

Amendment No. 618

Senate Amendment to Assembly Bill No. 20 First Reprint (BDR 54-501)

Proposed by: Senate Committee on Commerce, Labor and Energy

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 20 (§§ 2, 5).

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

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 underlining* is newly added transitory language.

SLP/TMC



Date: 5/19/2011

A.B. No. 20—Revises provisions governing the practice of optometry.
(BDR 54-501)



ASSEMBLY BILL NO. 20—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE STATE BOARD OF OPTOMETRY)

PREFILED DECEMBER 14, 2010

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the practice of optometry.
(BDR 54-501)

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 optometry; requiring the Nevada State Board of Optometry to issue a license by endorsement to practice optometry in this State in certain circumstances; revising provisions governing the examination for licensure by the Board; revising provisions governing the discipline and unprofessional or unethical conduct of licensees; repealing provisions that require the Board to maintain a roster of licensees; repealing provisions that pertain to the scope of reexaminations for licensure; establishing fees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires each applicant for a license to practice optometry in this State to take and pass an examination prepared and administered by the Nevada State Board of Optometry or by a testing agency that has been designated by the Board. The examination must test the fitness of an applicant to practice optometry and include testing of the applicant's knowledge of statutes and regulations governing the practice of optometry. (NRS 636.150, 636.180, 636.185) Other states have enacted legislation creating exceptions from general licensure provisions which allow certain qualified persons who are licensed in another jurisdiction to receive a license to practice optometry without requiring the licensee to take an examination that is designed to evaluate competency to practice optometry. However, existing law in this State does not authorize such an exception.

Section 2 of this bill provides for the issuance of a license by endorsement to practice optometry and requires the Board to issue a license by endorsement to certain qualified applicants who are licensed to practice optometry in the District of Columbia or other states or territories and who have been continuously and actively engaged in the practice of optometry for the 5 years immediately preceding the date on which they apply to the Board for the issuance of a license by endorsement. **Section 7** of this bill requires an applicant for a license by endorsement to take and pass an examination, but **section 3** of this bill provides that the examination must test only the applicant's knowledge of statutes and regulations governing the practice of optometry in this State. **Section 5** of this bill establishes the fees which must be

paid by an applicant for the examination for a license by endorsement and for the issuance and renewal of a license by endorsement.

Section 10 of this bill revises provisions governing the score required to pass the examinations, and **sections 6, 8, 9, 11 and 12** of this bill make certain revisions to distinguish between the examination for and issuance of a license to practice optometry and a license by endorsement.

Existing law also defines the scope of the practice of optometry in this State and authorizes the Board to discipline licensees for certain acts or omissions and determine what acts constitute unethical or unprofessional conduct by licensees. (NRS 636.025, 636.130, 636.290-636.340) **Section 4.5 of this bill provides that a license to practice optometry does not authorize an optometrist to engage in acts or perform procedures which are not authorized by law.** **Section 13** of this bill authorizes the Board to discipline licensees for the commission of a felony ~~or~~ **or** for conduct that demonstrates incompetency in the practice of optometry ~~for for practicing or offering to practice optometry outside the scope of practice authorized by law.~~ **Sections 14 and 15** of this bill revise provisions pertaining to unprofessional or unethical conduct relating to the use of prescription blanks and the sale, solicitation or advertisement of certain products and services.

Section 16 of this bill repeals provisions requiring the Board to maintain a roster of licensees and authorizing the Board to determine the scope of reexaminations for licensure.

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

Section 1. Chapter 636 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. The Board shall, except for good cause, issue a license by endorsement to practice optometry to an applicant who has been issued a license to practice optometry by the District of Columbia or any state or territory of the United States if:

(a) At the time the applicant files an application with the Board, the license issued to the applicant by the District of Columbia or the other state or territory of the United States is in effect and unrestricted; and

(b) The applicant:

(1) Has obtained a passing score on an examination for licensure that is recognized by the Board as an appropriate examination to assess competency in the practice of optometry;

(2) Has had no adverse actions reported to the National Practitioner Data Bank within the 5 years immediately preceding the date of the application;

(3) Has been continuously and actively engaged in the practice of optometry for the 5 years immediately preceding the date of the application;

(4) Is not involved in and does not have pending any disciplinary action concerning a license to practice optometry in the District of Columbia or any state or territory of the United States;

(5) Provides information to the Board about any malpractice claim that has been brought against the applicant, regardless of when the claim was filed or how the claim was resolved;

(6) Obtains a passing score on the examination for licensure by endorsement administered by the Board pursuant to NRS 636.170; and

(7) Pays the fee required by NRS 636.143.

2. A license by endorsement may be issued at a meeting of the Board or between its meetings by the President and Executive Director. Such action shall be deemed to be an action of the Board.

1 **Sec. 3. *An examination for licensure by endorsement must:***

2 ***1. Test only the examinee's knowledge of statutes and regulations***
3 ***governing the practice of optometry in this State;***

4 ***2. Be prepared and administered by the Board or a testing agency that has***
5 ***been designated by the Board to conduct its examinations; and***

6 ***3. Be conducted in the English language.***

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

8 **Sec. 4.5. NRS 636.025 is hereby amended to read as follows:**

9 636.025 1. The acts set forth in this ~~{section}~~ subsection, or any of them,
10 whether done severally, collectively or in combination with other acts that are not
11 set forth in this ~~{section}~~ subsection constitute practice in optometry within the
12 purview of this chapter:

13 (a) Advertisement or representation as an optometrist.

14 (b) Adapting, or prescribing or dispensing, without prescription by a
15 practitioner of optometry or medicine licensed in this State, any ophthalmic lens,
16 frame or mounting, or any part thereof, for correction, relief or remedy of any
17 abnormal condition or insufficiency of the eye or any appendage or visual process.
18 The provisions of this paragraph do not prevent an optical mechanic from doing the
19 mere mechanical work of replacement or duplication of the ophthalmic lens or
20 prevent a licensed dispensing optician from engaging in the practice of ophthalmic
21 dispensing.

22 (c) The examination of the human eye and its appendages, the measurement of
23 the powers or range of human vision, the determination of the accommodative and
24 refractive states of the eye or the scope of its function in general, or the diagnosis or
25 determination of any visual, muscular, neurological, interpretative or anatomic
26 anomalies or deficiencies of the eye or its appendages or visual processes.

27 (d) Prescribing, directing the use of or using any optical device in connection
28 with ocular exercises, orthoptics or visual training.

29 (e) The prescribing of contact lenses.

30 (f) The measurement, fitting or adaptation of contact lenses to the human eye
31 except under the direction and supervision of a physician, surgeon or optometrist
32 licensed in the State of Nevada.

33 (g) The topical use of diagnostic pharmaceutical agents to determine any
34 visual, muscular, neurological, interpretative or anatomic anomalies or deficiencies
35 of the eye or its appendages or visual processes.

36 (h) Prescribing, directing the use of or using a therapeutic pharmaceutical agent
37 to treat an abnormality of the eye or its appendages.

38 (i) Removing a foreign object from the surface or epithelium of the eye.

39 (j) The ordering of laboratory tests to assist in the diagnosis of an abnormality
40 of the eye or its appendages.

41 2. The provisions of ~~{this section}~~ subsection 1 do not authorize an
42 optometrist to engage in any practice which includes:

43 (a) The incision or suturing of the eye or its appendages; or

44 (b) The use of lasers for surgical purposes.

45 **3. A license to practice optometry issued pursuant to this chapter does not**
46 **authorize an optometrist to engage in any act or perform any procedure which is**
47 **not authorized by this chapter or the regulations adopted pursuant thereto.**

48 **Sec. 5. NRS 636.143 is hereby amended to read as follows:**

49 636.143 The Board shall establish within the limits prescribed a schedule of
50 fees for the following purposes:

	Not less than	Not more than
Examination , <i>including examination for license by endorsement</i>	\$100	\$500
Reexamination , <i>including reexamination for license by endorsement</i>	100	500
Issuance of each license or duplicate license , <i>including a license by endorsement</i>	35	75
Renewal of each license or duplicate license , <i>including a license by endorsement</i>	100	500
Issuance of a license for an extended clinical facility	100	500
Issuance of a replacement renewal card for a license	10	50

Sec. 6. NRS 636.150 is hereby amended to read as follows:
 636.150 ~~Any~~ *Except as otherwise provided in section 2 of this act, any* person applying for a license to practice optometry in this State must:

1. File proof of his or her qualifications;
2. Make application for an examination;
3. Take and pass the examination;
4. Pay the prescribed fees; and
5. Verify that all the information he or she has provided to the Board or to any other entity pursuant to the provisions of this chapter is true and correct.

Sec. 7. NRS 636.170 is hereby amended to read as follows:

636.170 The Board shall ~~1. Conduct a regular annual examination, and may conduct a special examination when it deems that circumstances warrant such examination.~~
~~2. Fix and announce the time and place of any examination at least 30 days prior to the day when it is to be commenced.]~~ *conduct an examination of each applicant for licensure and each applicant for licensure by endorsement by the Board. The examination must be administered at a time and place designated by the Board.*

Sec. 8. NRS 636.180 is hereby amended to read as follows:

636.180 An examination *other than an examination for licensure by endorsement* must:

1. Be practical in character and design as determined by the Board;
2. Test the fitness of the examinee to practice optometry;
3. Be prepared and administered by the Board or a testing agency that has been designated by the Board to conduct its examinations; and
4. Be conducted in the English language.

Sec. 9. NRS 636.185 is hereby amended to read as follows:

636.185 1. An examination, other than ~~one~~ *an examination* conducted solely for reexamination of an examinee who has failed in a previous examination ~~or an examination for licensure by endorsement~~, must include testing in the following areas:

- (a) General anatomy.
- (b) General physiology.
- (c) Ocular anatomy.
- (d) Ocular physiology.

- (e) Ocular pathology.
 - (f) Geometric optics.
 - (g) Physiological optics.
 - (h) Theoretical optometry.
 - (i) Practical optometry.
 - (j) Retinoscopy and ophthalmic instruments.
 - (k) Ophthalmoscopy and biomicroscopy.
 - (l) Neurology, visual fields and perimetry.
 - (m) Vision therapy.
 - (n) Clinical optometry.
 - (o) Contact lenses.
 - (p) Pharmacology.
 - (q) Statutes and regulations governing the practice of optometry.
 - (r) Such other areas as the Board may prescribe.
2. An examination , *other than an examination conducted solely for reexamination of an examinee who has failed in a previous examination or an examination for licensure by endorsement*, must also provide for an evaluation of the examinee's knowledge of the following areas:
- (a) Basic science.
 - (b) Clinical science.
 - (c) Care and management of patients.
- Sec. 10.** NRS 636.190 is hereby amended to read as follows:
636.190 Except as otherwise provided in NRS 622.090, a grade of 75 or higher ~~[for each area tested on the examination]~~ is required to pass an examination.
- Sec. 11.** NRS 636.215 is hereby amended to read as follows:
636.215 The Board shall execute a license *other than a license by endorsement* for each person who has satisfied the requirements of NRS 636.150 and submitted all information required to complete an application for a license. A license must:
1. Certify that the licensee has been examined and found qualified to practice optometry in this State; and
 2. Be signed by each member of the Board.
- Sec. 12.** NRS 636.220 is hereby amended to read as follows:
636.220 ~~[The]~~ A license *executed pursuant to NRS 636.215* must be issued and delivered by the Executive Director to the licensee upon payment to the Executive Director of the prescribed fee.
- Sec. 13.** NRS 636.295 is hereby amended to read as follows:
636.295 The following acts, conduct, omissions, or mental or physical conditions, or any of them, committed, engaged in, omitted, or being suffered by a licensee, constitute sufficient cause for disciplinary action:
1. Affliction of the licensee with any communicable disease ~~[likely to]~~ *which may* be communicated to other persons.
 2. Commission by the licensee of a felony ~~[relating to the practice of optometry]~~ or *of* a gross misdemeanor involving moral turpitude of which the licensee has been convicted and from which he or she has been sentenced by a final judgment of a federal or state court in this or any other state, the judgment not having been reversed or vacated by a competent appellate court and the offense not having been pardoned by executive authority.
 3. Conviction of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.
 4. Commission of fraud by or on behalf of the licensee in obtaining a license or a renewal thereof, or in practicing optometry thereunder.
 5. Habitual drunkenness or addiction to any controlled substance.

6. ~~[Gross incompetency.]~~ *Incompetency in the practice of optometry or conduct which demonstrates a significant lack of ability, knowledge or fitness to discharge a professional obligation in the practice of optometry.*

7. Affliction with any mental or physical disorder or disturbance ~~[seriously impairing]~~ *which impairs* his or her competency as an optometrist.

8. Making false or misleading representations, by or on behalf of the licensee, with respect to optometric materials or services.

9. Practice by the licensee, or attempting or offering so to do, while in an intoxicated condition.

10. Perpetration of unethical or unprofessional conduct in the practice of optometry.

11. Any violation of the provisions of this chapter or any regulations adopted pursuant thereto.

12. ~~[Practicing or offering to practice optometry outside the scope of practice authorized by law.]~~

~~13.]~~ Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility is suspended or revoked; or

(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This subsection applies to an owner or other principal responsible for the operation of the facility.

Sec. 14. NRS 636.300 is hereby amended to read as follows:

636.300 The following acts, among others, constitute unethical or unprofessional conduct:

1. Association as an optometrist with any person, firm or corporation violating this chapter.

2. Accepting employment ~~[.]~~ *as an optometrist or in the practice of optometry*, directly or indirectly, from a person not licensed to practice optometry in this State, ~~[to assist the person in such practice or enabling the person to engage therein.]~~ except as authorized in NRS 636.347.

3. Signing *or using* the prescription blanks of another optometrist, *ophthalmologist or medical professional* or allowing another optometrist, *ophthalmologist or medical professional* to *sign or* use his or her prescription blanks.

4. Except as otherwise provided in NRS 636.372 and 636.373, practicing in or on premises where any materials other than those necessary to render optometric examinations or services are dispensed to the public, or where a business is being conducted not exclusively devoted to optometry or other healing arts and materials or merchandise are displayed having no relation to the practice of optometry or other healing arts.

Sec. 15. NRS 636.302 is hereby amended to read as follows:

636.302 The following acts, among others, constitute unethical or unprofessional conduct:

1. Making a house-to-house canvass, either in person or by another person, for advertising, selling or soliciting the sale of *contact lenses*, eyeglasses, frames, lenses, mountings, or optometric examinations or services.

2. Circulating or publishing, directly or indirectly, any false, fraudulent or misleading statement as to optometric materials or services, his or her method of practice or skill, or the method of practice or skill of any other licensee.

3. Advertising in any manner that will tend to deceive, defraud or mislead the public.

~~[4. Advertising, directly or indirectly, free optometric examinations or services.]~~

Sec. 16. NRS 636.120 and 636.200 are hereby repealed.

Sec. 17. This act becomes effective upon passage and approval for the purpose of adopting regulations and on October 1, 2011, for all other purposes.

TEXT OF REPEALED SECTIONS

636.120 Roster of licensees: Preparation and distribution. Once each year, the Board shall prepare and distribute to all licensees a roster containing their names and addresses.

636.200 Scope of reexamination. An examinee whose request for reexamination has been granted may, at the discretion of the Board or the testing agency designated by the Board to conduct its examinations, be required to retake:

1. The entire examination; or
2. Only the section or sections of the examination on which the examinee did not receive the grade required to pass.