

HB

457



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Capitol Building

Juneau, AK 99801-2197

(907) 465-3743 ph

(907) 465-2381 fax

SPONSOR STATEMENT

HB 457 Fines: unlicensed practice of occupation

Rep. Jeannette James

February 6, 1995

This legislation was requested by LB&A as part of the sunset audits on various boards.

Current law allows enforcement of practicing certain occupations without a license only through the courts. This Bill allows the Department to impose a civil penalty if a person practices or offers to practice an occupation in this State that is regulated under Title Sec.08.01.

The civil penalty may not exceed \$5,000.00 for each offense. The Bill also provides for enforcement mechanisms.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 457

Revision Date: _____
 Title: An Act relating to the unlicensed practice of
certain occupations for which licenses are required.
 Sponsor: Representative James
 Requestor: House State Affairs

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 HB 457 authorizes the department to establish a civil penalty for unlicensed practice of a regulated occupation in an amount not to exceed \$5,000.00. The bill expands the department's current enforcement powers for unlicensed activity by providing the civil fine option. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 485-2144
 Date: February 5, 1996
 Date: 2-5-96

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534
FAX: (907) 465-2974
TDD: (907) 465-5437

DATE: January 24, 1996
TO: Walt Wilcox, Aide
Representative Jeannette James
FROM: Catherine A. Reardon, Director *e 2R*
Division of Occupational Licensing
Department of Commerce and
Economic Development
SUBJECT: Sunset Extension Bills

RECEIVED
JAN 24 1996
Rep. Jeannette James

I spoke with Randy Welker, the Legislative Auditor, to clarify a few points in his January 17 memo and sunset audits. I hope this information assists your effort to incorporate all audit recommendations into the bills.

On page 1 of his memo, Mr. Welker recommends clarifying Alaska Statute (AS) 08.71.145 regarding licensure of opticians by credential. Mr. Welker explained to me that he suggests amending that statute to specifically mention all the requirements in Regulation 12 AAC 30.100. Page 8 of the optician audit discusses this suggested language.

On page 2 of his memo, Mr. Welker recommends amending AS 08.20.140 to codify the current practice of requiring all chiropractic applicants to take the state exam. Repeal of the AS 08.20.140 and AS 08.20.120(b) will achieve Mr. Welker's goal, because all applicants would then have to satisfy the requirements of AS 08.20.12(a).

On page 2 of his memo, Mr. Welker recommends that the Legislature amend the optician statute to clarify whether employees of optometrists who provide optician services must be licensed opticians. This is a subject of substantial controversy between optometrists and opticians. The Division of Occupational Licensing believes that the current law requires optometrists' employees to be licensed opticians; however, directly addressing the issue in statute would certainly resolve the ongoing dispute.

Finally, Mr. Welker's memo recommends amending the law to give the Division of Occupational Licensing authority to impose civil fines for unlicensed activity. Mr. Welker explained that he is recommending this authority be granted for all division licensing programs, not just the optician program. The creation of a new section in AS 08.01 modeled after AS 08.48.295 (architects, engineers and land surveyors) would achieve this goal. Licensing boards should impose the fines in programs which have boards. The division should impose fines in programs it directly administers.

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ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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MEMORANDUM

TO: The Honorable Mark Hanley
The Honorable Richard Foster
Co-Chairs, House Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: January 17, 1996

RE: Sunset Audits

The Legislative Budget and Audit Committee has released the enclosed sunset audit reports on the Board of Dispensing Opticians, the Board of Chiropractic Examiners, and the Board of Examiners in Optometry.

I would like to take this opportunity to provide the following comments on the legislation you have before your committee on each board.

Board of Dispensing Opticians (HB 382)

We have recommended that the termination date of the board be extended to June 30, 2000 as provided for in House Bill 382.

We are also recommending certain statutory changes regarding licensing by reciprocity and credentials. In Recommendation No. 1, we support the repeal of AS 08.71.150. This section is essentially irrelevant and serves to provide legal support for applicants who have been rejected and are predisposed to legally challenging the board's decision.

Also in Recommendation No. 1, we suggest that AS 08.71.145 should be clarified to provide that a person licensed in another state **with requirements and standards essentially equivalent to those of Alaska** shall be issued a license in Alaska without examination. Such language would reflect the current standard being utilized by the board and provide a stronger statutory basis for those standards.

Board of Chiropractic Examiners (HB 404)

Our audit conclusion recommended a four year extension of this board until the year 2000. This is one year sooner than the date contained in House Bill No. 404.

We are also recommending the legislature consider modifying AS 08.20.140. This statute provides a process by which applicants may be licensed as chiropractors without taking the state examination if they are licensed in another jurisdiction that has requirements equivalent to Alaska. The board has determined that no other jurisdiction has requirements essentially equivalent to those of Alaska. This has rendered the licensure by credentials statute meaningless.

Statutory amendment should codify current practice, thereby providing clear notice of the licensing requirements and standards.

Board of Examiners in Optometry (HB 405)

We are recommending that the board be extended to June 30, 2002. Additionally, we are recommending several changes to the optometry statutes.

First, we suggest the repeal of AS 08.72.150 which establishes an administrative deadline for submitting applications to the Division of Occupational Licensing. We believe this deadline should be set by the board and the division through regulation.

Next, we recommend the repeal of the license requirements relating to branch offices (AS 08.72.125). It appears that the conditions and concerns that originally gave rise to branch office licensing no longer exist.

We are also recommending the repeal of language relating to health and visual acuity requirements for licensure. AS 08.72.140 and AS 08.72.181 contain unreasonable and potentially discriminatory requirements.

Finally, we are recommending the Legislature clarify the statute that relates to the supervision and registration requirements of unlicensed individuals employed by opticians and optometrists.

We would respectfully request that the House Finance Committee consider amending the bills before you to address the issues summarized above regarding these specific boards.

Additionally, on a broader basis, we believe that the Division of Occupational Licensing would benefit from statutory authority to impose civil fines for unlicensed activity. This would apply to all professions under its jurisdiction. We provide a brief discussion of the

The Honorable Mark H. ...
The Honorable Richard Foster
Co-Chairs, House Finance Committee

- 3 -

January 17, 1996

issue in Recommendation No. 2 of the audit on the Board of Dispensing Opticians. If an appropriate vehicle is available to accommodate this measure, we believe the division will improve in the efficiency and cost effectiveness of enforcement activities.

We are available to assist you in analyzing the boards currently under sunset review. Please feel free to contact me at any time.

HOUSE STATE AFFAIRS STANDING COMMITTEE
January 16, 1996
8:00 a.m.

MEMBERS PRESENT

Representative Jeannette James, Chair
Representative Scott Ogan, Vice Chair
Representative Joe Green
Representative Ivan Ivan
Representative Brian Porter
Representative Caren Robinson
Representative Ed Willis

MEMBERS ABSENT

All members present.

COMMITTEE CALENDAR

* HOUSE BILL NO. 382

"An Act extending the termination date of the Board of Dispensing Opticians; and providing for an effective date."

- PASSED OUT OF COMMITTEE

* HOUSE BILL NO. 404

"An Act extending the termination date of the Board of Chiropractic Examiners; and providing for an effective date."

- PASSED OUT OF COMMITTEE

* HOUSE BILL NO. 405

"An Act extending the termination date of the Board of Examiners in Optometry; and providing for an effective date."

- PASSED OUT OF COMMITTEE

* HOUSE BILL NO. 71

"An Act relating to the location of the convening of the legislature in regular session; and providing for an effective date."

- PASSED OUT OF COMMITTEE

(* First public hearing)

PREVIOUS ACTION

BILL: HB 382

SHORT TITLE: EXTEND BOARD OF DISPENSING OPTICIANS
SPONSOR(S): REPRESENTATIVE(S) JAMES

JRN-DATE	JRN-PG		ACTION
12/29/95	2366	(H)	PREFILE RELEASED
01/08/96	2366	(H)	READ THE FIRST TIME - REFERRAL(S)
01/08/96	2366	(H)	STATE AFFAIRS
01/16/96		(H)	STA AT 08:00 AM CAPITOL 102

BILL: HB 404

SHORT TITLE: EXTENDING BOARD OF CHIROPRACTORS
SPONSOR(S): LABOR & COMMERCE

JRN-DATE	JRN-PG		ACTION
01/09/96	2392	(H)	READ THE FIRST TIME - REFERRAL(S)
01/09/96	2392	(H)	STATE AFFAIRS
01/16/96		(H)	STA AT 08:00 AM CAPITOL 102

BILL: HB 405

SHORT TITLE: EXTEND BOARD OF OPTOMETRISTS
SPONSOR(S): LABOR & COMMERCE

JRN-DATE	JRN-PG		ACTION
01/09/96	2392	(H)	READ THE FIRST TIME - REFERRAL(S)
01/09/96	2392	(H)	STATE AFFAIRS
01/16/96		(H)	STA AT 08:00 AM CAPITOL 102

BILL: HB 71

SHORT TITLE: LEGISLATIVE SESSIONS TO BE IN ANCHORAGE
SPONSOR(S): REPRESENTATIVE(S) GREEN, Porter, Bunde, Kohring

JRN-DATE	JRN-PG		ACTION
01/06/95	39	(H)	PREFILE RELEASED
01/16/95	39	(H)	READ THE FIRST TIME - REFERRAL(S)
01/16/95	39	(H)	STATE AFFAIRS, JUDICIARY, FINANCE
01/19/95	91	(H)	COSPONSOR(S): BUNDE
01/12/96	2440	(H)	COSPONSOR(S): KOHRING
01/16/96		(H)	STA AT 08:00 AM CAPITOL 102

WITNESS REGISTER

WALTER WILCOX, Committee Aide
House State Affairs Committee
State Capitol, Room 102
Juneau, Alaska 99801-1182
Telephone: (907) 465-3743

POSITION STATEMENT: Provided information on HB 382, HB 404 and
HB 405.

CATHERINE REARDON, Director
Division of Occupational Licenses

Department of Commerce and Economic Development
P.O. Box 110806
Juneau, Alaska 99811-0806
Telephone: (907) 465-2974
POSITION STATEMENT: Testified in favor of HB 382, HB 404 and HB 405.

LARRY HARPER, Licensed Dispensing Optician
534 West 2nd Avenue
Anchorage, Alaska 99501
Telephone: (907) 276-1021
POSITION STATEMENT: Provided comments on HB 382.

DENNIS EGAN, Mayor
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801
Telephone: (907) 586-5257
POSITION STATEMENT: Testified against HB 71.

JAMIE PARSONS, Chair
Alaska Committee
9218 Emily Way
Juneau, Alaska 99801
Telephone: (907) 789-3060
POSITION STATEMENT: Testified against HB 71.

CHUCK ACHBERGER, Executive Director
Juneau Chamber of Commerce
124 West 5th Avenue
Juneau, Alaska 99801
Telephone: (907) 586-6420
POSITION STATEMENT: Testified against HB 71.

SENATOR RANDY PHILLIPS
Alaska State Legislature
State Capitol, Room 103
Juneau, Alaska 99801-1182
Telephone: (907) 465-4949
POSITION STATEMENT: Provided comments on HB 71.

ACTION NARRATIVE

TAPE 96-01, SIDE A
Number 0000

The House State Affairs Committee was called to order by Chair Jeannette James at 8:00 a.m. Members present at the call to order were Representatives James, Ogan, Ivan, Porter, Robinson, and Willis. Members absent were Green.

CHAIR JEANNETTE JAMES welcomed the committee members back and the

audience to the first 1996 House State Affairs Committee meeting. She proceeded with housekeeping issues. Meeting times would be from 8:00 a.m. to 10:00 a.m. on Tuesdays and Thursdays, and 10:00 a.m. to 12:00 p.m. on Saturdays, if necessary. Chair James declared the meetings would start and end on time. However, on Thursday, January 25, 1996, the Speaker of the House and the President of the Senate would be speaking at the Alaska Business Round Table at 7:00 a.m., therefore, the meeting would start at 8:15 a.m. She remarked a meeting may be extended in the event of a heavy schedule. She informed the committee teleconference testifiers would have a time limit and suggested a representative speak on behalf of a large group of testifiers, when possible. She further remarked the witness registers were located at the front door and all those who wished to testify must register. She stated each committee member would receive a committee packet. She informed the committee on Tuesday, January 23, 1996, there would be a joint state affairs committee meeting. Chair James further outlined the rules by which the committee would operate.

Number 0510

CHAIR JAMES recognized the presence of Representative Joe Green.

HB 382 - EXTEND BOARD OF DISPENSING OPTICIANS

HB 404 - EXTENDING BOARD OF CHIROPRACTORS

HB 405 - EXTEND BOARD OF OPTOMETRISTS

Number 0529

The first order of business to come before the House State Affairs Committee was HB 382, HB 404 and HB 405.

CHAIR JAMES said she prepared HB 382 and her Committee Aide, Walter Wilcox, was here to make the presentation.

Number 0544

WALTER WILCOX, Committee Aide, House State Affairs Committee, read the sponsor statement for HB 382, HB 404 and HB 405. House Bill 382 extended the board for four years, HB 404 extended the board for five years, and HB 405 extended the board for five years. Mr. Wilcox stated the boards were responsible for overseeing the licensing of doctors that were covered by the appropriate board. The board must be extended, he stated, if the doctors were to be licensed. He further stated the fiscal notes identified the cost of the programs which were included in the 1997 fiscal year operating budget, therefore new funds were not required. Mr. Wilcox informed the committee, concerns were raised in the Legislative Budget and Audit Committee regarding some of the boards of which legislation was forthcoming. Catherine Reardon, Director, Division of Occupational Licensing

was here to answer any questions from the committee.

Number 0597

REPRESENTATIVE SCOTT OGAN asked Mr. Wilcox to share with the committee the concerns expressed in the Legislative Budget and Audit Committee.

MR. WILCOX said he would defer to Ms. Reardon to answer that question.

Number 0611

CHAIR JAMES asked Ms. Reardon to come forth and join them at the table for further discussion. She informed the committee members HB 382, HB 404 and HB 405 were grouped together because of their similarities, but they would vote on them separately.

Number 0645

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Commerce and Economic Development, thanked Representatives James and Kott for introducing the three bills before them. She stated the boards were up for their scheduled "sunset period." The Legislative Budget and Audit Committee recommended extending all three boards, she stated. The fiscal notes were not new money the division would need, she asserted, but reflected the ongoing cost needed to run the programs. Ms. Reardon said, the issues brought forth in the "sunset" audits were relatively minor statute concerns. For example, the Board of Optometrists audit suggested the application deadline be regulated by department rather than by statute. The statute mandated that the application must be received 15 days before the examination causing administrative trouble in the department. It also suggested removing statute licensing requirements for branch offices, and finally, it recommended deleting some statute requirements due to the Americans with Disabilities Act (ADA). The Board of Chiropractor Examiners audit suggested eliminating licensing reciprocity with other states. The Board of Dispensing Opticians audit suggested eliminating one of two statutes that addressed Alaska licensing requirements for those licensed in other states. The audit also suggested instituting a civil fine for practicing the field of opticianry without a license. In summary, she stated, the legislative audits were favorable towards the boards.

Number 0975

CHAIR JAMES thanked Ms. Reardon and opened the floor up for discussion and questions.

Number 0980

REPRESENTATIVE CAREN ROBINSON asked Ms. Reardon if the Administration would be making suggestions for changes or was it the responsibility of the legislature.

Number 1000

MS. REARDON said the Administration agreed with all of the suggested changes as a result of the audits. However, the Governor did not intend to introduce legislation this year. The concentration was solely on extending the boards at this time.

Number 1040

CHAIR JAMES asked if there were further questions or comments.

Number 1045

REPRESENTATIVE SCOT OGAN asked if the boards had any judicial powers.

Number 1062

MS. REARDON cited the Board of Registration for Architects, Engineers, Land Surveyors had the ability to fine up to \$5,000 for unlicensed activity. However, the great majority of the boards did not have judicial power, she said. It was left to the court system burdened with perceived more serious cases. Ms. Reardon mentioned again the dispensing opticians audit recommended instituting a civil fine authority for that board.

Number 1098

CHAIR JAMES asked if there were further questions or comments and thanked Ms. Reardon for her time. She called on the first teleconference participant in Anchorage, Larry Harper.

Number 1114

LARRY HARPER via Anchorage, Licensed Dispensing Optician, testified and recommended to the committee the Board of Dispensing Opticians and the Board of Optometrists have the same "sunset" expiration date.

Number 1175

CHAIR JAMES asked Mr. Wilcox to respond.

MR. WILCOX said it was his understanding the intention was to stagger the expiration dates for the audit department's work load. He called on Ms. Reardon to respond further.

Number 1198

MS. REARDON said it was her understanding it worked that way in prior years. She said the chiropractic extension could be adjusted, however.

Number 1200

MR. WILCOX said there was no objection to making them all the same.

Number 1211

CHAIR JAMES said, that would be up to the committee, and asked if there were further questions or comments.

Number 1217

REPRESENTATIVE OGAN asked Ms. Reardon to explain the makeup of the boards.

Number 1242

MS. REARDON said there were five members on each board. The Board of Optometrists consisted of four licensed optometrists and one public member. The Board of Chiropractic Examiners consisted of four licensed chiropractors and one public member. The Board of Dispensing Opticians consisted of four opticians to include some licensed in contacts and some in spectacles, and one public member. The Board of Dispensing Opticians met one time per year to help keep expenses down, while the other two boards met twice a year. Teleconference meetings were arranged, when needed.

Number 1350

CHAIR JAMES asked if there were further questions or comments.

Number 1355

REPRESENTATIVE BRIAN PORTER moved that HB 382 move from committee. Hearing no objection, HB 382 was moved out of the House State Affairs Committee with the attached fiscal note and individual recommendations.

Number 1375

REPRESENTATIVE JOE GREEN said there was discussion about changing "2000" to "2001" for the Board of Dispensing Opticians. He asked if the decision was to leave it at "2000."

Number 1380

CHAIR JAMES said it would remain as is because there was a motion made and no one objected.

Number 1390

REPRESENTATIVE PORTER moved that HB 404 move from committee. Hearing no objection, HB 404 was moved out of the House State Affairs Committee with the attached fiscal note and individual recommendations.

Number 1405

REPRESENTATIVE PORTER moved that HB 405 move from the committee. Hearing no objection, HB 405 was moved out of the House State Affairs Committee with the attached fiscal note and individual recommendations.

HB 71 - LEGISLATIVE SESSIONS TO BE IN ANCHORAGE

Number 1470

CHAIR JAMES announced the next item on the agenda was HB 71. She called on Representative Joe Green to present his sponsor statement.

Number 1480

REPRESENTATIVE JOE GREEN read the following sponsor statement.

"HB 71 directs the legislature to meet in the Municipality of Anchorage beginning in January 1998. HB 71 does not, and I repeat, does not, propose to move the capitol.

"A recent statewide survey, and the results of the 1994 ballot initiative, both indicated that there is considerable statewide support, and majority support in southcentral Alaskan area, for the legislature to meet in Anchorage. HB 71 directs the legislative council to arrange for an appropriate meeting place. Since the dimensions of the House chambers, the largest meeting body that we have in the legislature, are 60 feet by 52 feet, it is not anticipated that arranging for an appropriate meeting place would present much of a problem.

"While credit should be given to the Alaska Committee for their efforts to make Juneau a better host to legislators and staff, their efforts can not overcome Juneau's remote geographical location. Navigational improvements at the airport, telecommunications infrastructure, and more available housing units will all make Juneau a better capitol city. However, none of these improvements will get the majority of legislators together in a majority with the voters."

REPRESENTATIVE GREEN asserted the setting today was biased. He suggested a meeting was in order in the Anchorage Bowl. In comparison to the capital move, he said, the legislative move did