

complete the construction of their improvements as planned, and are unable to do so under the present statute, and the necessity for removing certain ambiguities from the present statute, create an emergency and an imperative public necessity for the immediate passage of this Act and that it take effect from and after its passage. It is therefore further enacted that the constitutional rule requiring bills to be read on three several days be, and it hereby is, suspended, and that this Act be in force from and after its passage.

[NOTE.—The enrolled bill shows that the foregoing Act passed the Senate, yeas 24, nays 0; and passed the House with amendments, no vote given; and that the Senate concurred in the House amendments, no vote given.]

Approved August 24, 1921.
Effective November 15, 1921.

OPTOMETRY—DEFINING AND REGULATING THE PRACTICE OF—CREATING A BOARD OF EXAMINERS.

S. B. No. 50.]

CHAPTER 51.

An Act to define and regulate the practice of optometry; to create a board of examiners, prescribing its qualifications, powers and duties; to provide for the registration and examination of applicants and the issuance of license and certificates; to prescribe the qualifications of applicants; to provide that the county clerk of each county shall keep a record; to fix fees and require payment into the general fund of the State of Texas; to provide for the registration of Optometrists and the revocation of their licenses for cause; to require licenses and certificates to be displayed; to prescribe manner of practice outside of principal office; to fix penalties; to provide that this Act shall not apply to persons selling spectacles and eye-glasses as merchandise from permanently established places of business, officers or agents of the United States or the State of Texas in the discharge of official duties; to give no authority for the use or sale of drugs, medicines or eye lotions or for the use of any titles to indicate the practice of medicine; to provide that the use of the title of Optometrist and practice of Optometry, as defined, shall not be construed as the practice of medicine; to provide that if any part is held unconstitutional it shall not invalidate any other part; to repeal laws in conflict, and to declare an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The practice of optometry is hereby defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Provided that nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer any drug or drugs externally or internally, nor to prescribe drug or drugs or physical treatment whatsoever, unless such optometrist is a regular licensed physician or surgeon under the laws of this State.

SEC. 2. The "Texas State Board of Examiners in Optometry," hereinafter provided for, shall defray all expenses under this Act from fees provided in this Act, and no part of same shall be paid from the State Treasury, nor shall any appropriation ever be made from the State Treasury for any expenditures made necessary by this Act, and all fees remaining in the hands of the State Board of Examiners in Optometry at the end of any fiscal year in excess of five thousand (\$5,000.00) dollars shall be paid into the general fund of the State of Texas.

SEC. 3. That a Board to be known as "The Texas State Board of Examiners in Optometry," for the State of Texas, named in Section 2 of this Act, is hereby created. Said Texas State Board of Examiners in Optometry, which hereinafter may be referred to as the Board, shall be composed of five members, whose duty it shall be to carry out the purposes and enforce the provisions of this Act, and the Governor of Texas shall within ninety (90) days after the passage of this Act, appoint five persons to constitute such Texas State Board of Examiners in Optometry, who shall possess the necessary qualifications to practice optometry and who shall have been residents of this State, actually engaged in the practice of optometry within the meaning of this Act, for at least five years immediately preceding the passage of this Act. The Texas State Board of Examiners in Optometry thus appointed, or a quorum thereof, shall, by virtue of such appointment, issue licenses to themselves. Three members of the Board shall constitute a quorum.

SEC. 4. The members of the said Texas State Board of Examiners in Optometry shall be divided into three classes; one, two and three, and their terms of office shall be determined by lot at the first meeting of the Board. Two members shall hold their offices for two years, two members four years, and one member six years, respectively, from the time of their appointment, and until their successors are duly appointed and qualified, and the members of one of the above classes of said Board shall thereafter be appointed every two years, by the Governor, to supply vacancies made by provisions of this Act, who shall hold office for six years and until their successors are duly appointed and qualified. In case of death or resignation of a member of the Board, the Governor shall appoint another to take his place for the unexpired term only. After the first Board has been appointed, only licensed optometrists under the laws of the State of Texas and actively engaged in the practice of optometry shall be eligible for appointment on said Board.

SEC. 5. The members of said Texas State Board of Examiners in Optometry shall qualify by taking the oath of office, the same as prescribed by the Constitution for State officials. At the first meeting of said Board after each appointment the Board shall elect a president, a vice-president, and secretary-treasurer. Regular meetings shall be held at least twice a year, at such time and place as shall be deemed most convenient for applicants for license. Not less than ten days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation as may be selected by the Board. Special meetings may be held upon call of three

members of the Board. The Board may prescribe rules, regulations and by-laws in harmony with the provisions of the Act, for its own proceedings and government for the examination of applicants for license to practice optometry. Any member of said Board shall have the power to administer oaths for all purposes required in the discharge of its duties and shall adopt a seal to be affixed to its official documents.

SEC. 6. The Board shall preserve a record of its proceedings in a book or register kept for that purpose, showing name, age, place and present residence of each applicant, the name and location of any school or schools of optometry from which he holds credentials, and the time devoted to the study and practice of same, together with such other information as the Board may desire to record. Said register shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters contained therein. The secretary of the Board shall on March 1st of each year transmit a certified copy of said register to the Secretary of State for permanent record a certified copy of which, with hand and seal of the secretary of said Board, or Secretary of State, shall be admitted as evidence in all courts.

SEC. 7. All those engaged in the practice of optometry in this State at the time of the passage of this Act shall have one hundred and twenty (120) days after the appointment of the Board by the Governor of Texas in which to make declaration to the secretary of said Board on blank forms furnished by the Board, their intention to continue the practice of optometry in the State of Texas and their intention and purpose to take such examination in optometry as the Board may prescribe. Such examination to cover the following subjects only:

- (a) The limitations of the sphere of optometry.
- (b) The necessary scientific instruments used.
- (c) The form and power of lenses used.
- (d) A correct method of measuring presbyopia, hypermetropia, myopia and astigmatism.
- (e) The writing of formulas and prescriptions for the adaptation of lenses in aid of vision.

Provided that those making this declaration shall on or before January 1st, 1923, secure a license from the Board as hereinafter provided. Those engaged in the practice of optometry in this State at the time of the passage of this Act who fail to make such declaration, notifying the secretary of the Board as specified, shall be deemed to have waived their rights under the provisions of this Act. Those referred to as privileged to make declaration to the secretary of said Board on blank forms furnished by the Board of their intention to continue the practice of optometry in the State of Texas are hereinafter referred to as declarants.

SEC. 8. Declarants, who file with the secretary of the Texas State Board of Examiners in Optometry a declaration of their intention to continue the practice of optometry in this State as provided in this Act, shall be given by the Board a certified copy of the declaration so filed, bearing the seal of the Board, and this certified copy

shall be filed for record in the county clerk's office of the declarant's home county within thirty days of its date of certification by the Texas State Board of Examiners in Optometry, and thereafter declarant shall not begin or continue the practice of optometry in any county in this State without having first filed for record with the county clerk of such county the certified copy of his declaration issued him by the Texas State Board of Examiners in Optometry, and the failure to file same for record in the office of the county clerk shall be regarded as prima facie evidence of the lack of such document. Said certified copy so issued to him, or her, by the Board of declarant's declaration of intention to continue the practice of optometry in this State, as provided in this Act, may hereinafter in this Act be called a certificate.

SEC. 9. After the passage of this Act it shall be unlawful for any person to begin to practice optometry within the limits of this State who has not registered in the county clerk's office of the county in which he resides, and in each county in which he practices, his license for so practicing as herein prescribed, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be endorsed by the county clerk upon the license. The absence of record of such license in the county clerk's office shall be prima facie evidence of the lack of possession of such license to practice optometry.

SEC. 10. It is hereby made the duty of the county clerk of each county in the State to purchase a book of suitable size to be known as the "Optometry Register" of such county and set apart at least one full page for the registration of each optometrist, and to record in said Optometry Register the name and record of each optometrist who presents for record a license or certificate issued under this Act by the State Board of Examiners in Optometry. The county clerk shall receive the sum of one dollar for each document registered under this Act, which shall be his full compensation for all duties required under this Act. When an optometrist shall have his license revoked, it shall be the duty of said county clerk, upon being notified by the Board, to make a note of the fact beneath the record in the Optometry Register, which entry shall close the record. On the first day of January in each year, said county clerk, shall, upon request of the Board, certify to the secretary of the Board a correct list of the optometrists then registered in the county, together with such other information as said Board may require.

SEC. 11. Every person desiring to begin the practice of optometry after the passage of this Act shall make application for license by presenting to the secretary of the Board, on blank forms furnished by the Board, satisfactory evidence, verified by oath, that he or she has attained the age of twenty-one years, is of good moral character, has the necessary preliminary education and has graduated from a school of optometry maintaining a standard which meets with the requirements of said Board, or has studied optometry in Texas not less than two years in the office of an optometrist licensed under this Act, before taking the examination which shall be prescribed by the Board. Said examinations shall consist of tests in

practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology, and pathology of the eye as applied to optometry. Every candidate successfully passing examination shall be registered by the Board as possessing the qualifications required by this Act, and shall receive from said Board a license which, when registered with the county clerk, as provided, shall entitle the person so examined and licensed to practice optometry in this State; provided that the Board shall have authority, at its discretion, to recognize the license which as been issued, after full examination, by State Board of Examiners in Optometry of other states having a standard of education in optometry satisfactory to the Texas State Board of Examiners in Optometry and may issue to such persons a license to practice optometry in Texas, or in its discretion, may admit for full examination any person presenting an unrevoked certificate of examination from the Board of Examiners of any other State.

When a license or certificate is issued it shall be numbered and recorded in a book kept by the secretary of the Board and its number shall be noted upon the respective documents. The Board shall charge a fee of \$15.00 for examining an applicant for license, which fee must accompany the application for examination. Such applicant shall be given due notice of the date and place of examination. In case an applicant, because of failure to pass examination, be refused a license, such applicant shall, after six months, be permitted to take a second examination without additional fee. The fee for issuing a license or certificate shall be \$5.00, to be paid to the secretary of the Board. The fund realized from the aforesaid fees shall first be applied to the payment of all necessary expenses of the Board and remaining fund shall be applied, by order of the Board, to compensating members of the Board in proportion to their labors, provided said compensation shall in no case exceed \$20.00 per day for the time occupied.

SEC. 12. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate for the ascertainment of the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given identical questions. No person taking the examination contemplated herein shall be approved by the Board until the Board is satisfied that the applicant has the necessary knowledge to practice optometry. The Board may refuse to admit persons to its examination or to issue licenses provided for in this Act for any of the following reasons:

First. The presentation to the Board of any untrue statement or any document or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing the examination.

Second. Conviction of a crime of the grade of felony, or one which involves moral turpitude.

Third. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of

intemperance or drug addiction, provided any applicant who may be refused admittance to examination before said Board or be refused a license, after legal notice and a full and impartial hearing, shall have his right of action to have such issue tried in the district court of any county in which one of the members of the Board shall reside.

SEC. 13. The right herein to practice optometry in this State may be revoked by any district court upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Examiners in Optometry is authorized to refuse to admit persons to examination or to issue licenses as provided in Section 12 of this Act, and it shall be the duty of the several district and county attorneys of this State to file and prosecute proceedings in the name of the State upon request of any member of said Board.

SEC. 14. Every person practicing optometry in this State shall display his license or certificate in a conspicuous place in the principal office where he practices optometry, and, whenever required, exhibit such license or certificate to said Board of Examiners, or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office, or place of business, he shall deliver to each client or person fitted with glasses a bill of purchase, or sale, which shall contain his signature, post-office address, and number of his license, or certificate, together with a specification of the lenses and material furnished and the prices charged for such lenses and material respectively.

SEC. 15. Any person violating any of the provisions of this Act, shall upon conviction thereof, be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term of not less than two months nor more than six months, or both, such fine and imprisonment, and each day of such violation shall constitute a new and separate offense.

SEC. 15a. Any one practicing optometry in this State, who shall prescribe or fit lenses for any diseased condition of the eye or for any disease of any other organ of the body that manifests itself in the eye, shall be deemed to be practicing medicine within the meaning of the statutes of this State defining the practice of medicine and prohibiting the practice thereof without a license, and any such person possessing no license to practice medicine shall be liable to prosecution for the unlawful practice of medicine without a license and, upon conviction thereof, shall be subject to the same penalties or punishment as is prescribed by law for the practice of medicine without a license.

SEC. 16. Nothing in this Act shall be construed to apply to persons who sell spectacles and eye-glasses as merchandise and those who fit glasses for their customers; officers or agents of the United States or the State of Texas in the discharge of their official duties.

SEC. 17. Nothing in this Act shall be construed as giving authority to use, prescribe, sell or offer for sale any eye lotions, salves, or medicines of any kind or description, practice medicine and surgery within the provisions of Chapter XCCIII, Acts of the Thirtieth Texas Legislature, or as conferring any title or appellation in a sense to indicate the practice of medicine and providing that the title of Optometrist or practice, as defined in Section 1 of this Act, shall not be con-

strued as practicing medicine or surgery or indicating the practice of medicine or surgery.

SEC. 18. All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

SEC. 19. That if any of the provisions of this Act shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the constitutionality or validity of any portion of this Act which may be given reasonable effect without the provisions so declared unconstitutional or invalid.

SEC. 20. The fact that there is now no law in the State of Texas regulating the practice of optometry creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be and is hereby suspended, and this Act take effect from and after its passage, and it is so enacted.

[NOTE.—The enrolled bill shows that the foregoing Act passed the Senate, yeas 18, nays 8; and passed the House, no vote given.]

Approved August 27, 1921.
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