificate. (1) The board shall
17 adopt rules relative to and governing the qualifications of
18 applicants for certificates of registration as optometrists.
19 If the applicant does not meet the requirements of the
20 rules, he is not eligible to take an examination to practice
21 optometry in this state. If the applicant meets the
22 requirements of the rules, he must pass an examination given
23 by the department, subject to 37-1-101. Examinations shall
24 be practical in character and designed to ascertain the
25 applicant's fitness to practice the profession of optometry

1 and shall be conducted in the English language. The
2 department shall publish and distribute the examination
3 requirements for a certificate to practice optometry in this
4 state. The board may accept the grades an applicant has
5 received in the written examinations given by the national
6 board of examiners in optometry.

7 (2) No person is eligible to take the examination
8 unless he is 18 years of age or older and of good moral
9 character.

10 (3) No person is eligible to take the examination
11 unless he has certificates a certificate of graduation from
12 an accredited ~~high--school--and--from--a~~ school of optometry
13 that is approved by the board. in--which--the--practice--and
14 ~~science--of--optometry--is--taught--in--a--course--of--study--covering~~
15 ~~8--semesters--or--4--years--of--actual--attendance--and--which--is~~
16 ~~accredited--by--the--international--association--of--boards--of~~
17 ~~examiners--in--optometry--instead--of--the--certificates--of~~
18 ~~graduation,--an--applicant--for--examination--may,--with--like~~
19 ~~effect,--furnish--an--affidavit--that--he--has--practiced--optometry~~
20 ~~exclusively--for--a--period--of--at--least--6--years--in--some--other~~
21 ~~state--or--states.~~

22 (4) A person desiring to be examined in optometry
23 shall file an application, in the manner prescribed by the
24 board, at least 4 weeks before the examination is held, and
25 a fee prescribed by the board shall accompany the

1 application.

2 (5) A person successfully passing the examination
3 shall be registered in a register which shall be kept by the
4 department, and on the payment of a fee prescribed by the
5 board shall receive a certificate of registration signed by
6 the members of the board."

7 Section 7. Section 37-10-303, MCA, is amended to read:

8 "37-10-303. Reciprocity. If an applicant for a
9 certificate of registration has been admitted to practice
10 optometry in another state, has been in active practice for
11 the last 5 years, and has attained an average of 75% in his
12 examination in the other state, he may, at the discretion of
13 the board, be granted a certificate to practice his
14 profession in this state without examination, on payment of
15 all fees, if the state from which the applicant comes offers
16 equal privileges to applicants for certificates of
17 registration from this state."

18 Section 8. Section 37-10-304, MCA, is amended to read:

19 "37-10-304. Course in use of diagnostic drugs
20 required. (1) In addition to the requirements of 37-10-302
21 or 37-10-303, whichever is applicable, each person desiring
22 to commence the practice of optometry shall satisfactorily
23 complete a course prescribed by the board of medical
24 examiners with consultation and approval by the board of
25 ~~optometrists~~ optometry with particular emphasis on the

1 topical application of diagnostic agents to the eye for the
2 purpose of examination of the human eye and the analysis of
3 ocular functions.

4 (2) A person presently licensed to practice optometry
5 who wishes to employ diagnostic agents must satisfactorily
6 complete a course referred to in subsection (1) and must
7 pass an examination as provided in subsection (4).

8 (3) The course referred to in subsection (1) must be
9 conducted by an institution accredited by a regional or
10 professional accreditation organization which is recognized
11 or approved by the national commission on accrediting or the
12 United States commissioner of education. The course must
13 also be approved by the board.

14 (4) The board shall provide for an examination in
15 competency in the use of diagnostic drugs and shall issue a
16 certificate to those applicants who pass such examination."

17 Section 9. Section 37-10-306, MCA, is amended to read:

18 "37-10-306. Certificate to be displayed in office.
19 Every person to whom a certificate of ~~examination--or~~
20 registration is granted shall display the same in a
21 conspicuous part of his office wherein the practice of
22 optometry is conducted."

23 Section 10. Section 37-10-311, MCA, is amended to
24 read:

25 "37-10-311. Revocation ~~---unprofessional-conduct.~~ (1)

1 The board may revoke a certificate of registration for:

2 (a) physical or mental incompetence;

3 (b) gross malpractice or repeated malpractice;

4 (c) a violation of any of the provisions of this

5 chapter or rules or orders of the board; or

6 (d) unprofessional conduct, as defined by rule of the

7 board;

8 ~~(2) Unprofessional conduct includes:~~

9 ~~(a) obtaining a fee by fraud or misrepresentation;~~

10 ~~(b) employing, directly or indirectly, a suspended or~~

11 ~~unlicensed optometrist to perform work covered by this~~

12 ~~chapter;~~

13 ~~(c)(e) directly or indirectly accepting employment to~~

14 ~~practice optometry from a person not having a valid~~

15 ~~certificate of registration as an optometrist or accepting~~

16 ~~employment to practice optometry for or from a company or~~

17 ~~corporation; or~~

18 ~~(d) permitting another to use his certificate of~~

19 ~~registration;~~

20 ~~(e) soliciting or sending a solicitor from house to~~

21 ~~house;~~

22 ~~(f) treatment or advice in which untruthful or~~

23 ~~improbable statements are made;~~

24 ~~(g) professing to cure disease;~~

25 ~~(h)(f) advertising in which ambiguous or misleading~~

1 statements are made; or.

2 ~~(1) the use in advertising of the expression "eye~~

3 ~~specialist" or "specialist on eyes" in connection with the~~

4 ~~name of an optometrist; This chapter does not prohibit~~

5 ~~legitimate or truthful advertising by a registered~~

6 ~~optometrist.~~

7 ~~(3)(2) Before a certificate is revoked, the holder~~

8 ~~shall be given a notice and an opportunity for a hearing.~~

9 ~~(4)(3) Any optometrist convicted a second time for~~

10 ~~violation of the provisions of this chapter or whose~~

11 ~~certificate of registration or examination has been revoked~~

12 ~~a second time shall not be permitted to practice optometry~~

13 ~~in this state."~~

14 NEW SECTION. Section 11. Extension of authority. Any

15 existing authority of the board of optometry to make rules

16 on the subject of the provisions of this act is extended to

17 the provisions of this act.

-End-