

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Since S.L. 2016-117 was not approved by the Governor until July 28th, it places the Board in the position of having to ask for the rule revision as soon as possible so that it can implement the new registration and associated fee.

A Public Hearing was held August 23, 2016, with no appearances/participants. Public comment was received September 2 – 23, 2016. Two comments were received and are attached; the comments were acknowledged and taken into consideration by the Board in finalization of the rule's revision.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority: S.L. 2016-117(3)(c)

No

9. Rule-making Coordinator: Sue M. Hodgin

Phone: 919-420-1390

E-Mail: shodgin@neopticiansboard.org

Agency contact, if any: Same as above

Phone:

E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Debra N. Newell

Title: Acting Chair

E-Mail: debra.newell1@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2016-117
HOUSE BILL 728**

AN ACT TO AMEND LAWS AND FEES PERTAINING TO VARIOUS OCCUPATIONAL LICENSING BOARDS.

The General Assembly of North Carolina enacts:

INCREASE THE TIME FOR CERTIFICATION OF CHIROPRACTIC CLINICAL ASSISTANTS BY THE STATE BOARD OF CHIROPRACTIC EXAMINERS AND AUTHORIZE THE STATE BOARD OF CHIROPRACTIC EXAMINERS TO IMPOSE FINES AS SANCTIONS AND TO INCREASE ANNUAL LICENSE RENEWAL FEES

SECTION 1.(a) G.S. 90-143.4(b) reads as rewritten:

"(b) Any person employed as a chiropractic clinical assistant shall obtain a certificate of competency from the State Board of Chiropractic Examiners (Board) within ~~120~~180 days after the person begins employment. Certification shall not be required for employees whose duties are limited to administrative activities of a nonclinical nature. Except as otherwise provided in this section, it shall be unlawful for any person to practice as a chiropractic clinical assistant unless duly certified by the Board."

SECTION 1.(b) G.S. 90-154(a) reads as rewritten:

"(a) The Board of Chiropractic Examiners may impose any of the following sanctions, singly or in combination, when it finds that a practitioner or applicant is guilty of any offense described in subsection (b):

- (1) Permanently revoke a license to practice ~~chiropractic~~;chiropractic.
- (2) Suspend a license to practice ~~chiropractic~~;chiropractic.
- (3) Refuse to grant a ~~license~~;license.
- (4) Censure a ~~practitioner~~;practitioner.
- (5) Issue a letter of ~~reprimand~~;reprimand.
- (6) Place a practitioner on probationary status and require him to report regularly to the Board upon the matters which are the basis of probation."

SECTION 1.(c) G.S. 90-155 reads as rewritten:

"§ 90-155. Annual fee for renewal of license.

Any person practicing chiropractic in this State, in order to renew ~~his~~a license, shall, on or before the first Tuesday after the first Monday in January in each year after a license is issued ~~to him~~ as herein provided, pay to the secretary of the Board of Chiropractic Examiners a renewal license fee as prescribed and set by the said Board which fee shall not be more than ~~one hundred fifty~~three hundred dollars (~~\$150.00~~);(\$300.00), and shall furnish the Board evidence ~~that he has~~of having attended two days of educational sessions or programs approved by the Board during the preceding 12 months, provided the Board may waive this educational requirement due to sickness or other hardship of the applicant.

Any license or certificate granted by the Board under this Article shall automatically be canceled if the holder ~~thereof~~of the license or certificate fails to secure a renewal within 30 days from the time herein provided; but any license thus canceled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of the renewal fee and an additional twenty-five dollars (\$25.00) reinstatement fee.

If any licensee of the Board retires from active practice, the licensee may renew his or her license annually by paying the license fee and shall not be required to furnish the Board proof of continuing education; however, if at a later time the licensee desires to resume active practice, the licensee shall first appear before the Board and the Board shall determine ~~his~~the licensee's competency to practice."



~~periodic reporting of statistical information; assurance of confidentiality of nonpublic information and of the review process.~~the Program.

~~(d) Upon investigation and review of a physician licensed by the Board, or a physician assistant approved by the Board, or upon receipt of a complaint or other information, a society which enters a peer review agreement with the Board, or the Academy if it has a peer review agreement with the Board, as appropriate, The Program shall report immediately to the Board detailed information about any physician or physician assistant licensed or approved by the Board if:~~licensee of the Board who meets any of the following criteria:

~~(1) The physician or physician assistant constitutes~~The licensee constitutes an imminent danger to the public or to himself ~~patient care by reason of impairment, mental illness, physical illness, the commission of substance use disorder, professional sexual boundary violations, misconduct, or any other reason;~~reason.

~~(2) The physician or physician assistant~~The licensee refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; ~~or~~submit to an assessment as ordered by the Board, has entered into a monitoring contract and fails to comply with the terms of the Program's monitoring contract, or is still unsafe to practice medicine after treatment.

~~(3) It reasonably appears that there are other grounds for disciplinary action.~~

~~(e) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by the Academy or a society~~Program pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case. ~~is privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than to the Board, the Program, or their employees or consultants. No person participating in good faith in the peer review or impaired physician or impaired physician assistant programs of this section~~Program shall be required in a civil case to disclose the fact of participation in the Program or any information acquired or opinions, recommendations, or evaluations acquired or developed solely in the course of participating in ~~any agreements~~the Program pursuant to this section.

~~(f) Peer review activities~~Activities conducted in good faith pursuant to ~~any~~the agreement ~~under~~authorized by subsection (a) of this section shall not be grounds for civil action under the laws of this State and are deemed to be State directed and sanctioned and shall constitute State action for the purposes of application of antitrust laws.State.

~~(g) Upon the written request of a licensee, the Program shall provide the licensee and the licensee's legal counsel with a copy of a written assessment of the licensee prepared as part of the licensee's participation in the Program. In addition, the licensee shall be entitled to a copy of any written assessment created by a treatment provider or facility at the recommendation of the Program, to the extent permitted by State and federal laws and regulations. Any information furnished to a licensee pursuant to this subsection shall be inadmissible in evidence and shall not be subject to discovery in any civil proceeding. However, this subsection shall not be construed to make information, documents, or records otherwise available for discovery or use in a civil action immune from discovery or use in a civil action merely because the information, documents, or records were included as part of the Program's assessment of the licensee or were the subject of information furnished to the licensee pursuant to this subsection. For purposes of this subsection, a civil action or proceeding shall not include administrative actions or proceedings conducted in accordance with Article 1 of Chapter 90 and Chapter 150B of the General Statutes.~~

~~(h) The Board has authority to adopt, amend, or repeal rules as may be necessary to carry out and enforce the provisions of this section."~~

~~SECTION 2.(o) G.S. 90-16(d) is repealed.~~

AMEND DISPENSING OPTICIAN EXAMINATION QUALIFICATIONS AND APPRENTICESHIP REQUIREMENTS AND AUTHORIZE THE STATE BOARD OF OPTICIANS TO INCREASE CERTAIN LICENSURE FEES

SECTION 3.(a) G.S. 90-240 reads as rewritten:

"§ 90-240. Examination.

(a) Applicants to take the examination for dispensing opticians shall be high school graduates or the equivalent ~~who~~who have done one of the following:

- (1) ~~Have successfully~~ Successfully completed a two-year course of training in an accredited school of opticianry with a minimum of 1600 ~~hours; or~~ hours.
- (2) ~~Have completed three~~ Completed two and one-half years of apprenticeship while registered with the Board under a licensed dispensing optician, with time spent in a recognized school credited as part of the apprenticeship ~~period; or~~ period.
- (3) ~~Have completed three~~ Completed two and one-half years of apprenticeship while registered with the Board under the direct supervision of an optometrist or a physician specializing in ophthalmology, provided the supervising optometrist or physician elects to operate the apprenticeship under the same requirements applicable to dispensing opticians.

(a1) Applicants to take the examination for dispensing opticians who are graduates from an accredited college or university with a four-year degree or comparable degree in a health-related field shall satisfy one of the following:

- (1) The requirements of subdivision (1) of subsection (a) of this section.
- (2) Successful completion of two years of apprenticeship while registered with the Board under a health care professional identified in subdivision (2) or (3) of subsection (a) of this section. The Board may adopt rules specifying the colleges, universities, and coursework that meet the accreditation requirements of this subsection.

(b) The examination shall be confined to such knowledge as is reasonably necessary to engage in preparation and dispensing of optical devices and shall include the following:

- (1) The skills necessary for the proper analysis of prescriptions;
- (2) The skills necessary for the dispensing of eyeglasses and contact lenses; and
- (3) The processes by which the products offered by dispensing opticians are manufactured.

(c) The examination shall be given at least twice each year at sites and on dates that are publicly announced 60 days in advance.

(d) Each applicant shall, upon request, receive his or her examination score on each section of the examination.

(e) ~~The Board may~~ shall include as part or all of the examination, any nationally prepared and recognized examination, and will periodically review and validate any exam in use by the Board. The Board will credit an applicant with the score on any national test taken successfully completed in the last three years immediately preceding the date the applicant is scheduled to take the North Carolina examination, to the extent that such test may be included in the North Carolina exam-examination. The Board shall adopt rules designating the nationally prepared and recognized examinations that will satisfy and serve as credit for parts or all of the North Carolina examination.

~~(f) An applicant for admission on the basis of apprenticeship shall have worked full time under the supervision of a licensed dispensing optician, optometrist or physician trained in ophthalmology. An apprentice shall have obtained experience in ophthalmic fabricating and manufacturing techniques and processes for no less than six months and shall have gained experience in the other activities defined as dispensing herein. Completion of the six-month internship required of all applicants under G.S. 90-237(4) may, at the election of the applicant, occur before or after the applicant sits for the examination as provided in this section, so long as the applicant has met the minimum qualifications for examination under subsection (a) or (a1) of this section at the time the internship commences."~~

SECTION 3.(b) G.S. 90-245 reads as rewritten:

"§ 90-245. Collection of fees.

The ~~secretary to administrator~~ for the Board is hereby authorized and empowered to collect in the name and on behalf of this Board the fees prescribed by this Article and shall turn over to the State Treasurer all funds collected or received under this Article, which funds shall be credited to the North Carolina State Board of Opticians, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this Article. Nothing in this Article shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from the fees collected under the provisions of this Article and received by the State Treasurer in the manner aforesaid."

SECTION 3.(c) G.S. 90-246 reads as rewritten:

"§ 90-246. Fees.

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the Board is hereby authorized to charge and collect ~~fees established by its rules not to exceed the following:~~the following fees:

- (1) Each examination.....~~\$200.00~~\$300.00
- (2) Each initial license~~\$ 50.00~~\$100.00
- (3) Each renewal of license.....~~\$100.00~~\$150.00
- (4) Each license issued to a practitioner of another state to practice in this State.....~~\$200.00~~\$300.00
- (5) Each registration of an optical place of business~~\$ 50.00~~\$ 75.00
- (6) Each application for registration as an opticianry apprentice or intern, and renewals thereof~~\$ 25.00~~\$ 35.00
- (7) Repealed by Session Laws 1997-424, s. 4.
- (8) Each registration of a training establishment~~\$ 25.00~~\$ 35.00
- (9) Each license verification~~\$ 10.00~~\$ 15.00
- (10) Each registration of an optician in charge..... \$ 50.00
- (11) Late fee for restoration of an expired license within the first year after expiration..... \$ 75.00
- (12) Late fee for restoration of an expired license within the second year after expiration \$150.00
- (13) Restoration fee for an inactive license within the second year..... \$100.00."

SECTION 3.(d) G.S. 90-249 is amended by adding a new subdivision to read:

"(10a) Designation of accredited colleges, universities, and coursework that satisfy the qualifications for examination pursuant to G.S. 90-240(a1)."

INCREASE THE FEE FOR REAL ESTATE BROKER LICENSE APPLICATIONS AND REINSTATEMENTS AND INCREASE THE CAP FOR RENEWAL FEES

SECTION 4.(a) G.S. 93A-4 reads as rewritten:

"§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least 18 years of age. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 75 hours of ~~classroom~~-instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker shall be required to pay a fee, ~~fixed by the Commission but not to exceed thirty dollars (\$30.00)-fee.~~ The application fee shall be one hundred dollars (\$100.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set a fee that exceeds one hundred twenty dollars (\$120.00). The application fee shall not increase by more than five dollars (\$5.00) during a 12-month period.

(a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within three years following initial licensure, satisfactorily complete, at a school approved by the Commission, a postlicensing education program consisting of 90 hours of ~~classroom~~-instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than three years, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing

education within three years following initial licensure, the broker's license shall be placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.

...
(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee ~~is thirty dollars (\$30.00)~~ shall be forty-five dollars (\$45.00) unless the Commission sets the fee at a higher amount. ~~The amount by rule; however, the Commission may shall not set the license renewal fee at an amount that does not exceed fifty dollars (\$50.00).~~ exceeds sixty dollars (\$60.00). The license renewal fee may not increase by more than five dollars (\$5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. The fee for reinstatement of an ~~expired~~ expired, revoked, or suspended license shall be ~~fifty-five dollars (\$55.00)~~ an amount equal to two times the license renewal fee at the time the application for reinstatement is submitted. In the event a licensee fails to obtain a reinstatement of such license within six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars (\$10.00).

...."

SECTION 4.(b) This section becomes effective July 1, 2017.

EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act becomes effective October 1, 2016.

In the General Assembly read three times and ratified this the 1st day of July, 2016.

s/ Louis M. Pate, Jr.
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:03 a.m. this 28th day of July, 2016

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: NC State Board of Opticians

RULE CITATION: 21 NCAC 40 .0202

DEADLINE FOR RECEIPT: Friday, October 14, 2016

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In the Filing Form, Page 2, I do not believe this Rule establishes a fee – the statute does. However, SL 2016-117(3)(c) does not contain any authority to bypass the consultation. Please resubmit Page 2 of the form to either state that the Rule does not establish or increase a fee or submit the consultation date.

*In the Introductory Statement, line 1, please state “21 NCAC 40 .0202 is amended under temporary procedures **with changes** as follows.”*

On line 2, please provide the full citation for the Rule. “21 NCAC 40 .0202” You do not need to underline it; simply add it.

In (a), line 3, I recommend inserting a comma after “office”

Also on lines 3 and 4, I suggest replacing “such a” with “the”

In Subparagraph (a)(1), line 8, this is not the proper way to add or delete punctuation. You must treat punctuation as part of the word that precedes it. Thus “~~relocation~~, relocation” and “ownership.”~~ownership~~”

In Subparagraph (a)(2), what is the rationale for changing the expiration date via temporary rulemaking? What makes this change necessary under G.S. 150B-21.1?

In Subparagraph (a)(3), line 13, replace “which” with “that”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 10, 2016

In (a)(3), given the addition of G.S. 90-254 on line 15, do you need to retain the sentence on lines 15-16?

§ 90-254. General penalty for violation.

Any person, firm or corporation who shall violate any provision of this Article for which no other penalty has been provided shall, upon conviction, be fined not more than two hundred dollars (\$200.00) or imprisoned for a period of not more than 12 months, or both, in the discretion of the court.

Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reasons of the violation. The venue for actions brought under this subsection shall be the superior court of any county in which such acts are alleged to have been committed or in the county where the defendants in such action reside. (1951, c. 1089, s. 21; 1981, c. 600, s. 19.)

In (a)(4), line 17, I suggest replacing “is” with “shall be”

Adjust the indentation on line 18.

In (b), lines 19-29, all of this language is new. Therefore, the only language that should not be underlined is that being struck through. I am aware that the language on lines 19-20 is the same as the language struck on lines 5-6; however, this is now new language where it is placed in the Rule.

Since all of (b) is new, all language that is currently struck through on lines 19, 20, 23, 27 and 28 needs to simply be removed. Do not show that you are removing it – simply do it.

On line 20, do you mean “licensee” instead of “license”?

It appears that (b)(1) through (3) are meant to parallel (a)(1) through (3), but there are differences in language. Is there a specific reason for that, or are you intending to address that through permanent rulemaking?

In (b)(1), please insert a cross-reference to the fee. I suggest citing to G.S. 90-246.

On line 27, replace “which” with “that”

On line 29, did you intentionally leave out G.S. 90-254?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 10, 2016

1 21 NCAC 40.0202 is proposed to be amended as follows:

2 **.0202 REGISTRATION OF OPTICAL PLACE OF BUSINESS AND OPTICIAN IN CHARGE**

3 (a) As used in this Rule, "optical place of business" means the principal office as well as each branch office of such
4 a business.

5 ~~(b) Every optical place of business shall have a licensed optician in charge, who shall serve as the registered
6 licensee in charge of only one optical place of business.~~

7 ~~(c)~~ (1) Every optical place of business shall be registered with the Board within 10 days following its opening
8 for business and thereafter annually and in the event of relocation, or change of ownership, or change of
9 ~~licensed optician in charge.~~ The registration fee shall be paid for each registration.

10 ~~(d)~~ (2) Registration of an optical place of business automatically expires on the ~~first day of July~~ last day of
11 June of each year, and it shall not engage in business until it is registered for the next annual period.

12 ~~(e)~~ (3) ~~Registration~~ An optical place of business registration is the responsibility of ~~both the licensed optician~~
13 ~~in charge and the owner.~~ Any ~~licensed optician in charge of an optical place of business~~ which violates the
14 registration requirements of this Rule shall be subject to the Board's disciplinary authority under ~~G.S. 90-~~
15 ~~249.1, G.S. 90-249.1, G.S. 90-252, and G.S. 90-254.~~ An injunction closing an unregistered optical place
16 of business may also be obtained.

17 ~~(f)~~ (4) An optical place of business registered in compliance with this Rule is eligible to be a training
18 establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.

19 (b) Every optical place of business shall ~~have a~~ register a licensed optician in charge, who shall serve as the
20 ~~registered licensee~~ license in charge of only one optical place of business.

21 (1) Every optician in charge shall be registered with the Board within 10 days of a business opening, or
22 change of optician in charge. The registration fee shall be paid for each registration.

23 (2) Registration of an optician in charge automatically expires on the first day of July last day of June of
24 each year, and the optical business shall not engage in dispensing activities under G.S. 90-236 until it has a
25 registered optician in charge for the next annual period.

26 (3) An optician in charge registration is the responsibility of both the licensed optician in charge and the
27 owner. Any ~~licensed~~ optician in charge of an optical place of business which violates the registration
28 requirements of this Rule shall be subject to the Board's disciplinary authority under ~~G.S. 90-249.1, G.S.~~
29 ~~90-249.1 and G.S. 90-252.~~

30

31 *History Note: Authority G.S. 90-239; 90-243; 90-249(5); 90-252; 90-253;*

32 *Eff. February 1, 1976;*

33 *Amended Eff. November 1, 1978; June 21, 1978; September 6, 1977;*

34 *Readopted Eff. May 23, 1979;*

35 *Amended Eff. August 1, 1998; January 1, 1994; August 1, 1991; February 1, 1989; August 1,*
36 *1985.*

