

SENATE BILL NO. 209

INTRODUCED BY CRIPPEN  
BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE SENATE

JANUARY 19, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON PUBLIC HEALTH, WELFARE, & SAFETY.

FIRST READING.

JANUARY 26, 1993

COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

JANUARY 27, 1993

SECOND READING, DO PASS.

JANUARY 28, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 45; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON HUMAN SERVICES & AGING.

FIRST READING.

FEBRUARY 11, 1993

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 2, 1993

SECOND READING, CONCURRED IN.

MARCH 5, 1993

THIRD READING, CONCURRED IN.  
AYES, 100; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 10, 1993

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 11, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 209  
2 INTRODUCED BY Cygn  
3 BY REQUEST OF THE DEPARTMENT OF COMMERCE  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
6 LAW REGARDING THE LICENSED PRACTICE OF OPTOMETRY; PROVIDING  
7 FOR THE PURPOSE OF THE REGULATION OF THE PRACTICE OF  
8 OPTOMERTRY; CHANGING THE NAME OF THE BOARD OF OPTOMETRISTS  
9 TO THE BOARD OF OPTOMETRY; REVISING MEETING REQUIREMENTS OF  
10 THE BOARD; REQUIRING THAT THE LICENSURE EXAMINATION BE  
11 CONDUCTED BY THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY;  
12 REVISING QUALIFICATION REQUIREMENTS, RECIPROCITY, AND  
13 CONTINUING EDUCATION REQUIREMENTS FOR THE PRACTICE OF  
14 OPTOMETRY; REVISING THE DISCIPLINARY AUTHORITY OF THE BOARD  
15 OVER HOLDERS OF CERTIFICATES OF REGISTRATION; AMENDING  
16 SECTIONS 2-15-1846, 37-10-101, 37-10-201, 37-10-301,  
17 37-10-302, 37-10-303, 37-10-308, AND 37-10-311, MCA; AND  
18 PROVIDING EFFECTIVE DATES."  
19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
21 **Section 1.** Section 2-15-1846, MCA, is amended to read:  
22 "2-15-1846. Board of optometrists optometry. (1) There  
23 is a board of optometrists optometry.  
24 (2) The board consists of four members appointed by the  
25 governor with the consent of the senate. Three members must

1 be registered optometrists of this state and actually  
2 engaged in the exclusive practice of optometry in this state  
3 during their terms of office. One member must be a  
4 representative of the public who is not engaged in the  
5 practice of optometry.

6 (3) Members shall serve staggered 4-year terms.

7 (4) The board is allocated to the department for  
8 administrative purposes only as prescribed in 2-15-121."

9 **NEW SECTION. Section 2.** Purpose. The legislature finds  
10 that the practice of the profession of optometry is a  
11 privilege and is not a natural right of individuals. The  
12 legislature considers it necessary, in the interests of  
13 protecting the public health, safety, and welfare and in  
14 order to provide for the optometric needs of the public, to  
15 provide laws and delegate rulemaking authority regarding the  
16 granting of licenses and their subsequent use so that the  
17 public is protected from the unprofessional, improper,  
18 unauthorized, and unqualified practice of optometry.

19 **Section 3.** Section 37-10-101, MCA, is amended to read:

20 "37-10-101. Definitions -- practice of optometry. (1)  
21 The practice of optometry is the profession constituting the  
22 art and science of visual care and is hereby defined to be  
23 any one of the following acts:

24 (a) the optometric examination or optometric diagnosis  
25 of all of those physiological or anatomical parts or

functions which that consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which that may be optometrically diagnosed, corrected, remedied, or relieved;

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

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs, not including corticosteroids, approved by the board for use in ocular treatment limited to

the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

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

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

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18."

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

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

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

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

1 to:

2 (a) practice optometry in this state unless he that  
3 person has first obtained a certificate of registration;

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

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

9 (d) materially alter with fraudulent intent a  
10 certificate of registration;

11 (e) use or attempt to use a certificate of registration  
12 which that has been purchased, fraudulently issued,  
13 counterfeited, or materially altered as a valid certificate  
14 of registration;

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

16 (g) willfully make a materially false statement in an  
17 application ~~for--an--examination-by-the-department-or~~ for a  
18 certificate of registration;

19 (h) advertise by displaying a sign or by otherwise  
20 ~~holding--himself--out~~ claiming to be an optometrist without  
21 having at the time a valid certificate of registration;

22 (i) replace or duplicate ophthalmic lenses with or  
23 without a prescription or to dispense ophthalmic lenses from  
24 prescriptions without having at the time a valid certificate  
25 of registration as an optometrist; however, this subsection

1 does not prevent an optical mechanic from:

2 (i) doing the merely mechanical work on an ophthalmic  
3 lens which that is ordered on a prescription signed by a  
4 registered optometrist and is dispensed only by the  
5 optometrist or a person employed by the optometrist and who  
6 does so in the office of and under the direct personal  
7 supervision of an optometrist; or

8 (ii) replacing or duplicating an existing lens for  
9 glasses;

10 (j) take or make measurements for the purpose of  
11 fitting or adapting ophthalmic lenses to the human eye  
12 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) measure, fit, or adapt a lens to direct, contiguous  
21 contact to the human eyeball without having at the time a  
22 valid certificate of registration as an optometrist.

23 (2) When the board has reasonable cause to believe that  
24 a person is violating this section or a rule issued under  
25 this chapter, it may, in addition to other remedies provided

in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred."

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

"37-10-302. **Examination -- qualifications -- application -- issuance of certificate.** (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations shall must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall must be conducted in the English language. The department shall publish and distribute the examination requirements for a

certificate to practice optometry in this state. ~~The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.~~

(2) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person is 18 years of age or older and of good moral character.

(3) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which that is accredited by the international association of boards of examiners in optometry. ~~Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.~~

(4) A person desiring ~~to be examined in optometry~~ a certificate of registration shall file an application, in the manner prescribed by the board, ~~at least 4 weeks before the examination is held~~ and pay a fee prescribed by the board ~~shall accompany the application.~~

(5) A person who successfully passing passes the

examination ~~shall~~ administered by the national board of  
examiners in optometry and who has met the requirements for  
qualification as an optometrist must be registered in a  
 register ~~which shall be~~ kept by the department, and, on the  
 payment of a fee prescribed by the board, ~~shall~~ must receive  
 a certificate of registration signed by the members of the  
 board."

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

"37-10-303. Reciprocity. If an applicant for a  
 certificate of registration has been admitted to practice  
 optometry in another state and has attained an average of  
 75% in ~~his~~ the examination in the other that state, ~~he that~~  
person may, at the discretion of the board, be granted a  
 certificate to practice ~~his--profession~~ optometry in this  
 state without examination, on payment of all fees, if the  
 state ~~from in~~ which the applicant ~~comes~~ is admitted to  
practice offers equal privileges to applicants for  
 certificates of registration from this state."

**Section 8.** Section 37-10-308, MCA, is amended to read:

"37-10-308. Continuing education required for license  
 renewal. ~~A-licensed-optometrist-in-active-practice--in--this~~  
~~state~~ An optometrist licensed pursuant to 37-10-302 or  
37-10-303 is required to attend not less than 12 hours  
 annually of scientific clinics, forums, or optometric  
 educational studies as may be provided or approved by the

board as a prerequisite for his license renewal. A copy of  
 this section ~~shall~~ must be sent to each licensee by the  
 department prior to the license renewal date each year. The  
 board may exempt from this requirement those licensees who  
 submit satisfactory proof that they were prevented from  
 attending educational programs during the preceding year due  
 to illness or for other good reason."

**Section 9.** Section 37-10-311, MCA, is amended to read:

"37-10-311. Revocation -- unprofessional conduct. (1)  
 The board may revoke or suspend a certificate of  
 registration or may reprimand, prescribe probation for, or  
censure the holder of a certificate of registration for:

- (a) physical or mental incompetence;
  - (b) gross malpractice or repeated malpractice;
  - (c) a violation of any of the provisions of this  
 chapter or rules or orders of the board; or
  - (d) unprofessional conduct.
- (2) Unprofessional conduct includes:
- (a) obtaining a fee by fraud or misrepresentation;
  - (b) employing, directly or indirectly, a suspended or  
 unlicensed optometrist to perform work covered by this  
 chapter;
  - (c) directly or indirectly accepting employment to  
 practice optometry from a person not having a valid  
 certificate of registration as an optometrist or accepting

1 employment to practice optometry for or from a company or  
2 corporation;

3 (d) permitting another to use ~~his~~ the holder's  
4 certificate of registration;

5 (e) soliciting or sending a solicitor from house to  
6 house;

7 (f) treatment or advice in which untruthful or  
8 improbable statements are made;

9 (g) professing to cure nonocular disease;

10 (h) advertising in which ambiguous or misleading  
11 statements are made; or

12 (i) the use in advertising of the expression "eye  
13 specialist" or "specialist on eyes" in connection with the  
14 name of an optometrist. This chapter does not prohibit  
15 legitimate or truthful advertising by a registered  
16 optometrist.

17 (3) Before a certificate is revoked, or suspended or  
18 before the holder is reprimanded, placed on probation, or  
19 censured, the holder shall must be given a notice and an  
20 opportunity for a hearing.

21 (4) Any optometrist convicted a second time for  
22 violation of the provisions of this chapter or whose  
23 certificate of registration or examination has been revoked  
24 or suspended a second time shall may not be permitted to  
25 practice optometry in this state."

1 NEW SECTION. **Section 10.** Codification instruction.

2 [Section 2] is intended to be codified as an integral part  
3 of Title 37, chapter 10, and the provisions of Title 37,  
4 chapter 10, apply to [section 2].

5 NEW SECTION. **Section 11.** Effective date. [Sections 4  
6 and 6 and this section] are effective on passage and  
7 approval.

-End-



APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

INTRODUCED BY Senate BILL NO. 209  
BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGARDING THE LICENSED PRACTICE OF OPTOMETRY; PROVIDING FOR THE PURPOSE OF THE REGULATION OF THE PRACTICE OF OPTOMETRY; CHANGING THE NAME OF THE BOARD OF OPTOMETRISTS TO THE BOARD OF OPTOMETRY; REVISING MEETING REQUIREMENTS OF THE BOARD; REQUIRING THAT THE LICENSURE EXAMINATION BE CONDUCTED BY THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY; REVISING QUALIFICATION REQUIREMENTS, RECIPROCITY, AND CONTINUING EDUCATION REQUIREMENTS FOR THE PRACTICE OF OPTOMETRY; REVISING THE DISCIPLINARY AUTHORITY OF THE BOARD OVER HOLDERS OF CERTIFICATES OF REGISTRATION; AMENDING SECTIONS 2-15-1846, 37-10-101, 37-10-201, 37-10-301, 37-10-302, 37-10-303, 37-10-308, AND 37-10-311, MCA; AND PROVIDING EFFECTIVE DATES."

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

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

"2-15-1846. Board of optometrists optometry. (1) There is a board of optometrists optometry.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must

be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Members shall serve staggered 4-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**NEW SECTION. Section 2. Purpose.** The legislature finds that the practice of the profession of optometry is a privilege and is not a natural right of individuals. The legislature considers it necessary, in the interests of protecting the public health, safety, and welfare and in order to provide for the optometric needs of the public, to provide laws and delegate rulemaking authority regarding the granting of licenses and their subsequent use so that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of optometry.

**Section 3.** Section 37-10-101, MCA, is amended to read:

"37-10-101. Definitions -- practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or

functions which that consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which that may be optometrically diagnosed, corrected, remedied, or relieved;

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

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs, not including corticosteroids, approved by the board for use in ocular treatment limited to

the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

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

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

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18."

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1 to:

2 (a) practice optometry in this state unless he that  
3 person has first obtained a certificate of registration;

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

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

9 (d) materially alter with fraudulent intent a  
10 certificate of registration;

11 (e) use or attempt to use a certificate of registration  
12 which that has been purchased, fraudulently issued,  
13 counterfeited, or materially altered as a valid certificate  
14 of registration;

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

16 (g) willfully make a materially false statement in an  
17 application ~~for--an--examination-by-the-department-or~~ for a  
18 certificate of registration;

19 (h) advertise by displaying a sign or by otherwise  
20 ~~holding--himself--out~~ claiming to be an optometrist without  
21 having at the time a valid certificate of registration;

22 (i) replace or duplicate ophthalmic lenses with or  
23 without a prescription or to dispense ophthalmic lenses from  
24 prescriptions without having at the time a valid certificate  
25 of registration as an optometrist; however, this subsection

1 does not prevent an optical mechanic from:

2 (i) doing the merely mechanical work on an ophthalmic  
3 lens which that is ordered on a prescription signed by a  
4 registered optometrist and is dispensed only by the  
5 optometrist or a person employed by the optometrist and who  
6 does so in the office of and under the direct personal  
7 supervision of an optometrist; or

8 (ii) replacing or duplicating an existing lens for  
9 glasses;

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11 fitting or adapting ophthalmic lenses to the human eye  
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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) measure, fit, or adapt a lens to direct, contiguous  
21 contact to the human eyeball without having at the time a  
22 valid certificate of registration as an optometrist.

23 (2) When the board has reasonable cause to believe that  
24 a person is violating this section or a rule issued under  
25 this chapter, it may, in addition to other remedies provided

in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred."

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certificate to practice optometry in this state. ~~The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.~~

(2) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person is 18 years of age or older and of good moral character.

(3) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which that is accredited by the international association of boards of examiners in optometry. ~~instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.~~

(4) A person desiring ~~to be examined in optometry~~ a certificate of registration shall file an application, in the manner prescribed by the board, ~~at least 4 weeks before the examination is held,~~ and pay a fee prescribed by the board ~~shall accompany the application.~~

(5) A person who successfully passing passes the

1 ~~examination shall~~ administered by the national board of  
 2 examiners in optometry and who has met the requirements for  
 3 qualification as an optometrist must be registered in a  
 4 register ~~which shall be~~ kept by the department; and, on the  
 5 payment of a fee prescribed by the board, ~~shall~~ must receive  
 6 a certificate of registration signed by the members of the  
 7 board."

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

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

19 **Section 8.** Section 37-10-308, MCA, is amended to read:

20 "37-10-308. Continuing education required for license  
 21 ~~renewal. A licensed optometrist in active practice--in--this~~  
 22 state An optometrist licensed pursuant to 37-10-302 or  
 23 37-10-303 is required to attend not less than 12 hours  
 24 annually of scientific clinics, forums, or optometric  
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1 board as a prerequisite for his license renewal. A copy of  
 2 this section ~~shall~~ must be sent to each licensee by the  
 3 department prior to the license renewal date each year. The  
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8 **Section 9.** Section 37-10-311, MCA, is amended to read:

9 "37-10-311. Revocation -- unprofessional conduct. (1)  
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 11 registration or may reprimand, prescribe probation for, or  
 12 censure the holder of a certificate of registration for:

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- 14 (b) gross malpractice or repeated malpractice;
- 15 (c) a violation of any of the provisions of this  
 16 chapter or rules or orders of the board; or
- 17 (d) unprofessional conduct.
- 18 (2) Unprofessional conduct includes:
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 21 unlicensed optometrist to perform work covered by this  
 22 chapter;
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 24 practice optometry from a person not having a valid  
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1 employment to practice optometry for or from a company or  
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19 censured, the holder shall must be given a notice and an  
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22 violation of the provisions of this chapter or whose  
23 certificate of registration or examination has been revoked  
24 or suspended a second time shall may not be permitted to  
25 practice optometry in this state."

1 NEW SECTION. Section 10. Codification instruction.  
2 [Section 2] is intended to be codified as an integral part  
3 of Title 37, chapter 10, and the provisions of Title 37,  
4 chapter 10, apply to [section 2].

5 NEW SECTION. Section 11. Effective date. [Sections 4  
6 and 6 and this section] are effective on passage and  
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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 6 LAW REGARDING THE LICENSED PRACTICE OF OPTOMETRY; PROVIDING  
 7 FOR THE PURPOSE OF THE REGULATION OF THE PRACTICE OF  
 8 OPTOMERTRY; CHANGING THE NAME OF THE BOARD OF OPTOMETRISTS  
 9 TO THE BOARD OF OPTOMETRY; REVISING MEETING REQUIREMENTS OF  
 10 THE BOARD; REQUIRING THAT THE LICENSURE EXAMINATION BE  
 11 CONDUCTED BY THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY;  
 12 REVISING QUALIFICATION REQUIREMENTS, RECIPROCITY, AND  
 13 CONTINUING EDUCATION REQUIREMENTS FOR THE PRACTICE OF  
 14 OPTOMETRY; REVISING THE DISCIPLINARY AUTHORITY OF THE BOARD  
 15 OVER HOLDERS OF CERTIFICATES OF REGISTRATION; AMENDING  
 16 SECTIONS 2-15-1846, 37-10-101, 37-10-201, 37-10-301,  
 17 37-10-302, 37-10-303, 37-10-308, AND 37-10-311, MCA; AND  
 18 PROVIDING EFFECTIVE DATES."

19  
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

22 "2-15-1846. Board of optometrists optometry. (1) There  
 23 is a board of optometrists optometry.

24 (2) The board consists of four members appointed by the  
 25 governor with the consent of the senate. Three members must

1 be registered optometrists of this state and actually  
 2 engaged in the exclusive practice of optometry in this state  
 3 during their terms of office. One member must be a  
 4 representative of the public who is not engaged in the  
 5 practice of optometry.

6 (3) Members shall serve staggered 4-year terms.

7 (4) The board is allocated to the department for  
 8 administrative purposes only as prescribed in 2-15-121."

9 **NEW SECTION. Section 2. Purpose.** The legislature finds  
 10 that the practice of the profession of optometry is a  
 11 privilege and is not a natural right of individuals. The  
 12 legislature considers it necessary, in the interests of  
 13 protecting the public health, safety, and welfare and in  
 14 order to provide for the optometric needs of the public, to  
 15 provide laws and delegate rulemaking authority regarding the  
 16 granting of licenses and their subsequent use so that the  
 17 public is protected from the unprofessional, improper,  
 18 unauthorized, and unqualified practice of optometry.

19 **Section 3.** Section 37-10-101, MCA, is amended to read:

20 "37-10-101. Definitions -- practice of optometry. (1)  
 21 The practice of optometry is the profession constituting the  
 22 art and science of visual care and is hereby defined to be  
 23 any one of the following acts:

24 (a) the optometric examination or optometric diagnosis  
 25 of all of those physiological or anatomical parts or

1 functions which that consummate the process of human vision  
 2 to ascertain the presence therein of abnormal conditions or  
 3 functions which that may be optometrically diagnosed,  
 4 corrected, remedied, or relieved;

5 (b) the employment of any optometric means, excluding  
 6 the use of surgery, for the purpose of detecting any  
 7 condition of the process of vision which that may have any  
 8 significance in a complete optometric eye and vision  
 9 examination, including the employment and administration of  
 10 drugs topically applied for examination purposes, limited to  
 11 cycloplegics, mydriatics, topical anesthetics, dyes such as  
 12 fluorescein, and for emergency use only, miotics;

13 (c) the application or prescription of ophthalmic  
 14 lenses, contact lenses, prisms, orthoptics, visual training,  
 15 and any physical, mechanical, or physiological therapy, and  
 16 the furnishing or application of any prosthetic or  
 17 therapeutic devices for the correction or relief of visual  
 18 anomalies, excluding surgery;

19 (d) the administration, dispensation, and prescription  
 20 of the oral analgesics codeine, propoxyphene, hydrocodone,  
 21 and dihydrocodeine, alone or in combination with  
 22 nonscheduled or nonregulated drugs; and

23 (e) the administration, dispensation, and prescription  
 24 of those topical drugs, not including corticosteroids,  
 25 approved by the board for use in ocular treatment limited to

1 the anterior segment of the eye and adnexa. Glaucoma may not  
 2 be treated.

3 (2) Nothing in subsection (1) prohibits an optometrist  
 4 from removing from the eye or adnexa a foreign body that is  
 5 not intraocular.

6 (3) Unless the context requires otherwise, in this  
 7 chapter:

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

10 (b) "department" means the department of commerce  
 11 provided for in Title 2, chapter 15, part 18."

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

13 "37-10-201. Organization -- meetings. The board shall  
 14 annually choose from its members a president and secretary,  
 15 both of whom may administer oaths and take affidavits. The  
 16 board shall meet at least once each year, at Helena or some  
 17 other place within the state designated by the president, on  
 18 the--fourth--Monday--of--July and, in addition, whenever and  
 19 wherever the president and secretary call a meeting at a  
 20 location within the state. The department shall keep a  
 21 record of the proceedings of the board, which shall must be  
 22 open to public inspection."

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

24 "37-10-301. Certificate required for practice --  
 25 unlawful acts -- injunction. (1) It is unlawful for a person



1 to:

2 (a) practice optometry in this state unless he that  
3 person has first obtained a certificate of registration;

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

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

9 (d) materially alter with fraudulent intent a  
10 certificate of registration;

11 (e) use or attempt to use a certificate of registration  
12 which that has been purchased, fraudulently issued,  
13 counterfeited, or materially altered as a valid certificate  
14 of registration;

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

16 (g) willfully make a materially false statement in an  
17 application ~~for--an--examination-by-the-department-or~~ for a  
18 certificate of registration;

19 (h) advertise by displaying a sign or by otherwise  
20 ~~holding--himself--out~~ claiming to be an optometrist without  
21 having at the time a valid certificate of registration;

22 (i) replace or duplicate ophthalmic lenses with or  
23 without a prescription or to dispense ophthalmic lenses from  
24 prescriptions without having at the time a valid certificate  
25 of registration as an optometrist; however, this subsection

1 does not prevent an optical mechanic from:

2 (i) doing the merely mechanical work on an ophthalmic  
3 lens which that is ordered on a prescription signed by a  
4 registered optometrist and is dispensed only by the  
5 optometrist or a person employed by the optometrist and who  
6 does so in the office of and under the direct personal  
7 supervision of an optometrist; or

8 (ii) replacing or duplicating an existing lens for  
9 glasses;

10 (j) take or make measurements for the purpose of  
11 fitting or adapting ophthalmic lenses to the human eye  
12 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) measure, fit, or adapt a lens to direct, contiguous  
21 contact to the human eyeball without having at the time a  
22 valid certificate of registration as an optometrist.

23 (2) When the board has reasonable cause to believe that  
24 a person is violating this section or a rule issued under  
25 this chapter, it may, in addition to other remedies provided

in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred."

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

"37-10-302. Examination -- qualifications -- application -- issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations shall must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall must be conducted in the English language. The department shall publish and distribute the examination requirements for a

certificate to practice optometry in this state. ~~The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.~~

(2) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person is 18 years of age or older and of good moral character.

(3) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which that is accredited by the international association of boards of examiners in optometry. ~~Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.~~

(4) A person desiring ~~to be examined in optometry~~ a certificate of registration shall file an application, in the manner prescribed by the board, ~~at least 4 weeks before the examination is held,~~ and pay a fee prescribed by the board ~~shall accompany the application.~~

(5) A person who successfully passing passes the

examination ~~shall~~ administered by the national board of  
examiners in optometry and who has met the requirements for  
qualification as an optometrist must be registered in a  
 register which ~~shall~~ be kept by the department, and, on the  
 payment of a fee prescribed by the board, ~~shall~~ must receive  
 a certificate of registration signed by the members of the  
 board."

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

"37-10-303. Reciprocity. If an applicant for a  
 certificate of registration has been admitted to practice  
 optometry in another state and has attained an average of  
 75% in his the examination in the other that state, he that  
person may, at the discretion of the board, be granted a  
 certificate to practice his--profession optometry in this  
 state without examination, on payment of all fees, if the  
 state from in which the applicant comes is admitted to  
practice offers equal privileges to applicants for  
 certificates of registration from this state."

**Section 8.** Section 37-10-308, MCA, is amended to read:

"37-10-308. Continuing education required for license  
 renewal. ~~A-licensed-optometrist-in-active-practice--in--this~~  
~~state~~ An optometrist licensed pursuant to 37-10-302 or  
37-10-303 is required to attend not less than 12 hours  
 annually of scientific clinics, forums, or optometric  
 educational studies as may be provided or approved by the

board as a prerequisite for his license renewal. A copy of  
 this section ~~shall~~ must be sent to each licensee by the  
 department prior to the license renewal date each year. The  
 board may exempt from this requirement those licensees who  
 submit satisfactory proof that they were prevented from  
 attending educational programs during the preceding year due  
 to illness or for other good reason."

**Section 9.** Section 37-10-311, MCA, is amended to read:

"37-10-311. Revocation -- unprofessional conduct. (1)  
 The board may revoke or suspend a certificate of  
 registration or may reprimand, prescribe probation for, or  
censure the holder of a certificate of registration for:

- (a) physical or mental incompetence;
  - (b) gross malpractice or repeated malpractice;
  - (c) a violation of any of the provisions of this  
 chapter or rules or orders of the board; or
  - (d) unprofessional conduct.
- (2) Unprofessional conduct includes:
- (a) obtaining a fee by fraud or misrepresentation;
  - (b) employing, directly or indirectly, a suspended or  
 unlicensed optometrist to perform work covered by this  
 chapter;
  - (c) directly or indirectly accepting employment to  
 practice optometry from a person not having a valid  
 certificate of registration as an optometrist or accepting

1 employment to practice optometry for or from a company or  
2 corporation;

3 (d) permitting another to use his the holder's  
4 certificate of registration;

5 (e) soliciting or sending a solicitor from house to  
6 house;

7 (f) treatment or advice in which untruthful or  
8 improbable statements are made;

9 (g) professing to cure nonocular disease;

10 (h) advertising in which ambiguous or misleading  
11 statements are made; or

12 (i) the use in advertising of the expression "eye  
13 specialist" or "specialist on eyes" in connection with the  
14 name of an optometrist. This chapter does not prohibit  
15 legitimate or truthful advertising by a registered  
16 optometrist.

17 (3) Before a certificate is revoked, or suspended or  
18 before the holder is reprimanded, placed on probation, or  
19 censured, the holder ~~shall~~ must be given a notice and an  
20 opportunity for a hearing.

21 (4) Any optometrist convicted a second time for  
22 violation of the provisions of this chapter or whose  
23 certificate of registration or examination has been revoked  
24 or suspended a second time shall may not be permitted to  
25 practice optometry in this state."

1 NEW SECTION. Section 10. Codification instruction.  
2 [Section 2] is intended to be codified as an integral part  
3 of Title 37, chapter 10, and the provisions of Title 37,  
4 chapter 10, apply to [section 2].

5 NEW SECTION. Section 11. Effective date. [Sections 4  
6 and 6 and this section] are effective on passage and  
7 approval.

-End-

HOUSE STANDING COMMITTEE REPORT

February 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 209 (third reading copy -- blue) be concurred in as amended.

*Wm E Boharski*

Signed: \_\_\_\_\_

Bill Boharski, Chair

And, that such amendments read:

Carried by: Rep. Molnar

1. Page 8, line 4.

Following: "~~optometry~~."

Insert: "The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry."

HOUSE  
*SB 209*

Committee Vote:  
Yes 16, No 0.

341037SC.Hss

## 1 SENATE BILL NO. 209

2 INTRODUCED BY CRIPPEN

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
6 LAW REGARDING THE LICENSED PRACTICE OF OPTOMETRY; PROVIDING  
7 FOR THE PURPOSE OF THE REGULATION OF THE PRACTICE OF  
8 OPTOMETRY; CHANGING THE NAME OF THE BOARD OF OPTOMETRISTS TO  
9 THE BOARD OF OPTOMETRY; REVISING MEETING REQUIREMENTS OF THE  
10 BOARD; REQUIRING THAT THE LICENSURE EXAMINATION BE CONDUCTED  
11 BY THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY; REVISING  
12 QUALIFICATION REQUIREMENTS, RECIPROCITY, AND CONTINUING  
13 EDUCATION REQUIREMENTS FOR THE PRACTICE OF OPTOMETRY;  
14 REVISING THE DISCIPLINARY AUTHORITY OF THE BOARD OVER  
15 HOLDERS OF CERTIFICATES OF REGISTRATION; AMENDING SECTIONS  
16 2-15-1846, 37-10-101, 37-10-201, 37-10-301, 37-10-302,  
17 37-10-303, 37-10-308, AND 37-10-311, MCA; AND PROVIDING  
18 EFFECTIVE DATES."

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

22 "2-15-1846. Board of optometrists optometry. (1) There  
23 is a board of optometrists optometry.

24 (2) The board consists of four members appointed by the  
25 governor with the consent of the senate. Three members must

1 be registered optometrists of this state and actually  
2 engaged in the exclusive practice of optometry in this state  
3 during their terms of office. One member must be a  
4 representative of the public who is not engaged in the  
5 practice of optometry.

6 (3) Members shall serve staggered 4-year terms.

7 (4) The board is allocated to the department for  
8 administrative purposes only as prescribed in 2-15-121."

9 **NEW SECTION. Section 2. Purpose.** The legislature finds  
10 that the practice of the profession of optometry is a  
11 privilege and is not a natural right of individuals. The  
12 legislature considers it necessary, in the interests of  
13 protecting the public health, safety, and welfare and in  
14 order to provide for the optometric needs of the public, to  
15 provide laws and delegate rulemaking authority regarding the  
16 granting of licenses and their subsequent use so that the  
17 public is protected from the unprofessional, improper,  
18 unauthorized, and unqualified practice of optometry.

19 **Section 3.** Section 37-10-101, MCA, is amended to read:

20 "37-10-101. Definitions -- practice of optometry. (1)  
21 The practice of optometry is the profession constituting the  
22 art and science of visual care and is hereby defined to be  
23 any one of the following acts:

24 (a) the optometric examination or optometric diagnosis  
25 of all of those physiological or anatomical parts or

functions ~~which~~ that consummate the process of human vision to ascertain the presence ~~therein~~ of abnormal conditions or functions ~~which~~ that may be optometrically diagnosed, corrected, remedied, or relieved;

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

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs, not including corticosteroids, approved by the board for use in ocular treatment limited to

the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

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

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

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18."

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

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

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

"37-10-301. **Certificate required for practice -- unlawful acts -- injunction.** (1) It is unlawful for a person

1 to:

2 (a) practice optometry in this state unless he that  
3 person has first obtained a certificate of registration;

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

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

9 (d) materially alter with fraudulent intent a  
10 certificate of registration;

11 (e) use or attempt to use a certificate of registration  
12 which that has been purchased, fraudulently issued,  
13 counterfeited, or materially altered as a valid certificate  
14 of registration;

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

16 (g) willfully make a materially false statement in an  
17 application ~~for--an--examination-by-the-department-or~~ for a  
18 certificate of registration;

19 (h) advertise by displaying a sign or by otherwise  
20 ~~holding--himself--out~~ claiming to be an optometrist without  
21 having at the time a valid certificate of registration;

22 (i) replace or duplicate ophthalmic lenses with or  
23 without a prescription or to dispense ophthalmic lenses from  
24 prescriptions without having at the time a valid certificate  
25 of registration as an optometrist; however, this subsection

1 does not prevent an optical mechanic from:

2 (i) doing the merely mechanical work on an ophthalmic  
3 lens which that is ordered on a prescription signed by a  
4 registered optometrist and is dispensed only by the  
5 optometrist or a person employed by the optometrist and who  
6 does so in the office of and under the direct personal  
7 supervision of an optometrist; or

8 (ii) replacing or duplicating an existing lens for  
9 glasses;

10 (j) take or make measurements for the purpose of  
11 fitting or adapting ophthalmic lenses to the human eye  
12 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) measure, fit, or adapt a lens to direct, contiguous  
21 contact to the human eyeball without having at the time a  
22 valid certificate of registration as an optometrist.

23 (2) When the board has reasonable cause to believe that  
24 a person is violating this section or a rule issued under  
25 this chapter, it may, in addition to other remedies provided



in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred."

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

"37-10-302. Examination -- qualifications -- application -- issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations ~~shall~~ must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and ~~shall~~ must be conducted in the English language. The department shall publish and distribute the examination requirements for a

certificate to practice optometry in this state. ~~The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.~~ THE BOARD MAY ACCEPT THE GRADES AN APPLICANT HAS RECEIVED IN THE WRITTEN EXAMINATIONS GIVEN BY THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY.

(2) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person is 18 years of age or older and of good moral character.

(3) No A person is not eligible to ~~take the examination~~ receive a certificate of registration unless he that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which that is accredited by the international association of boards of examiners in optometry. ~~Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.~~

(4) A person desiring ~~to be examined in optometry~~ a certificate of registration shall file an application, in the manner prescribed by the board, ~~at least 4 weeks before the examination is held,~~ and pay a fee prescribed by the

1 board ~~shall accompany the application.~~

2 (5) A person who successfully passing passes the  
3 examination shall administered by the national board of  
4 examiners in optometry and who has met the requirements for  
5 qualification as an optometrist must be registered in a  
6 register ~~which shall be~~ kept by the department; and, on the  
7 payment of a fee prescribed by the board, ~~shall must~~ receive  
8 a certificate of registration signed by the members of the  
9 board."

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

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

21 **Section 8.** Section 37-10-308, MCA, is amended to read:

22 "37-10-308. Continuing education required for license  
23 renewal. ~~A licensed optometrist in active practice in this~~  
24 state An optometrist licensed pursuant to 37-10-302 or  
25 37-10-303 is required to attend not less than 12 hours

1 annually of scientific clinics, forums, or optometric  
2 educational studies as may be provided or approved by the  
3 board as a prerequisite for his license renewal. A copy of  
4 this section ~~shall must~~ be sent to each licensee by the  
5 department prior to the license renewal date each year. The  
6 board may exempt from this requirement those licensees who  
7 submit satisfactory proof that they were prevented from  
8 attending educational programs during the preceding year due  
9 to illness or for other good reason."

10 **Section 9.** Section 37-10-311, MCA, is amended to read:

11 "37-10-311. Revocation -- unprofessional conduct. (1)  
12 The board may revoke or suspend a certificate of  
13 registration or may reprimand, prescribe probation for, or  
14 censure the holder of a certificate of registration for:

- 15 (a) physical or mental incompetence;
- 16 (b) gross malpractice or repeated malpractice;
- 17 (c) a violation of any of the provisions of this
- 18 chapter or rules or orders of the board; or
- 19 (d) unprofessional conduct.
- 20 (2) Unprofessional conduct includes:
- 21 (a) obtaining a fee by fraud or misrepresentation;
- 22 (b) employing, directly or indirectly, a suspended or
- 23 unlicensed optometrist to perform work covered by this
- 24 chapter;
- 25 (c) directly or indirectly accepting employment to

1 practice optometry from a person not having a valid  
 2 certificate of registration as an optometrist or accepting  
 3 employment to practice optometry for or from a company or  
 4 corporation;

5 (d) permitting another to use ~~his~~ the holder's  
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7 (e) soliciting or sending a solicitor from house to  
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 10 improbable statements are made;

11 (g) professing to cure nonocular disease;

12 (h) advertising in which ambiguous or misleading  
 13 statements are made; or

14 (i) the use in advertising of the expression "eye  
 15 specialist" or "specialist on eyes" in connection with the  
 16 name of an optometrist. This chapter does not prohibit  
 17 legitimate or truthful advertising by a registered  
 18 optometrist.

19 (3) Before a certificate is revoked, or suspended or  
 20 before the holder is reprimanded, placed on probation, or  
 21 censured, the holder ~~shall~~ must be given a notice and an  
 22 opportunity for a hearing.

23 (4) Any optometrist convicted a second time for  
 24 violation of the provisions of this chapter or whose  
 25 certificate of registration or examination has been revoked

1 or suspended a second time shall may not be permitted to  
 2 practice optometry in this state."

3 NEW SECTION. Section 10. Codification instruction.  
 4 [Section 2] is intended to be codified as an integral part  
 5 of Title 37, chapter 10, and the provisions of Title 37,  
 6 chapter 10, apply to [section 2].

7 NEW SECTION. Section 11. Effective date. [Sections 4  
 8 and 6 and this section] are effective on passage and  
 9 approval.

-End-