

Amendment No. 773

Senate Amendment to Assembly Bill No. 249 Second Reprint	(BDR 54-547)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

RRY



Date: 5/18/2007

A.B. No. 249—Revises provisions relating to dispensing opticians. (BDR 54-547)



ASSEMBLY BILL NO. 249—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE BOARD OF DISPENSING OPTICIANS)

MARCH 6, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to dispensing opticians. (BDR 54-547)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to dispensing opticians; requiring the Board of Dispensing Opticians to adopt minimum standards for eyewear and certain devices dispensed by a dispensing optician; authorizing any member of the Board to issue subpoenas to compel the production of books, papers and documents; revising provisions governing the reinstatement of an expired license or limited license; authorizing the Board to impose an administrative fine against a person who engages in ophthalmic dispensing without a license; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Board of Dispensing Opticians to regulate the practice of ophthalmic dispensing. (Chapter 637 of NRS) **Section 1.3** of this bill requires the Board to adopt minimum standards for eyewear and certain optical and ophthalmic devices dispensed by a dispensing optician. The standards must be consistent with the minimum standards of quality approved by the American National Standards Institute. **Section 6** of this bill provides that a dispensing optician may be disciplined by the Board for dispensing, without proper verification, such eyewear or devices that do not meet the minimum standards adopted by the Board. **Section 1.7** of this bill provides that the expiration date of a prescription which is received by a dispensing optician is 2 years after the date the prescription was issued unless **the practitioner who wrote the prescription indicates a ~~shorter~~ different period . ~~is indicated for a specific patient.~~**

Existing law authorizes any member of the Board to issue subpoenas to compel the attendance of a witness to testify before the Board. (NRS 637.040) **Section 2** of this bill authorizes any member of the Board to issue subpoenas to compel the production of books, papers and documents.

Existing law authorizes the Board to renew an expired license or limited license to practice ophthalmic dispensing. (NRS 637.121, 637.140) **Sections 3 and 5** of this bill provide that the Board may only renew an expired license or limited license if the license or limited license has been expired for 2 years or less.

Existing law authorizes the Board to issue a cease and desist order to a person practicing ophthalmic dispensing without a license. If the person does not comply with the cease and desist order within 30 days, the Board shall impose an administrative fine of up to \$10,000

against the person. (NRS 637.181) **Section 7** of this bill authorizes the Board to impose an administrative fine against a person practicing ophthalmic dispensing without a license without regard to whether or not the person failed to comply with a cease and desist order.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 637 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.7 of this act.

Sec. 1.3. *1. The Board shall adopt regulations setting forth minimum standards for lenses, frames, specially fabricated optical devices and other ophthalmic devices dispensed by a person licensed as a dispensing optician.*

2. The standards adopted by the Board must be consistent with the minimum standards of quality approved by the American National Standards Institute.

Sec. 1.7. *A prescription received by a dispensing optician shall be deemed to have an expiration date of 2 years after the date the prescription was issued unless the practitioner who wrote the prescription includes on the prescription ~~that a shorter period is required for the specific patient.~~ a different period.*

Sec. 2. NRS 637.040 is hereby amended to read as follows:

637.040 1. The Board shall elect a President, Vice President, Secretary and Treasurer from its membership.

2. Any member of the Board may:

(a) Issue subpoenas to compel ~~the~~ attendance of witnesses to testify before the Board ~~or the production of books, papers and documents.~~ Subpoenas must issue under the seal of the Board and must be served in the same manner as subpoenas issued out of the district court.

(b) Administer oaths in taking testimony in any matter pertaining to the duties of the Board.

Sec. 3. NRS 637.121 is hereby amended to read as follows:

637.121 1. Except as otherwise provided in this section, a limited license as a dispensing optician authorizes the licensee to engage in the practice of ophthalmic dispensing pursuant to this chapter.

2. Only a person who is deemed to hold an active, inactive or delinquent limited license as a dispensing optician on February 1, 2004, may hold a limited license as a dispensing optician. A limited license as a dispensing optician may not be issued to any other person.

3. A person practicing ophthalmic dispensing pursuant to a limited license:

(a) Except as otherwise provided in this section, is subject to the provisions of this chapter in the same manner as a person practicing ophthalmic dispensing pursuant to a license issued pursuant to NRS 637.120, including, without limitation, the provisions of this chapter governing the renewal or reactivation of a license; and

(b) Shall not sell, furnish or fit contact lenses.

4. A limited license as a dispensing optician:

(a) Expires on January 31 of each year.

(b) May be renewed before its expiration upon:

(1) Presentation of proof of completion of the continuing education required by this section; and

(2) Payment of a renewal fee set by the Board of not more than \$200.

(c) Except as otherwise provided in subsection 5, is delinquent if it is not renewed before January 31 of each year. ~~Such~~ *Not later than 2 years after the*

1 *expiration of a limited license*, a delinquent limited license may be reinstated, at
2 the discretion of the Board, upon payment of each applicable annual renewal fee in
3 addition to the annual delinquency fee set by the Board of not more than \$500.

4 5. Upon written request to the Board, and payment of a fee not to exceed
5 \$300, a licensee in good standing may have his name and limited license as a
6 dispensing optician transferred to an inactive list. Such a licensee shall not practice
7 ophthalmic dispensing during the time the limited license is inactive. If an inactive
8 licensee ~~desires~~ *wishes* to resume the practice of ophthalmic dispensing as limited
9 by this section, the Board shall reactivate the limited license upon:

10 (a) If deemed necessary by the Board, the demonstration by the licensee that
11 the licensee is then qualified and competent to practice;

12 (b) The completion of an application; and

13 (c) Payment of the renewal fee set by the Board pursuant to subsection 4.

14 6. To reactivate a limited license as a dispensing optician pursuant to
15 subsection 5, an inactive licensee is not required to pay the delinquency fee and the
16 renewal fee for any year while the license was inactive.

17 7. Except as otherwise provided in subsection 8, each person with a limited
18 license as a dispensing optician must complete courses of continuing education in
19 ophthalmic dispensing each year. Such continuing education must:

20 (a) Encompass such subjects as are established by regulations of the Board.

21 (b) Consist of a minimum of 12 hours for a period of 12 months.

22 8. A person with a limited license as a dispensing optician who is on active
23 military service is exempt from the requirements of subsection 7.

24 9. The Board shall adopt any *other* regulations *it determines are* necessary to
25 carry out the provisions of this section.

26 **Sec. 4.** (Deleted by amendment.)

27 **Sec. 5.** NRS 637.140 is hereby amended to read as follows:

28 637.140 1. A license as a dispensing optician issued under the provisions of
29 this chapter expires on January 31 of each year.

30 2. A license may be renewed before its expiration upon:

31 (a) Presentation of proof of completion of the continuing education required by
32 NRS 637.135; and

33 (b) Payment of a renewal fee set by the Board of not more than \$500.

34 3. Except as otherwise provided in subsection 4, any license which is not
35 renewed before January 31 of each year shall be deemed delinquent. ~~[A]~~ *Not later*
36 *than 2 years after the expiration of a license*, a delinquent license may be
37 reinstated, at the discretion of the Board, upon payment of each applicable annual
38 renewal fee in addition to the annual delinquency fee set by the Board of not more
39 than \$500.

40 4. Upon written request to the Board, and payment of a fee not to exceed
41 \$300, a licensee in good standing may have his name and license transferred to an
42 inactive list. Such a licensee shall not practice ophthalmic dispensing during the
43 time the license is inactive. If an inactive licensee desires to resume the practice of
44 ophthalmic dispensing, the Board shall reactivate the license upon the:

45 (a) Demonstration, if deemed necessary by the Board, that the licensee is then
46 qualified and competent to practice;

47 (b) Completion of an application; and

48 (c) Payment of the renewal fee set by the Board pursuant to subsection 2.

49 ➤ Payment of the delinquency fee and the renewal fee for any year while the
50 license was inactive is not required.

51 **Sec. 6.** NRS 637.150 is hereby amended to read as follows:

52 637.150 1. Upon proof by substantial evidence that an applicant or holder of
53 a license:

- (a) Has been adjudicated insane;
- (b) Habitually uses any controlled substance or intoxicant;
- (c) Has been convicted of a crime involving moral turpitude;
- (d) Has been convicted of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;
- (e) Has advertised in any manner which would tend to deceive, defraud or mislead the public;
- (f) Has presented to the Board any diploma, license or certificate that has been signed or issued unlawfully or under fraudulent representations, or obtains or has obtained a license to practice in the State through fraud of any kind;
- (g) Has been convicted of a violation of any federal or state law relating to a controlled substance;
- (h) *Has, without proper verification, dispensed a lens, frame, specially fabricated optical device or other ophthalmic device that does not satisfy the minimum standards established by the Board pursuant to section 1.3 of this act;*
- (i) Has violated any regulation of the Board;
- ~~(j)~~ (j) Has violated any provision of this chapter;
- ~~(k)~~ (k) Is incompetent;
- ~~(l)~~ (l) Is guilty of unethical or unprofessional conduct as determined by the Board;
- ~~(m)~~ (m) Is guilty of repeated malpractice, which may be evidenced by claims of malpractice settled against a practitioner; or
- ~~(n)~~ (n) Is guilty of a fraudulent or deceptive practice as determined by the Board,
- the Board may, in the case of an applicant, refuse to grant him a license, or may, in the case of a holder of a license, place him on probation, reprimand him publicly, require him to pay an administrative fine of not more than \$10,000, suspend or revoke his license, or take any combination of these disciplinary actions.
2. The Board shall not privately reprimand a holder of a license.
3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.
- Sec. 7.** NRS 637.181 is hereby amended to read as follows:
- 637.181 Notwithstanding the provisions of chapter 622A of NRS:
1. The Board shall conduct an investigation if it receives a complaint that sets forth reason to believe that a person, without the proper license, is engaging in an activity for which a license is required pursuant to this chapter. The complaint must be:
- (a) Made in writing; and
- (b) Signed and verified by the person filing the complaint.
2. If the Board determines that a person, without the proper license, is engaging in an activity for which a license is required pursuant to this chapter, the Board ~~shall~~:
- (a) *Shall* issue and serve on the person an order to cease and desist *from* engaging in the activity until such time as the person obtains the proper license from the Board.
- ~~[3.—If a person upon whom an order to cease and desist is served does not comply with the order within 30 days after service, the Board shall.]~~
- (b) *May*, after notice and opportunity for a hearing, impose upon the person an administrative fine of not more than \$10,000. The imposition of an administrative fine is a final decision for the purposes of judicial review.
- ~~[4.]~~ 3. An administrative fine imposed pursuant to this section is in addition to any other penalty provided in this chapter.

1 **Sec. 8.** NRS 637.190 is hereby amended to read as follows:

2 637.190 1. The district court in the county in which any hearing is being
3 conducted by the Board may compel the attendance of witnesses, the giving of
4 testimony and the production of books , ~~and~~ papers **or documents** as required by
5 any subpoena issued by the Board.

6 2. If any witness refuses to attend or testify or produce any **books**, papers **or**
7 **documents** required by such **a** subpoena, the Board may report to the district court
8 for the county in which the hearing is pending by petition, setting forth:

9 (a) That due notice has been given of the time and place of attendance of the
10 witness or the production of the books ~~and papers;~~ , **papers or documents;**

11 (b) That the witness has been subpoenaed in the manner prescribed in NRS
12 637.040; and

13 (c) That the witness has failed and refused to attend or produce the **books**,
14 papers **or documents** required by subpoena before the Board in the hearing named
15 in the subpoena, or has refused to answer questions propounded to him in the
16 course of ~~such~~ **the** hearing,

17 and asking an order of the court compelling the witness to attend and testify or
18 produce the books , ~~or~~ papers **or documents** before the Board.

19 3. The court, upon petition of the Board, shall enter an order directing the
20 witness to appear before the court at a time and place to be fixed by the court in
21 ~~such~~ **the** order, the time to be not more than 10 days ~~from~~ **after** the date of the
22 order, and then and there show cause why he has not attended or testified or
23 produced the books , ~~or~~ papers **or documents** before the Board. A certified copy
24 of the order must be served upon the witness. If it appears to the court that the
25 subpoena was regularly issued by the Board, the court may thereupon enter an order
26 that the witness appear before the Board at the time and place fixed in the order and
27 testify or produce the required books ~~or papers;~~ , **papers or documents** and upon
28 failure to obey the order the witness shall be dealt with as for contempt of court.

29 **Sec. 9.** This act becomes effective on July 1, 2007.