



2022 South Dakota Legislature
House Bill 1028
ENROLLED

AN ACT

ENTITLED An Act to update certain provisions related to the licensure of optometrists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 36-7 be amended with a NEW SECTION:

As used in this chapter, the term, board, means the South Dakota Board of Examiners in Optometry.

Section 2. That § 36-7-3 be AMENDED:

36-7-3. The Governor shall appoint five members to the board. Four members must be optometrists in active practice in this state for at least five years preceding the appointment. One member must be a representative of the public who is a resident of this state and who is not associated with, or financially interested in, the practice or business of optometry. The term of each member is three years commencing on July first. The Governor shall, by appointment, fill any vacancy. No member may serve more than three consecutive, full terms. The appointment of a person to an unexpired term is not considered a full term.

Section 3. That § 36-7-3.2 be AMENDED:

36-7-3.2. The board shall continue within the Department of Health.

Section 4. That § 36-7-10 be AMENDED:

36-7-10. It is a Class 2 misdemeanor for any person who is not the holder of a certificate of registration or exemption, issued and recorded as provided in this chapter, to practice or offer to practice optometry within the state.

Section 5. That § 36-7-11 be AMENDED:

36-7-11. The board may issue a license to an applicant that:

- (1) Submits an application on a form prescribed by the board;
- (2) Pays the application fee set by rules promulgated by the board pursuant to chapter 1-26, not to exceed one hundred seventy-five dollars;
- (3) Is eighteen years or older, and a citizen of the United States or a resident of South Dakota;
- (4) Is of good moral character;
- (5) Is a graduate of an optometric school or college approved by the Accreditation Council on Optometric Education or the board;
- (6) Has passed all required sections of a national board examination approved by the board; and
- (7) Has committed no act for which disciplinary action may be justified.

Section 6. That § 36-7-12.1 be AMENDED:

36-7-12.1. Any applicant for licensure as an optometrist after July 1, 1986, shall satisfactorily complete all pharmacology studies and clinical experience required by this chapter and the board, and attain a passing grade on the pharmacology portion of a national board examination approved by the board.

Section 7. That § 36-7-13 be AMENDED:

36-7-13. The board may issue a license to practice as an optometrist by endorsement to a person who has been licensed as an optometrist under the laws of another state or territory under United States jurisdiction if:

- (1) The person submits an application and pays the required fee set by rules promulgated by the board pursuant to chapter 1-26, not to exceed one hundred seventy-five dollars;
- (2) In the opinion of the board, the applicant meets the qualifications required of an optometrist in this state at the time of the applicant's original licensure; and
- (3) The applicant has engaged in the practice of optometry for at least five consecutive years immediately preceding application under this section.

The board may require additional education, testing, or training before granting licensure if competency of any applicant is in question. Any applicant who has been denied a license by the board must reapply and meet all initial licensure requirements before the board may grant licensure.

Section 8. That § 36-7-15 be AMENDED:

36-7-15. The board may:

- (1) Promote the safe and qualified practice of optometry;
- (2) Promulgate rules pursuant to chapter 1-26 to govern standards for the safe and qualified practice of optometry, to adopt a code of ethics or professional conduct, and to establish criteria for advertising by optometrists;
- (3) Prepare an annual budget;
- (4) Expend funds for administrative, legal, consultative, and other necessary services from fees received by the board;
- (5) Examine, license, endorse, and renew the licenses of qualified applicants;
- (6) Define what constitutes a recognized optometric school;
- (7) Establish the minimum amount and type of continuing education to be required of each optometrist seeking renewal of a license; and
- (8) Administer oaths and take testimony pursuant to §§ 1-26-19.1 and 1-26-19.2.

Section 9. That § 36-7-17 be AMENDED:

36-7-17. Every optometrist in this state shall furnish the board satisfactory evidence that the licensee practices optometry as a profession, in an individual personal capacity under the optometrist's own name or as a partner of another licensed optometrist and not as a corporation, limited liability company or agent, employee, officer, member, or partner of a corporation or limited liability company, except where a practice as an officer, employee, member, or agent of a corporation is established under the terms of chapter 47-11B. A violation of this section is a Class 2 misdemeanor.

Nothing in this section precludes a licensed optometrist from serving as a shareholder, officer, or director of a corporation established under the terms of chapter 58-41 as a health maintenance organization, a preferred provider organization, individual practices association, or other form of entity whatever established for group health care purposes.

Section 10. That § 36-7-18 be AMENDED:

36-7-18. Each optometrist shall conspicuously display any license, and subsequent proof of renewal, issued by the board under this chapter at the optometrist's primary place of practice. A violation of this section is a Class 2 misdemeanor.

Section 11. That § 36-7-20 be AMENDED:

36-7-20. Each optometrist licensed pursuant to this chapter shall apply, on a form approved by the board, for a renewal of the license. The renewal must be issued by the board upon payment of a fee set by the board by rule promulgated pursuant to chapter 1-26, not to exceed three hundred dollars, and upon verification that the optometrist has met the requirements for continuing education as provided in § 36-7-20.2. The renewal must be in the form of a receipt acknowledging payment of the required fee and signed by the secretary of the board.

Failure to renew the license on or before October first of each year constitutes a forfeiture of the optometrist's license. The license may be renewed at the discretion of the board upon application and payment of the fee required by § 36-7-11, and a late fee set by the board by rules promulgated pursuant to chapter 1-26, not to exceed one hundred dollars for each month the renewal is late.

Section 12. That § 36-7-20.2 be AMENDED:

36-7-20.2. The board shall establish requirements for continuing education by rules promulgated pursuant to chapter 1-26. Any continuing education course must be certified by the Council of Optometric Practitioner Education or approved by the board. Attendance at any course must be submitted by each optometrist when renewing a license pursuant to § 36-7-20. The board may waive any or all of this requirement in case of certified illness or undue hardship.

Section 13. That § 36-7-21 be AMENDED:

36-7-21. The board may remit the license fee of any optometrist on active duty in the armed forces of the United States.

For the purposes of this section, the term, active duty in the armed forces, means full-time duty in the active military services and reserve components of the United States, including the National Guard and Reserve, while serving under published orders for active duty or full-time training.

Section 14. That § 36-7-24 be AMENDED:

36-7-24. The board, in compliance with chapter 1-26, may impose disciplinary sanctions against any optometrist for the following causes:

- (1) Conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- (2) Obtaining, or attempting to obtain, a license by fraudulent misrepresentation;
- (3) Malpractice;
- (4) Continued practice when knowingly having an infectious or contagious disease, or after sustaining a physical or mental disability that renders further practice potentially harmful or dangerous;
- (5) Use of alcohol or other substances that renders the optometrist unfit to practice with reasonable skill and safety;
- (6) Unprofessional conduct; or
- (7) Failure to submit to or cooperate with the criminal background investigation requested by the board.

Section 15. That § 36-7-25 be AMENDED:

36-7-25. The term, unprofessional conduct, as used in this chapter, means:

- (1) Any conduct of a character likely to deceive or defraud the public;
- (2) The loaning of a license by any licensed optometrist or any person or corporation;
- (3) Violating any provision of this chapter or any rule promulgated by the board;
- (4) Splitting or dividing a fee or compensation with any person or corporation;
- (5) The obtaining of any fee or compensation by fraud or misrepresentation;
- (6) Employing, either directly or indirectly, any suspended or unlicensed optometrist to perform any work covered by this chapter;
- (7) The advertising of optometric practice, treatment, advice, or costs in which untruthful, improbable, misleading, or impossible statements are made;
- (8) Failure to maintain adequate safety and sanitary conditions, or meet the requirements of an optometric clinic in accordance with the standards set forth in this chapter and any rule promulgated by the board in accordance with chapter 1-26;
- (9) Inappropriate prescribing to any person in quantities and under circumstances apparent to the board that the prescription was not made for legitimate medicinal purposes related to the practice optometry, or prescribing in a manner or in amounts that, in the opinion of the board, endanger the wellbeing of a patient or the public in general;

- (10) The failure to refer a patient to a physician licensed pursuant to chapter 36-4 if examination of the eye indicates a substantial likelihood of pathology that requires the attention of a physician;
- (11) Any conviction of a criminal offense related to the practice of optometry;
- (12) Consistently misdiagnosing or consistently prescribing improper therapy;
- (13) Failing to hold in professional confidence all information concerning a patient;
- (14) Failing to comply with state and federal laws on keeping records regarding possessing and dispensing controlled substances or habit-forming drugs;
- (15) Falsifying the records of a patient;
- (16) Exercising influence within the optometrist-patient relationship for the purpose of engaging a patient in sexual activity. For purposes of this subdivision, the patient is presumed incapable of giving free, full, and informed consent to sexual activity with the optometrist;
- (17) Engaging in sexual harassment;
- (18) Any practice or conduct that tends to constitute a danger to the health, welfare, or safety of patients or the public, or engaging in conduct that is unbecoming of an optometrist;
- (19) Discipline by the licensing board of another state or territory under United States jurisdiction if the violation is also a violation of this chapter or any rule promulgated by the board;
- (20) Not reporting discipline by a licensing board of another state or territory under United States jurisdiction to the board; and
- (21) Not reporting a conviction of a criminal offense arising out of the practice of optometry to the board.

Unprofessional conduct, as defined in this section, may not be the basis for criminal prosecution unless otherwise declared unlawful.

Section 16. That § 36-7-27 be AMENDED:

36-7-27. After one year, and upon application and proof that the disqualification has ceased, the board may reinstate a person whose license has been revoked, if no other basis for denial of the license exists.

Section 17. That § 36-7-3.1 be REPEALED.

Section 18. That § 36-7-4 be REPEALED.

Section 19. That § 36-7-5 be REPEALED.

Section 20. That § 36-7-6 be REPEALED.

Section 21. That § 36-7-8 be REPEALED.

Section 22. That § 36-7-12 be REPEALED.

Section 23. That § 36-7-14 be REPEALED.

Section 24. That § 36-7-15.1 be REPEALED.

Section 25. That § 36-7-15.2 be REPEALED.

Section 26. That § 36-7-15.3 be REPEALED.

Section 27. That § 36-7-19 be REPEALED.

Section 28. That § 36-7-20.1 be REPEALED.

Section 29. That § 36-7-20.3 be REPEALED.

Section 30. That § 36-7-20.4 be REPEALED.

Section 31. That § 36-7-29 be REPEALED.

Section 32. That § 36-7-31 be REPEALED.

An Act to update certain provisions related to the licensure of optometrists.

I certify that the attached Act originated in
the:
House as Bill No. 1028

Received at this Executive Office
this ____ day of _____,
2022 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2022

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2022
at _____ o'clock ___ M.

Secretary of the Senate

Secretary of State

House Bill No. 1028
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State