SB
541

COMMITTEE REPORT

SENATE

FURTHER:

4/3/80

Date: _____

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 541 professional licensing and regulation of the practice of dispensing opticians

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

DO PASS

S 60 (Rev. 12/78)

SB 541
By HESS

"An Act relating to ~~proposed HESS~~ 79-80 licensing of the practice of dispensing optician and providing for effective date."

HSS notified

Introduced 4-3-80
Logged 4-3-80
Referrals - none
Comm. hearing 4-9-80
" action Passed Jolen & Senate Secy 4-10-80 8:Am.

Licensing/ Regulation of Opticians

SENATE BILL NO. 541, by the Health, Education and Social Services Committee. Relates to professional licensing and to the regulation of the practice of dispensing opticians. Adds new sections to AS 08.71 (Dispensing Opticians) relati g to the removal of board members (states that a member may be removed by the governor for cause, and that the board may by regulation provide that unexcused absences constitutes cause for removal); powers and duties of the board, stating that the board may examine and issue licenses to applicants, renew licenses, hold hearings and order disciplinary sanctions, supply forms, keep records and enforce provisions and adopt or amend regulations. New section added relating to licensure by credentials, stating that a person with a valid license from another state, territory, district or possession of the United States shall be issued a license without examination for those areas in which he is licensed upon payment of fees. Adds new section relating to contact lenses, stating that lenses may be dispensed only upon the written contact lens prescription of a licensed physician or optometrist, except duplicate contacts may be dispensed under an original prescription. States patient shall be instructed to return for inspection of fit of lenses. New definitions added for "dispensing optician" and "supervision" (of work being performed). Amendments made relating to membership of the board and term of office, stating that the board consists of four opticians and one public member (now reads seven persons) who serve staggered terms of four years (now reads three), and states that a person who has served two succesive complete terms may not be reappointed until four years from the expiration of the second term. Amends qualifications for examination by reducing the number of hours a practicing optician has in good standing from 10,000 hours to 6,000, and amends renewal fee for license from a biennial fee of $50 to a fee every four years of $200. Amends provisions relating to practicing without a license by stating that a person who violates section is guilty of a class B misdemeanor. Deletes employees working under the personal supervision of a licensed physician or optometrist from provisions relating to exemptions from and limitations on the application of the chapter. Repeals various sections including qualifications of board members (AS 08.71.030); Board regulations (AS 08.71.050); Record of proceedings (08.71.060); Applicability of Administrative Procedure Act (AS 08.71.070); Contact lenses (AS 08.71.200) and definitions of "dispensing opticians" (AS 08.71.240(3)). Repeals and re-enacts sections relating to Grounds for revokation, suspension or denial of license to read "Imposition of disciplinary sanctions" and adds new language throughout relating to securing a license through decite, fraud or intentional misrepresentation; advertising in a false or misleading manner, conviction of a crime, negligence practicing after becoming unfit and engaging in lewd or immoral conduct. Repeals and re-enacts Limitations or conditions on license; discipline (AS 08.71.175) to read: "Displinary Sanction" and adds new language throughout relating to permanent revokation of license, suspension, censure, reprimand, probationary status and imposition of limitations. Also addresses reinstatement. Provides Act takes effect immediately.

Introduced April 3 and referred to HESS.

Introduced: 4/3/80
Referred: Health, Education & Social Services

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

2 SENATE BILL NO. 541

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to professional licensing and to the
7 regulation of the practice of dispensing opticians; and
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 08.01.100(a) is amended to read:

11 (a) Except as otherwise provided in this title, [ALL] licenses
12 shall be renewed biennially on the dates set by the department with the
13 approval of the respective board.

14 * Sec. 2. AS 08.71.020 is amended to read:

15 Sec. 08.71.020. MEMBERSHIP [OF BOARD; SOURCE OF APPOINTMENT;] AND
16 TERM OF OFFICE. The board consists of four opticians licensed under
17 AS 08.71.080 and one public member [SEVEN PERSONS] appointed by the
18 governor. Members serve staggered terms of four [THREE] years which [.
19 THE TERMS OF THE PUBLIC MEMBERS OF THE BOARD] shall be set so that they
20 do not expire at the same time. Vacancies on the board shall be filled
21 for the unexpired term. A person who has served two successive complete
22 terms may not be reappointed until four years from the expiration of the
23 second term.

24 * Sec. 3. AS 08.71 is amended by adding new sections to read:

25 Sec. 08.71.045. REMOVAL OF BOARD MEMBERS. A member of the board
26 may be removed from office by the governor for cause. The board may by
27 regulation provide that unexcused absences from meetings constitute
28 cause for removal.

29 Sec. 08.71.055. POWERS AND DUTIES. The board shall have the

following powers and duties:

(1) to examine and issue licenses to applicants;

(2) to renew licenses;

(3) to hold hearings and order disciplinary sanctions against a person who violates this chapter or the regulations of the board;

(4) to supply forms for applications, licenses, and other needed documents;

(5) to keep a record of all proceedings open to the public, including the name of each applicant for examination and each licensee;

(6) to enforce the provisions of this chapter and adopt or amend regulations necessary to make these provisions effective.

* Sec. 4. AS 08.71.110(1)(B) is amended to read:

(B) been engaged for at least 6,000 [10,000] hours as a practicing optician in good standing in a state, territory, district or possession of the United States; and

* Sec. 5. AS 08.71.120(3) is amended to read:

(3) [BIENNIAL] renewal fee, due every four years ..... 200 [50]

* Sec. 6. AS 08.71.130(a) is amended to read:

(a) A licensed dispensing optician shall renew his license every four years [BIENNIALLY] with the department [DEPARTMENT OF COMMERCE] on or before the date set by the department under AS 08.01.100.

* Sec. 7. AS 08.71 is amended by adding a new section to read:

Sec. 08.71.145. LICENSURE BY CREDENTIALS. A person with a valid license as a dispensing optician from another state, territory, district or possession of the United States shall be issued a license without examination for those professional areas in which he is licensed upon payment of any fee and documentation which the board may require by regulation.

* Sec. 8. AS 08.71.160 is amended to read:

Sec. 08.71.160. DISPENSING OPTICIAN'S APPRENTICE. (a) A person may be employed by a licensed dispensing optician as an apprentice. An apprentice shall be designated as such in the records of the board at the request of a licensed physician, optometrist or dispensing optician and shall be in training and under the [DIRECT] supervision of a licensed physician, optometrist or dispensing optician. No apprentice may be employed under this section for longer than six years unless the board determines that an apprentice is prevented by circumstances beyond his control from obtaining a license as a dispensing optician within that time.

(b) No more than two apprentices may be under the [DIRECT] supervision of one licensed dispensing optician at the same time.

* Sec. 9. AS 08.71.170 is repealed and re-enacted to read:

Sec. 08.71.170. IMPOSITION OF DISCIPLINARY SANCTIONS. The board may revoke or suspend the license of a dispensing optician, or the licensee may be reprimanded or otherwise disciplined when the board finds after a hearing that he

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a crime which affects his ability to continue to practice competently and safely;

(5) intentionally or negligently engaged in or permitted the performance of patient care by persons under his supervision which does

not conform to minimum professional standards regardless of whether actual injury to the patient occurred;

(6) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) failure to keep informed of or use current professional theories or practices;

(C) addiction or severe dependency on alcohol or other drugs which impairs his ability to practice safely;

(D) physical or mental disability;

(7) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients;

(8) participated in the division, assignment, rebate or refund of fees to a physician or optometrist in consideration of patient referrals;

(9) advertised the services of any other segment of the healing arts.

* Sec. 10. AS 08.71.175 is repealed and re-enacted to read:

Sec. 08.71.175. DISCIPLINARY SANCTIONS. (a) When it finds that a dispensing optician is guilty of an offense under AS 08.71.170, the board may impose the following sanctions singly or in combination:

(1) permanently revoke a dispensing optician's license to practice,

(2) suspend a dispensing optician's license for a determinate period of time;

(3) censure a dispensing optician;

(4) issue a letter of reprimand;

(5) place a dispensing optician on probationary status and require him to

(A) report regularly to the board upon matters involving

the basis of probation;

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the board to need improvement;

(6) impose limitations or conditions on the practice of a dispensing optician.

(b) The board may withdraw probation status of a dispensing optician if it finds that the deficiencies which required the sanction have been remedied.

(c) The board may summarily suspend a dispensing optician's license before final hearing or during the appeals process if the board finds that he poses a clear and immediate danger to the public health and safety if he continues to practice. A dispensing optician whose license is suspended under this section shall be entitled to a hearing by the board no later than seven days after the effective date of the order. The dispensing optician may appeal the suspension after a hearing to a court of competent jurisdiction.

(d) The board may reinstate a license which has been suspended or revoked if the board finds after a hearing that the applicant is able to practice with skill and safety.

(e) The board shall seek consistency in the application of disciplinary sanctions, and significant departure from prior decisions involving similar situations shall be explained in findings of fact or orders.

* Sec. 11. AS 08.71.180 is amended to read:

Sec. 08.71.180. PRACTICING WITHOUT A LICENSE. It is unlawful for a person to practice as a dispensing optician without a license issued under this chapter or while his license is suspended or revoked. A

person who violates this section is guilty of a class B misdemeanor.

* Sec. 12. AS 08.71 is amended by adding a new section to read:

Sec. 08.71.190. CONTACT LENSES. (a) Contact lenses may be dispensed only upon the written contact lens prescription of a licensed physician or optometrist, except duplicate contact lenses may be dispensed under an original prescription.

(b) The dispensing optician shall instruct a patient to return to the prescribing physician or optometrist for inspection of the fit of contact lenses.

DELETING

* Sec. 13. AS 08.71.230(1) is amended to read:

(1) limit or restrict a licensed physician or optometrist [OR EMPLOYEES WORKING UNDER THE PERSONAL SUPERVISION OF A LICENSED PHYSICIAN OR OPTOMETRIST] from the practices enumerated in this chapter, and each licensed physician and optometrist has all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under it;

* Sec. 14. AS 08.71.240 is amended by adding new paragraphs to read:

(4) "dispensing optician" means a person who, on written prescription from a licensed physician or optometrist, prepares and dispenses to the intended wearer or person who writes the prescription, original or duplicate lenses, eyeglasses, contact lenses, and appurtenances to them, and interprets, measures, adapts, fits, and adjusts lenses, eyeglasses, contact lenses, and appurtenances to them * to the face for the aid or correction of visual or ocular anomalies of the human eye;

(5) "supervision" means the provision of any needed direction, control, consultation, instruction, evaluation, and personal inspection of work being performed.

* Sec. 15. AS 08.71.030, 08.71.050, 08.71.060, 08.71.070, 08.71.200, and

08.71.240(3) are repealed.

* Sec. 16. This Act takes effect immediately in accordance with AS 01.10.-070(c).

WORKSHOP RECOMMENDED CHANGES

SB 541 - Dispensing Opticians

1) Delete "reasonable" in Sec. 10 (AS 08.71.175(6)(d)) — P5, L21

SB 549 - Nursing Home Administrators

1) Make board's composition comply with federal regulations - suggest reducing to three member board — P1, L22

SB 550 - Pharmacy

1) Rationale for wholesale licenses

SB 551 - Optometry

1) Include Canada — P3, L12

2) Remove "certificate number" — P6, L21

3) Include definition of optometry/practicing optometry — P7, L1

CSSB 541 - SECTIONAL (DISPENSING OPTICIANS)

* Sec. 1 -- Provides "exception" to current statute which renews licenses biennally and allows our "health boards" to renew every four years

Sec. 2 -- Changes composition of board--decreases number of board members from seven to five, membership is to be composed of four dispensing opticians and one public member. Also the members' term of service is increased from three to four years. Limits board member to two successive four year terms

Sec. 3 -- Allows for "removal of board members"

Enumerates "powers and duties" of board

Sec. 4 -- Reduces number of hours, 10,000 to 6,000, that an individual must be engaged in the practice of dispensing optician "outside" in order to qualify to take the exam to be licensed in this state

Sec. 5 -- Renewal Fee - $200 - due every four years

Sec. 6 -- Provides for license renewal to occur every four years instead of biennially

Sec. 7 -- Allows for "licensure by credentials"

Sec. 8 -- Deletes "direct" in reference to "direct supervision"

Sec. 9 -- Delineates circumstances in which disciplinary sanctions may be imposed

Sec. 10 -- Provides for "disciplinary sanctions"

Sec. 11 -- Makes practicing as a dispensing optician without a license as a class B misdemeanor

Sec. 12 -- Deletes the exemption clause which allows employees working under the personal supervision of a physician/optometrist from being licensed as a dispensing optician

Sec. 13 -- Definitions: "dispensing optician"; "supervision"

Sec. 14 -- Repealers:

08.71.030 (Qualifications of Board Members) Repeals current composition of board to account for change to composition of board proposed in this bill

08.71.050 (Board Regulations) Repeals current "board regulation" section to account for our "powers and duties" section proposed in this bill

08.71.060 (Record of Proceedings) Repeals this section because "maintenance of records" section is incorporated in the "powers and duties" section proposed in this bill

08.71.070 (Applicability of Administrative Procedures Act) Not necessary to have this
* appear in this chapter because AS 08.01.090 provides for applicability of administrative procedure act which is applicable to all boards.

08.71.240(3) (Dispensing Opticians) Repeals this current definition of dispensing optician because new definition is provided for in our bill