

2008 -- S 2889 SUBSTITUTE A AS AMENDED

LC02526/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - OPTOMETRISTS

Introduced By: Senators Perry, C Levesque, P Fogarty, McCaffrey, and Gallo

Date Introduced: March 25, 2008

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 5-35 of the General Laws entitled "Optometrists" is hereby repealed in its entirety.

CHAPTER 5-35

Optometrists

~~**5-35-1. "Optometry" and "optician" defined.** --- (a) "Optometry" is defined as the profession whose practitioners are engaged in the art and science of the evaluation of vision and the examination of vision and the examination and refraction of the human eye which includes: the employment of any objective or subjective means for the examination of the human eye or its appendages; the measurement of the powers or range of human vision or the determination of the accommodative and refractive powers of the human eye or the scope of its functions in general and the adaptation of lenses, prisms, and/or frames for the aid of these; the prescribing, directing the use of or administering ocular exercises, visual training, vision training, or orthoptics, and the use of any optical device in connection with these; the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye; the examination or diagnosis of the human eye to ascertain the presence of abnormal conditions or functions; and the topical application of pharmaceutical agents to the eye; provided, that no optometrist licensed in this state shall perform any surgery for the purpose of detecting any diseased or pathological condition of the eye. With respect to presently licensed optometrists, only presently licensed optometrists who: (1) have satisfactorily completed a course in pharmacology, as it applies to~~

~~optometry, at an institution accredited by a regional or professional accreditation organization which is recognized by the national commission on accreditation, with particular emphasis on the topical application of drugs to the eye for the purposes of detecting any diseased or pathological condition of the eye; or the effects of any disease or pathological condition of the eye, approved by the board of examiners in optometry and the chief of pharmacy of the department of health; or (2)(i) have successfully passed all sections of the national board of examiners in optometry (NBEO) examination; and (ii) the treatment and management of ocular disease (TMOD) examination shall be permitted to apply pharmaceutical agents topically to the eye for the purpose of detecting any diseased or pathological condition of the eye, or the effects of any disease or pathological condition of the eye.~~

~~(b) An "optician" is defined as a person who neither practices nor professes to practice optometry but who may grind ophthalmic lenses, fit spectacles and eyeglasses and may sell spectacles and eyeglasses or lenses on prescription from either a licensed physician or licensed optometrist, nor may an optician fit, sell, replace, or dispense contact lenses.~~

~~**5-35-1.1. Use and prescription of topical pharmaceutical agents for ocular conditions — Optometrists' training and certification.** --- (a) Notwithstanding the provisions of this chapter, qualified and licensed optometrists of this state may use and prescribe topical pharmaceutical agents in the treatment of ocular conditions of the human eye and its appendages, without the use of surgery or other invasive techniques; provided, that all qualified optometrists seeking initial licensure after January 1, 1994, shall be certified in the use of therapeutic pharmaceuticals in accordance with the requirements of section 5-35-1.2.~~

~~(b) The director of the department of health shall issue regulations governing the use and prescription of pharmaceutical agents by qualified and licensed optometrists in the treatment of ocular conditions of the human eye.~~

~~(c) The director of the department of health, before issuing the regulations, shall request and consider recommendations that may be submitted by the board of examiners for optometry.~~

~~(d) The board of examiners for optometry shall certify those individuals who have completed the prescribed course of training.~~

~~**5-35-1.2. Certification of optometrists in use of therapeutic pharmaceuticals for those licensed to January 1, 2007.** --- (a) To be certified in the use of therapeutic pharmaceuticals, an optometrist must:~~

~~(1) Have graduated from an accredited college of optometry; and~~

~~(2) Have satisfactorily passed, prior to commencing the clinical therapeutic training as stated in subsection (b) of this section, the International Association of Boards of Optometry~~

1 Examination in "The Treatment and Management of Ocular Disease" as approved by the director;
2 and

3 ~~-(3) Have successfully completed clinical therapeutic training with a board-certified~~
4 ~~ophthalmologist; and~~

5 ~~-(4) Have satisfactorily passed the clinical competency examination administered by the~~
6 ~~board.~~

7 ~~-(b) Clinical therapeutic training shall consist of a minimum of seventy-two (72) hours of~~
8 ~~direct therapeutic management of ocular disease, which training shall occur as part of any~~
9 ~~internship requirement mandated under applicable rules and regulations. The seventy-two (72)~~
10 ~~hours of clinical training may run concurrently with and shall be credited toward any internship~~
11 ~~requirements mandated by law or regulation.~~

12 ~~-(c) The board-certified ophthalmologist referenced in subdivision (a)(3) of this section~~
13 ~~shall be responsible for supervising the clinical training and shall be responsible to certify to the~~
14 ~~board of examiners in optometry that the optometrist seeking licensure has satisfactorily~~
15 ~~completed the previously referenced clinical training and that, during the training, participated in~~
16 ~~the diagnosis, treatment and management of the following numbers of patients with the following~~
17 ~~conditions:~~

18 Patients with diseases of the eyelid 50

19 Patients with diseases of the conjunctiva 50

20 Patients with diseases of the cornea 50

21 ~~-(d) The ratio of ophthalmologists to optometrists seeking certification for the clinical~~
22 ~~training shall be preferably 1:2 and shall not exceed 1:4.~~

23 ~~**5-35-1.3. Certification of optometrists in use of therapeutic pharmaceuticals for**~~
24 ~~**those seeking initial licensure on or after January 1, 2007.**~~ To be certified in the use of
25 therapeutic pharmaceuticals, an optometrist must:

26 ~~-(1) Have graduated from an accredited college of optometry;~~

27 ~~-(2) Have: (i) successfully passed all sections of the National Board of Examiners in~~
28 ~~Optometry (NBEO) examination; and (ii) the Treatment and Management of Ocular Disease~~
29 ~~(TMOD) examination.~~

30 ~~**5-35-2. Board of examiners for optometry -- Appointment of members.**~~ The
31 director of the department of health, with the approval of the governor, shall appoint a board of
32 examiners for optometry. The board shall consist of five (5) examiners, four (4) of whom shall be
33 residents of the state actually engaged in the practice of optometry for at least five (5) years prior
34 to their appointment and there shall be one public member appointed by the governor.

1 **5-35-2.1. Advisory committee for opticianry.** ~~--- There is created an advisory committee~~
2 ~~for opticianry, to consist of five (5) members, four (4) of whom shall be opticians licensed as~~
3 ~~opticians under the provisions of this chapter, who shall be residents of the state and shall have~~
4 ~~practiced as opticians for a period of at least five (5) years who shall be appointed by the director~~
5 ~~of the department of health, and one lay person who shall be from the public appointed by the~~
6 ~~governor. The members of the advisory committee shall be appointed for terms of three (3) years~~
7 ~~except that the initial committee shall be appointed as follows: On July 1, 1970, one member shall~~
8 ~~be appointed for a term expiring June 30, 1971; one member shall be appointed for a term~~
9 ~~expiring June 30, 1973; two (2) members shall be appointed for a term expiring June 30, 1986.~~
10 ~~The sole duty of the advisory committee for opticianry shall be to advise the director of the~~
11 ~~department of health, the administrator of the division of professional regulation and the board of~~
12 ~~examiners for optometry on all matters pertaining to the licensing and regulation of opticianry in~~
13 ~~this state. In any matter relating to opticianry alone, the committee shall have exclusive~~
14 ~~jurisdiction and its ruling shall be binding upon the division of professional regulation. In any~~
15 ~~matter relating to optometry, the division of professional regulation shall have exclusive~~
16 ~~jurisdiction and its rulings shall be binding.~~

17 **5-35-3. Board of examiners --- Compensation of members.** ~~--- No member of the board~~
18 ~~of examiners for optometry shall receive compensation for his or her attendance at meetings of~~
19 ~~the board.~~

20 **5-35-4. Receipts.** ~~--- The proceeds of any fees collected pursuant to the provisions of this~~
21 ~~chapter shall be deposited as general revenues.~~

22 **5-35-5. Functions of division of professional regulation.** ~~--- The division of professional~~
23 ~~regulation in the department of health shall perform the duties previously performed by the state~~
24 ~~board of optometry. The division may prescribe rules, regulations, and bylaws in harmony with~~
25 ~~the provisions of this chapter for its own procedure and government and for the examination of~~
26 ~~applicants for the practice of optometry. The division shall make rules and regulations governing~~
27 ~~advertising of all and any kind, directly or indirectly, by, on behalf of, or using the name of~~
28 ~~optometrists. The division has the power to revoke the license of any optometrist violating those~~
29 ~~rules and regulations. Any member of the division has the power to revoke the license of any~~
30 ~~optometrist violating those rules and regulations. Any member of the division has the power to~~
31 ~~administer oaths for all purposes required in the discharge of its duties, and the division may~~
32 ~~adopt a seal to be affixed to all its official documents. The division of professional regulation~~
33 ~~must preserve a record of its prosecutions and proceedings in a book kept for that purpose~~
34 ~~showing receipts and disbursements, the name, age, place, and duration of residence of each~~

1 applicant and registered optometrist, the time spent in schools or colleges of optometry and in the
2 study, internship and practice of the registered optometrist, and the year and institution from
3 which degrees were granted the applicant. That book shall show whether the applicants were
4 registered, and if registered, gives the number of the certificate of each applicant, and that book is
5 prima facie evidence of all matters contained within it. The administrator of the division must, in
6 January of each year, transmit an official copy of that book to the secretary of state for permanent
7 record, a certified copy of which may be admitted as evidence in all courts.

8 ~~**5-35-6. [Repealed.]--**~~

9 ~~**5-35-7. Eligibility for license to practice optometry.--**~~ Any citizen, or legal resident of
10 the United States not less than eighteen (18) years of age and of good moral character, who also
11 graduated from a school or college of optometry approved by the division of professional
12 regulation which maintains a course in optometry of not less than four (4) years, is eligible for
13 licensure.

14 ~~**5-35-8. Application for examination and license.--**~~ Every person desiring to be
15 licensed to practice optometry as provided in this chapter shall file with the division of
16 professional regulation, in the form prescribed by the division, an application, verified by oath,
17 presenting the facts which entitle the applicant to a license to practice optometry under this
18 chapter.

19 ~~**5-35-9. Fee for license.--**~~ Every applicant shall pay to the division of professional
20 regulation a fee of seventy dollars (\$70.00) which shall accompany his or her application for a
21 certificate of license.

22 ~~**5-35-10. [Repealed.]--**~~

23 ~~**5-35-11. [Repealed.]--**~~

24 ~~**5-35-12. [Repealed.]--**~~

25 ~~**5-35-13. Registration of optometrists from other states.--**~~ Any person who presents
26 evidence to the division of professional regulation that he or she is entitled to practice optometry
27 in another state where requirements for registration are, in the opinion of the division, equivalent
28 to those of this state, may be registered and given a certificate of license in this state without
29 examination upon payment to the division of a fee of ninety dollars (\$90.00); provided, that the
30 other state accords a similar privilege to holders of certificates of license issued in this state and
31 the applicant has not previously failed to pass the examinations required in this state.

32 ~~**5-35-14. Issuance, registration, and display of certificate of license to practice**~~
33 ~~**optometry.--**~~ Every applicant who complies with the provisions of this chapter, shall receive
34 from the director of the department of health, under his or her seal, a certificate of license

1 ~~entitling him or her to practice optometry in this state. This certificate shall be registered in a~~
2 ~~record book to be properly kept by the division of professional regulation for that purpose, which~~
3 ~~shall be open to public inspection, and a certified copy of that record shall be received as~~
4 ~~evidence in all courts of this state in the trial of any case. Every person to whom a certificate of~~
5 ~~license is issued by the division shall keep that certificate displayed in a conspicuous place in the~~
6 ~~office or place of business where that person practices optometry and, whenever required, shall~~
7 ~~exhibit the certificate to any authorized representative of the division.~~

8 ~~**5-35-15. Renewal of license to practice optometry.** -- Every licensed optometrist who~~
9 ~~desires to continue the practice of optometry shall present satisfactory evidence to the board of~~
10 ~~examiners for optometry and approved by rule or regulation by the board of examiners for~~
11 ~~optometry that the practitioner has completed a prescribed course of continuing optometric~~
12 ~~education or related health fields; and annually, in the month of January, shall pay to the division~~
13 ~~of professional regulation a renewal fee of one hundred and seventy dollars (\$170) for which he~~
14 ~~or she shall receive a renewal of his or her certificate of license for one year. In case of neglect or~~
15 ~~refusal to pay, the division shall revoke or suspend that certificate; provided, that no certificate of~~
16 ~~license shall be suspended or revoked without first giving sixty (60) days' notice in each case of~~
17 ~~neglect or refusal, and within that period, any optometrist has the right to receive a renewal of~~
18 ~~that certificate on payment of the renewal fee, together with an added penalty of seventy dollars~~
19 ~~(\$70.00). Retirement from practice in this state for a period not exceeding five (5) years shall not~~
20 ~~deprive the holder of a certificate of license of the right to renew a certificate upon the payment of~~
21 ~~all annual renewal fees remaining unpaid, and a further fee of seventy dollars (\$70.00) as an~~
22 ~~added penalty.~~

23 ~~**5-35-16. [Repealed.]** --~~

24 ~~**5-35-17. Use of title of doctor.** -- Any person registered to practice optometry under this~~
25 ~~chapter may prefix or append to his or her name the title of doctor, or any abbreviation of the~~
26 ~~word doctor, provided that person holds a degree granted by a chartered school or college of~~
27 ~~optometry authorized to grant this degree.~~

28 ~~**5-35-18. Minimum examination of patient.** -- Every person practicing optometry in~~
29 ~~accordance with the laws of this state shall, prior to prescribing eyeglasses, lens or spectacles,~~
30 ~~make a minimum examination of the patient to determine existent visual defects and procedures~~
31 ~~for their correction. The degree of that minimum examination shall be defined in the rules and~~
32 ~~regulations of the division of professional regulation. An examination is not necessary when a~~
33 ~~licensed optometrist or an optician, licensed as provided in this chapter, makes a sale of~~
34 ~~eyeglasses or spectacles in accordance with a prescription issued by a licensed optometrist or~~

1 ~~physician. The division has the power to revoke the license of any optometrist violating these~~
2 ~~rules and regulations.~~

3 ~~**5-35-19. Refusal, suspension or revocation of certificate for gross unprofessional**~~
4 ~~**conduct.**~~ (a) ~~In addition to any and all other remedies provided in this chapter, the~~
5 ~~administrator of the division of professional regulation and the director of the department of~~
6 ~~health may, after notice and a hearing, as provided in this section, in its discretion, refuse to grant,~~
7 ~~refuse to renew, suspend, or revoke any certificate of registration provided for in this chapter to~~
8 ~~any person who is not of good moral character, or who is guilty of gross unprofessional conduct~~
9 ~~or conduct of a character likely to deceive or defraud the public, or for any fraud or deception~~
10 ~~committed in obtaining a certificate. "Gross unprofessional conduct" is defined as including, but~~
11 ~~not being limited to:~~

12 ~~-(1) Conviction of felony or any crime or misdemeanor involving moral turpitude as~~
13 ~~evidenced by a certified copy of the record of the court convicting;~~

14 ~~-(2) Knowingly placing the health of a client at serious risk without maintaining proper~~
15 ~~precautions;~~

16 ~~-(3) Advertising by means of false or deceptive statements;~~

17 ~~-(4) Peddling from door to door;~~

18 ~~-(5) Habitual intoxication or addiction to the use of drugs;~~

19 ~~-(6) The use of any false or fraudulent statement in any document connected with his or~~
20 ~~her practice;~~

21 ~~-(7) The obtaining of any fee by fraud or willful misrepresentation of any kind either to a~~
22 ~~patient or insurance plan;~~

23 ~~-(8) Willfully betraying professional secrets;~~

24 ~~-(9) Knowingly performing any act which in any way aids or assists an unlicensed person~~
25 ~~to practice in violation of this chapter;~~

26 ~~-(10) Violating or attempting to violate, directly or indirectly, or assisting in, or abetting,~~
27 ~~the violation of, or conspiring to violate, any of the provisions of this chapter or regulations~~
28 ~~previously or hereafter issued pursuant to this chapter;~~

29 ~~-(11) Gross incompetence;~~

30 ~~-(12) Repeated acts of immorality or repeated acts of gross misconduct; or~~

31 ~~-(13) An optometrist providing services to a person who is making a claim as a result of a~~
32 ~~personal injury, who charges or collects from the person any amount in excess of the~~
33 ~~reimbursement to the optometrist by the insurer as a condition of providing or continuing to~~
34 ~~provide services or treatment.~~

~~(b) All proceedings under this section may be instituted by the administrator of the division, the director of the department of health, or the board of examiners for optometry from matters within his, her or its own knowledge, or may be taken upon the information of another. All accusations must be in writing, verified by some party familiar with the facts charged, and three (3) copies must be filed with the administrator of the division of professional regulation or the director of health. Upon receiving the accusation, the administrator of the division of professional regulation or the director of health shall, if he or she deems the accusation sufficient, make an order setting the accusation for a hearing and requiring the person against whom the accusation is made to appear and answer it at that hearing, at a specified time and place and shall cause a copy of the order and of the accusation or accusations to be served upon the person accused at least thirty (30) days before the appointed day in the order for that hearing. The hearing shall be open to the public. The person accused must appear at the time appointed in the order and answer the charges and make his or her defense to the charges, unless for sufficient cause the administrator of the division of professional regulation or the director of health assigns another day for that purpose. If he or she does not appear, the administrator of the division of professional regulation or the director of the department of health may proceed and determine the accusation or accusations in his or her absence. If the person against whom the accusation or accusations are made pleads guilty or refuses to answer the charges, or, upon the hearing, the administrator of the division of professional regulation or the director of the department of health finds them or any of them true, they may proceed to a judgment. The administrator of the division of professional regulation or the director of the department of health and the accused may have the benefit of counsel.~~

~~(c) When it appears to the administrator of the division, the director of the department of health, or the board of examiners for optometry from matters within his, her or its own knowledge, or upon information from another, as provided in this section, that any person is violating any of the provisions of this chapter the administrator, director of the department of health or board of examiners may, cause an action to be instituted commenced in the name of the board to enjoin that violation in a court of competent jurisdiction and that court may, only after a hearing in open court, restrain or enjoin any person, firm, corporation, or association from violating any of the provisions of this chapter without regard to whether proceedings have been or may be instituted before the board under the preceding paragraph or whether criminal proceedings have been or may be instituted. No ex parte restraining orders shall be issued in that matter.~~

~~(d) The administrator of the division and the director of the department of health, each, is~~

1 authorized to administer oaths, and in all cases or proceedings pending before them, is authorized
2 and empowered to summon witnesses by subpoena, and to compel those witnesses to attend and
3 testify in the same manner as witnesses are compelled to appear and testify in any court; and is
4 authorized to compel the production of all papers, books, documents, records, certificates, or legal
5 evidence that may be necessary or proper for the determination and decision of any question or
6 the discharge of any duty required by law of the division, by issuing a subpoena duces tecum. All
7 subpoenas and orders for the production of books, accounts, papers, records, and documents shall
8 be signed and issued by the administrator of the division or the director of the department of
9 health and shall be served as subpoenas in civil cases in the superior court are now served.
10 Subpoenaed witnesses shall be entitled to the same fee for attendance and travel that are now
11 provided for witnesses in civil cases in the superior court. If the person subpoenaed to attend
12 before the division fails to obey the command of that subpoena without reasonable cause, or if a
13 person in attendance before the division, without reasonable cause, refuses to be sworn, or to be
14 examined, or to answer a legal and pertinent question, or if any person refuses to produce the
15 books, accounts, papers, records, and documents material to the issue, set forth in an order served
16 on him or her, the administrator may apply to any justice of the superior court for any county,
17 upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more
18 than five (5) days, directing that person to show cause before the justice who made the order or
19 any other justice, why he or she should not be judged in contempt. Upon the return of that order,
20 the justice before whom the matter is brought on for a hearing shall examine under oath that
21 person and that person shall be given an opportunity to be heard and if the justice determines that
22 the person refused without reasonable cause or legal excuse to be examined or to answer a legal
23 and pertinent question, or to produce books, accounts, papers, records, and documents, material to
24 the issue, which he or she was ordered to bring or produce, he or she may immediately commit
25 the offender to jail, there to remain until he or she submits to do the act which he or she was
26 required to do, or is discharged according to law. Any person who swears falsely in any
27 proceeding, matter, or hearing before the division shall be deemed guilty of the crime of perjury.

28 **5-35-20. Acts constituting unlawful practice of optometry.** --- (a) Any person not
29 holding a certificate of registration issued to him or her may practice optometry within this state.
30 The opening and maintaining of an optometrist's office, the displaying of an optometrist's sign or
31 doorplate, or the advertising of the readiness to practice optometry in this state in public prints or
32 by cards, circulars, posters, or in any other manner is evidence of the practice of optometry, but
33 any person, firm, or corporation which has, prior to May 2, 1936, carried on the business of
34 optometry, may continue to carry on the business of optometry and may use a present trade name

~~now used by that person, firm, or corporation; provided, that all prescriptions for spectacles, eyeglasses, or lenses, are made by an optometrist holding a certificate of registration under the provisions of this chapter and regularly in the employ of that person, firm or corporation.~~

~~(b) No optometrist licensed by and practicing in this state may:~~

~~(1) Use or occupy space for that practice under any oral or written lease, contract, arrangement or understanding with anyone (other than with another optometrist licensed by, and practicing in, this state) by which the rent paid by that licensed optometrist for that use or occupancy or any element of the expense of practicing his or her profession varies according to his or her gross receipts, net profit, taxable income, numerical volume of the patients examined by that licensed optometrist or any combination;~~

~~(2) Use or occupy space for that practice in any building where more than fifty percent (50%) of the remaining space is used or occupied by tenants or a tenant of that building or the owner of that building and those tenants, tenant, or owner is engaged in the business of selling merchandise to the general public, if those tenants, tenant, or owner:~~

~~(i) Uses, or occupies that space under any oral or written lease, contract, arrangement, or understanding with anyone by which the rent paid by those tenants or tenant for that use or occupancy or any element in the cost of doing business varies according to the gross receipts, net profit, taxable income, numerical volume of sales or customers of those tenants or tenant or any combination; or~~

~~(ii) No optometrist or optician licensed by and practicing in this state advertises by written or spoken words of a character tending to deceive or mislead the public;~~

~~(3) Practice his or her profession under any oral or written contract, arrangement or understanding where anyone, not licensed to practice optometry practicing in this state, shares, directly or indirectly, in any fees received by that licensed optometrist.~~

~~(c) Subsection (b) of this section does not apply to any person, firm, or corporation entitled, under subsection (a) of this section, to use a trade name by reason of his, her, their or its having carried on the business of optometry prior to May 2, 1936, nor to any licensed optometrist while in the employ of that person, firm or corporation.~~

~~**5-35-21. Unlawful sale of spectacles.** --- It is unlawful for any person, firm, or corporation to sell, as merchandise, in any store or established place of business in the state, any eyeglasses, spectacles, or lenses for the correction of vision, unless a licensed optometrist, physician, or optician under the laws of this state is in charge and in personal attendance at the booth, counter, or place where those articles are sold in that store or established place of business. The provisions of this section shall not be construed to apply to the sale of simple reading~~

~~magnifying glasses, toy glasses, goggles consisting of plano white or plano colored lenses or ordinary colored glasses, or to optometrists, physicians, or opticians who sell spectacles, eyeglasses, or lenses in prescription; provided, that a seller of simple reading magnifying glasses shall have the following notice permanently affixed in plain view to the top of any point of sale display: "These magnifiers are not intended to be a substitute for corrective lenses; only a professional eye examination can determine your eye health status and vision needs." This notice shall be also prominently displayed in all newspaper, magazine, and other advertisements for simple reading magnifying glasses. As used in this section, "simple reading magnifying glasses" do not include lenses of bifocal design or single vision lenses of over plus 2.5 diopters or equivalent magnification.~~

~~**5-35-21.1. Freedom of choice for eye care.** (a) Any contract providing for health care benefits, which calls for the expenditure of private or public funds, for any purpose involving eye care, which is within the scope of the practice of optometry, shall provide the recipients and/or beneficiaries the freedom to choose within the participating provider panel either an optometrist or physician to provide the eye care. This provision shall be applicable whether or not the contract is executed and/or delivered in or outside of the state, or for use within or outside of the state by or for any individuals who reside or are employed in the state.~~

~~(b) Where the contracts call for the expenditure of public or private funds, for any purpose involving eye expenditure of public or private funds, for any purpose involving eye care, there shall be no discrimination as to the rate of reimbursement for the health care, whether provided by a doctor of optometry or physician providing similar services.~~

~~(c) Where the contracts call for the expenditure of public or private funds involving Medicaid and Rite Care, Medicare, or supplemental coverage for any purpose relating to eyewear, and as it pertains to opticianry, the distribution, dispensing, filling, duplication and fabrication of eyeglasses or optical prosthesis by opticians as defined in section 5-35-1, those health plans or contracts are required to notify by publication in a public newspaper published within and circulated and distributed throughout the state of Rhode Island, to all providers, including, but not limited to, opticians, within the health plan's or contract's geographic service area, of the opportunity to apply for credentials, and there is no discrimination as to the rate of reimbursement for health care provided by an optician for similar services as rendered by other professions pursuant to this section. Nothing contained in this chapter shall require health plans to contract with any particular class of providers.~~

~~**5-35-22. [Repealed.]**~~

~~**5-35-23. Examination, registration and certification of opticians -- Examination fees.**~~

~~No person shall conduct the business of optician until he or she passes an examination conducted by the division of professional regulation, and shall have registered and received a certificate of registration. Every applicant shall pay to the division a fee which shall accompany his or her application for that examination. Any applicant who fails to satisfactorily pass the examination for registration is entitled at any subsequent regular examination held by the division to additional examinations, and for each subsequent examination a fee shall be paid. Those fees shall be established by the division of professional regulation.~~

~~**5-35-24. Qualifications of optician applicants.**~~ Every applicant for licensure shall present satisfactory evidence in the form of affidavits properly sworn to that he or she:

- ~~(1) Is over eighteen (18) years of age;~~
- ~~(2) Is of good moral character;~~
- ~~(3) Has successfully graduated from a high school of a standard approved by the department of elementary and secondary education in the state in which the applicant graduated or holds a statement of high school equivalency certified and issued by the department of elementary and secondary education in the state in which the applicant obtained the equivalency certificate;~~
- ~~(4) Has graduated from a two (2) year school of opticianry approved by the department;~~
- ~~(5) Has successfully completed one year of postgraduate internship with a registered optometrist or optician;~~
- ~~(6) Has successfully passed a written examination such as the national opticianry competency examination or any other written examination approved by the department and the advisory committee;~~
- ~~(7) Has successfully passed a practical examination approved by the department with consultation from the advisory committee for opticianry.~~
- ~~(8) Notwithstanding any other provisions of this section and section 5-35-23, any individual who, at the time of his or her application for licensure, is a citizen or legal resident of the United States; submits satisfactory evidence to the department and advisory committee of successful completion of a two (2) year apprenticeship program; that he or she has previously held a valid license to practice opticianry in another state for at least one year; has practiced opticianry in this or any other state for a period of not less than one year; is in good standing in that state; has previously taken and successfully passed as a prerequisite for licensure in the other state a written examination such as the national opticianry competency examination or any other written examination approved by the department and the advisory committee and otherwise meets the requirements for licensure with the exception of subdivision (4) of this section; pays to this~~

1 ~~department the appropriate fee which accompanies his or her application; shall be eligible to~~
2 ~~apply for licensure on condition that he or she first completes the requirements of subdivision (7)~~
3 ~~of this section.~~

4 ~~**5-35-25. Opticians' biennial license fee.** -- Every registered optician shall, biennially, at~~
5 ~~any time that is prescribed by the division of professional regulation, pay to the division a license~~
6 ~~fee of ninety dollars (\$90.00) in default of which the division may revoke an individual's~~
7 ~~certificate and his or her authority to conduct the business of an optician.~~

8 ~~**5-35-26. Advertising by opticians.** -- The division of professional regulation, in addition~~
9 ~~to conducting the examinations, licensing, and registering of opticians, shall make rules and~~
10 ~~regulations governing advertising by opticians. The division shall have the power to revoke the~~
11 ~~license of any optician violating those rules and regulations.~~

12 ~~**5-35-27. Penalty for violations.** -- Any person who violates the provisions of this~~
13 ~~chapter shall be punished by a fine of not more than two hundred dollars (\$200) or shall be~~
14 ~~imprisoned for not more than three (3) months for each offense.~~

15 ~~**5-35-28. Prosecution of violations.** -- It shall be the duty of the director of the~~
16 ~~department of health and the division of professional regulation to enforce the provisions of this~~
17 ~~chapter and to prosecute every person who violates those provisions. Whenever a complaint is~~
18 ~~made by the administrator of the division, or by any of its authorized agents, of any violation of~~
19 ~~the provisions of this chapter, they shall not be required to furnish surety for costs, nor are they~~
20 ~~liable for costs on that complaint.~~

21 ~~**5-35-29. Persons exempt from requirements.** -- Nothing in this chapter shall be~~
22 ~~construed to apply to physicians registered to practice medicine under the laws of this state. This~~
23 ~~chapter shall not be construed to apply to registered osteopaths, nor shall any provision contained~~
24 ~~in sections 5-35-23--5-35-26, be construed to apply to optometrists licensed to practice in Rhode~~
25 ~~Island or to persons engaged in optical work, but who do not conduct a retail or wholesale optical~~
26 ~~business.~~

27 ~~**5-35-30. Severability.** -- (a) If any provision of this chapter or of any rule or regulation~~
28 ~~made under this chapter, or the application of this chapter to any person or circumstances, is held~~
29 ~~invalid by a court of competent jurisdiction, the remainder of the chapter, rule or regulation, and~~
30 ~~the application of that provision to other persons or circumstances shall not be affected.~~

31 ~~-(b) The invalidity of any section or sections or parts of any section or sections of this~~
32 ~~chapter does not affect the validity of the remainder of the chapter.~~

33 ~~**5-35-31. Construction of glass lenses -- Violations -- Penalty.** -- (a) No person shall~~
34 ~~distribute, sell, or deliver any eyeglasses or sunglasses unless those eyeglasses or sunglasses are~~

~~fitted with heat-treated glass lenses, plastic lenses, laminated lenses, or lenses made impact resistant by other methods. The provisions of this subsection do not apply if a physician or optometrist, having found that those lenses will not fulfill the visual requirements of a particular patient, directs, in writing, the use of other lenses and gives written notification to the patient. Before they are mounted in frames, all impact-resistant eyeglass and sunglass lenses, except plastic lenses, laminated lenses, and raised ledge multifocal lenses must withstand an impact test of a steel ball five eighths ($\frac{5}{8}$) of an inch in diameter weighing approximately fifty six hundredths of an ounce (0.56 oz.) dropped from a height of fifty (50) inches. Raised ledge multifocal lenses are capable of withstanding the impact test but do not need to be tested beyond initial design testing. To demonstrate that all plastic lenses and laminated lenses are capable of withstanding the impact test, the manufacturer of the lenses shall be subject to the impact test a statistically significant sampling of lenses from each production batch, and the tested lenses are representative of the finished forms as worn by the wearer. Plastic prescription and plastic non-prescription lenses, tested on the basis of statistical significance, may be tested in uncut finished or semi-finished form at the point of original manufacture.~~

~~(b) No person shall distribute, sell, exchange, or deliver, or have in his or her possession with intent to distribute, sell, exchange, or deliver any eyeglass frame or sunglass frame containing any form of cellulose nitrate or other highly flammable materials.~~

~~(c) Any person convicted of violating the provisions of this section shall be punished by a fine of not less than five hundred dollars (\$500) for each violation.~~

~~**5-35-32. Continuing education for opticians.** (a) Every person licensed to practice opticianry within this state on or before the thirty-first day of January of each year his or her license comes up for renewal and as a condition to his or her recertification and issuance of a biennial license shall present to the advisory committee for opticianry satisfactory evidence of his or her having completed not less than twelve (12) hours of continuing education in the preceding two (2) calendar years. Any course intended to fulfill the requirement of continuing education shall be submitted to the committee for review and approval. Continuing education derived from attendance at or participation in any of the following shall be deemed approved by the committee:~~

~~(1) Any course and/or courses offered by a provider meeting the guidelines of continuing opticianry education of the American Board of Opticianry.~~

~~(2) A maximum of one hour per two (2) year period in approved management and marketing courses.~~

~~(3) Any other course approved by the advisory committee on opticianry.~~

~~(b) If the applicant submits satisfactory evidence to the committee that he or she has~~

~~completed continuing opticianry education requirements and has complied with the provisions of section 5-35-25, a license for a two (2) year period shall be issued.~~

~~-(e) The committee, in its discretion, may exempt a person from the requirements for continuing opticianry education for any hardship or other extenuating circumstances as the committee deems appropriate.~~

SECTION 2. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 35.1

OPTOMETRISTS

5-35.1-1. Definitions. – As used in this chapter, the following terms are construed as follows:

(1) "Amplified optometrist" means an optometrist licensed in this state to practice optometry and authorized by the board to administer and prescribe pharmaceutical agents in the treatment of conditions of the human eye and its appendages, including anterior uveitis and glaucoma, without surgery or other invasive techniques, and in accordance with section 5-35.1-12 and all the requirements of this chapter.

(2) "Board" means the board of optometry established under the provisions of section 5-35.1-15 of the act.

(3) "Certified optometrist" means an optometrist licensed in this state to practice optometry and authorized by the board to administer and prescribe topical ocular pharmaceutical agents in the treatment of ocular conditions of the anterior segment of the human eye and its appendages (with the exception of uveitis and glaucoma) without surgery or other invasive techniques and in accordance with section 5-35.1-12 and all the requirements of this chapter.

(4) "Department" means the department of health.

(5) "Director" means the director of the department of health.

(6) "Optometrist" means a person licensed in this state to practice optometry pursuant to the provisions of this chapter.

(7) "Optometry" means the profession whose practitioners are engaged in the art and science of the evaluation of vision and the examination of vision and the examination and refraction of the human eye which includes: the employment of any objective or subjective means for the examination of the human eye or its appendages; the measurement of the powers or range of human vision or the determination of the accommodative and refractive powers of the human eye or the scope of its functions in general and the adaptation of lenses, prisms, and/or frames for the aid of these; the prescribing, directing the use of or administering ocular exercises, visual

training, vision training, or orthoptics, and the use of any optical device in connection with these;
the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human
eye; the examination or diagnosis of the human eye to ascertain the presence of abnormal
conditions or functions; and the application of pharmaceutical agents to the eye, provided, that no
optometrist licensed in this state shall perform any surgery for the purpose of detecting any
diseased or pathological condition of the eye. With respect to presently licensed optometrists,
only presently licensed optometrists who:

(1) have satisfactorily completed a course in pharmacology, as it applies to optometry, at
an institution accredited by a regional, professional, or academic accreditation organization which
is recognized by the national commission on accreditation, with particular emphasis on the
application of drugs to the eye for the purposes of detecting any diseased or pathological
condition of the eye; or the effects of any disease or pathological condition of the eye, approved
by the board of examiners in optometry and the department; or

(2)(i) have successfully passed all sections of the national board of examiners in
optometry (NBEO) examination; and

(ii) the treatment and management of ocular disease (TMOD) examination, shall be
permitted to apply pharmaceutical agents to the eye for the purpose of detecting any diseased or
pathological condition of the eye, or the effects of any disease or pathological condition of the
eye.

(8) "Pharmaceutical agents" means any medications as determined by the department,
except those specified in schedules I and II as provided in chapter 21-28.

5-35.1-2. Qualifications to practice optometry. – (a) Every applicant for licensure shall
present satisfactory evidence in the form of affidavits properly sworn to that he or she;

(1) is of good moral character; and

(2) has graduated from a school or college of optometry which maintains a course in
optometry of not less than four (4) years and is approved by the accreditation council on
optometric education (ACOE) or other accrediting body as approved by the board; and

(3) has successfully passed a national examination or other examinations approved by the
department and the board; and

(4) any other qualifications as may be established in rules and regulations promulgated by
the department.

5-35.1-3. Application for examination and license. – Every person desiring to be
licensed to practice optometry as provided in this chapter shall file with the department, in the
form prescribed by the department, an application, verified by oath, presenting the facts which

entitle the applicant to a license to practice optometry under this chapter. No one shall be permitted to practice optometry in this state without a valid license.

5-35.1-4. Fee for license. – Every applicant shall pay to the department a fee of ninety dollars (\$90.00) which shall accompany his or her application for a license.

5-35.1-5. Registration of optometrists from other states. – Any person who presents evidence to the department that he or she is entitled to practice optometry in another state where requirements for registration are, in the opinion of the department, equivalent to those of this state, may be licensed in this state upon payment to the department of a fee.

5-35.1-6. Issuance, registration, and display of certificate of license to practice optometry. – Every applicant who complies with the provisions of this chapter shall receive from the director under his or her seal a certificate of license entitling him or her to practice optometry in this state. Every person to whom a certificate or license is issued by the department shall keep that certificate displayed in a conspicuous place in the office or place of business where that person practices optometry and, whenever required, shall exhibit the certificate to any authorized representative of the department.

5-35.1-7. Renewal of license to practice optometry. – Every licensed optometrist who desires to continue the practice of optometry shall attest to the completion of a prescribed course of continuing optometric education. He or she shall annually pay to the department a renewal fee of one hundred seventy dollars (\$170). An additional fee of seventy dollars (\$70.00) shall be charged to the licensee who fails to renew by the license expiration date. Retirement from practice in this state for a period not exceeding five (5) years shall not deprive the holder of a certificate of license or the right to renew a certificate upon the payment of all annual renewal fees remaining unpaid, and a further fifty dollars (\$50.00) as an added fee.

5-35.1-8. Use of title of doctor. – Any person licensed to practice optometry under this chapter may prefix or append to his or her name the title of doctor or any abbreviation of the word doctor, provided that person holds a degree granted by a school or college of optometry authorized to grant this degree.

5-35.1-9. Acts constituting unlawful practice of optometry. – No optometrist licensed by and practicing in this state may:

(1) use or occupy space for that practice under any oral or written lease, contract, arrangement or understanding with anyone (other than with another optometrist licensed by, and practicing in this state) by which the rent paid by that licensed optometrist for that use or occupancy or any element of the expense of practicing his or her profession varies according to his or her gross receipts, net profit, taxable income, numeral volume of the patients examined by

that licensed optometrist or any combination;

(2) use or occupy space for that practice in any building where more than fifty percent (50%) of the remaining space is used or occupied by tenants or a tenant of that building or the owner of that building and those tenants, tenant, or owner is engaged in the business of selling merchandise to the general public, if those tenants, tenant, or owner:

(i) uses, or occupies that space under any oral or written lease, contract, arrangement, or understanding with anyone by which the rent paid by those tenants or tenant for that use or occupancy or any element in the cost of doing business varies according to the gross receipts, net profit, taxable income, numerical volume of sales or customers of those tenants or tenant or any combination; or

(ii) no optometrist licensed by and practicing in this state advertises by written or spoken words of a character tending to deceive or mislead the public;

(3) practice his or her profession under any oral or written contract, arrangement or understanding where anyone, not licensed to practice optometry practicing in this state shares, directly or indirectly, in any fees received by that licensed optometrist.

5-35.1-10. Unlawful sale of spectacles. – It is unlawful for any person, firm, or corporation to sell, as merchandise, in any store or established place of business in the state, any eyeglasses, spectacles, or lenses for the correction of vision, unless a licensed optometrist, physician, or optician under the laws of this state is in charge and in personal attendance at the booth, counter, or place where those articles are sold in a store or established place of business. The provisions of this section shall not be construed to apply to the sale of simple reading magnifying glasses, toy glasses, goggles consisting of plano white or plano colored lenses or ordinary colored glasses, or to optometrists, physicians, or opticians who sell spectacles, eyeglasses or lenses by prescription; provided, that a seller of simple reading magnifying glasses shall have the following notice permanently affixed in plain view to the top of any point of sale display. "These magnifiers are not intended to be a substitute for corrective lenses; only a professional eye examination can determine your eye health status and vision needs." This notice shall also be prominently displayed in all newspaper, magazine, and other advertisements for simple reading magnifying glasses. As used in this section, "simple reading magnifying glasses" do not include lenses of bifocal design or single vision lenses of over plus 2.5 diopters or equivalent magnification.

5-35.1-11. Freedom of choice for eye care. – (a) Any contract providing for health care benefits which calls for the expenditure of private or public funds, for any purpose involving eye care which is within the scope of the practice of optometry, shall provide the recipients and/or

1 beneficiaries the freedom to choose within the participating provider panel either an optometrist
2 or physician to provide the eye care. This provision shall be applicable whether or not the
3 contract is executed and/or delivered in or outside of the state, or for use within or outside of the
4 state by or for any individuals who reside or are employed in the state.

5 (b) Where the contracts call for the expenditure of public or private funds, for any
6 purpose involving expenditure of public or private funds, for any purpose involving eye care,
7 there shall be no discrimination as to the rate of reimbursement for the health care, whether
8 provided by a doctor of optometry or physician providing similar services.

9 **5-35.1-12. Use and prescription of pharmaceutical agents for ocular conditions –**
10 **Optometrists training and certification.** – (a)(i) Notwithstanding the provisions of this chapter,
11 amplified optometrists of this state may use and prescribe pharmaceutical agents in the treatment
12 of conditions of the human eye and its appendages, without the use of surgery or other invasive
13 techniques; provided, that all qualified optometrists, shall be permitted to become amplified
14 optometrists in accordance with the requirements of section 5-35.1-2, subsection (c) hereof, and
15 all other requirements of this chapter; and provided, further, that drugs contained in schedule III
16 of chapter 21-28 shall be prescribed for no more than seventy-two (72) hours and that; no
17 optometrist shall deliver any medication by injection.

18 (b) The director shall issue regulations governing the prescribing of oral pharmaceutical
19 agents, including oral steroids and schedule III narcotic and non-narcotic analgesics, within the
20 scope of the optometrist's practice.

21 (c) To be newly licensed as an amplified optometrist, a qualified optometrist must meet
22 the qualifications of section 5-35.1-2 and must provide evidence to the department that he or she
23 has satisfactorily:

24 (i) completed at least thirty (30) hours of clinical experience in the treatment of ocular
25 disease with pharmaceutical agents, consistent with current graduate degree requirements for
26 optometric education either within a four (4) year period immediately prior to the date of
27 application or as otherwise determined by the board; and

28 (ii) completed a course in pharmacology, as it applies to optometry, at an approved
29 institution accredited by a regional, professional or academic accreditation organization.

30 Further, to maintain amplified optometrist licensure status, all amplified optometrists
31 must submit, upon request, evidence of an average of at least five (5) hours of continuing
32 education in pharmacology per year.

33 (d) The director, before issuing the regulations, shall request and consider
34 recommendations that may be submitted by the board of optometry.

1 (e) The board shall require optometrists to adhere to electronic prescribing standards
2 within thirty (30) months of receiving prescriptive authority as defined in subsection 535.1-
3 12(a).

4 **5-35.1-13. Board of optometry – Appointment of members.** – The director shall
5 appoint a board of optometry. The board shall consist of five (5) members, all of whom shall be
6 residents of the state, four (4) of whom shall be licensed optometrists engaged in the practice of
7 optometry for at least five (5) years prior to their appointment, and there shall be one public
8 member. The members shall be appointed for terms of three (3) years; each member may serve a
9 maximum of two (2) consecutive full terms.

10 **5-35.1-14. Board – Compensation of members.** – No member of the board of
11 optometry shall receive compensation for his or her attendance at meetings of the board.

12 **5-35.1-15. Receipts.** – The proceeds of any fees collected pursuant to the provisions of
13 this chapter shall be deposited as general revenues.

14 **5-35.1-16. Minimum examination of patient.** – Every person practicing optometry in
15 accordance with the laws of this state shall, prior to prescribing eyeglasses, lenses or spectacles
16 make a minimum examination of the patient to determine existent visual defects and procedures
17 for their correction. The degree of that minimum examination shall be defined in the rules and
18 regulations of the department.

19 **5-35.1-17. Persons exempt from requirements.** – Nothing in this chapter shall be
20 construed to apply to physicians licensed to practice medicine under the laws of this state, or to
21 persons engaged in optical work who do not conduct a retail or wholesale optical business.

22 **5-35.1-18. Refusal, suspension or revocation of license for unprofessional conduct.** –
23 In addition to any and all other remedies provided in this chapter, the director may, after notice
24 and hearing in the director's discretion, refuse to grant, refuse to renew, suspend, or revoke any
25 license provided for in this chapter to any person who is guilty of unprofessional conduct or
26 conduct of a character likely to deceive or defraud the public, or for any fraud or deception
27 committed in obtaining a license. "Unprofessional conduct" is defined as including, but is not
28 limited to:

29 (1) Conviction of one or more of the offenses set forth in section 23-17-37;

30 (2) Knowingly placing the health of a patient at serious risk without maintaining proper
31 precautions;

32 (3) Advertising by means of false or deceptive statements;

33 (4) The use of drugs or alcohol to an extent that impairs the person's ability to properly
34 engage in the profession;

- 1 (5) Use of any false or fraudulent statement in any document connected with his or her
2 practice;
- 3 (6) Obtaining of any fee by fraud or willful misrepresentation of any kind whether from a
4 patient or insurance plan;
- 5 (7) Knowingly performing any act which in any way aids or assists an unlicensed person
6 to practice in violation of this chapter;
- 7 (8) Violating or attempting to violate, directly or indirectly, or assisting in, or abetting,
8 the violation of, or conspiring to violate, any of the provisions of this chapter or regulations
9 previously or hereafter issued pursuant to this chapter;
- 10 (9) Incompetence;
- 11 (10) Repeated acts of gross misconduct;
- 12 (11) An optometrist providing services to a person who is making a claim as a result of a
13 personal injury, who charges or collects from the person any amount in excess of the
14 reimbursement to the optometrist by the insurer as a condition of providing or continuing to
15 provide services or treatment;
- 16 (12) Failure to conform to acceptable and prevailing community standard of optometric
17 practice;
- 18 (13) Advertising by written or spoken words of a character tending to deceive or mislead
19 the public;
- 20 (14) Practicing his or her profession under any oral or written contract, arrangement or
21 understanding where anyone, not licensed to practice optometry in this state shares, directly or
22 indirectly, in any fees received by that licensed optometrist;
- 23 (15) Grave and repeated misuse of any ocular pharmaceutical agent; or
- 24 (16) The use of any agent or procedure in the course of optometric practice by an
25 optometrist not properly authorized under this chapter.

26 **5-35.1-19. Construction of glass lenses – Violations Penalty. --** (a) No person shall
27 distribute, sell, or deliver any eyeglasses or sunglasses unless those eyeglasses or sunglasses are
28 fitted with heat-treated glass lenses, plastic lenses, lamination lenses, or lenses made impact-
29 resistant by other methods. The provisions of this subsection do not apply if a physician or
30 optometrist, having found that those lenses will not fulfill the visual requirements of a particular
31 patient, directs, in writing, the use of other lenses and gives written notification to the patient.
32 Before they are mounted in frames, all impact-resistant eyeglasses and sunglass lenses, except
33 plastic lenses, laminated lenses, and raised ledge multi focal lenses must withstand an impact test
34 of a steel ball five-eighths (5/8) of an inch in diameter weighing approximately fifty-six

1 hundredths of an ounce (0.56 oz.) dropped from a height of fifty inches (50"). Raised ledge multi
2 focal lenses are capable of withstanding the impact test but do not need to be tested beyond initial
3 design testing. To demonstrate that all plastic lenses and laminated lenses are capable of
4 withstanding the impact test, the manufacturer of the lenses shall subject to the impact test a
5 statistically significant sampling of lenses from each production batch, and the tested lenses are
6 representative of the finished forms as worn by the wearer. Plastic prescription and plastic non-
7 prescription lenses, tested on the basis of statistical significance, may be tested in uncut finished
8 or semi-finished form at the point of original manufacture.

9 (b) Any person convicted of violating the provisions of this section shall be punished by a
10 fine of not less than five hundred dollars (\$500) for each violation.

11 **5-35.1-20. Penalty for violations.** -- Any person who violates the provisions of this
12 chapter shall be punished by a fine or not more than two hundred dollars (\$200) or shall be
13 imprisoned for not more than three (3) months for each offense.

14 **5-35.1-21. Prosecution of violations.** -- It shall be the duty of the director to enforce the
15 provisions of this chapter and to prosecute every person who violates those provisions. Whenever
16 a complaint is made by the department, or by any of its authorized agents of any violation of the
17 provisions of this chapter, they shall not be required to furnish surety for costs, nor are they liable
18 for costs on that complaint.

19 **5-35.1-22. Rules and regulations.** -- The department, in addition to approving the
20 examinations and licensing of optometrists, shall make rules and regulations governing the
21 practice of optometry. The department shall have the power to revoke the license of any
22 optometrist violating those rules and regulations.

23 **5-35.1-23. Severability.** -- (a) If any provision of this chapter or of any rule or regulation
24 made under this chapter, or the application of this chapter to any person or circumstances, is held
25 invalid by a court of competent jurisdiction, the remainder of the chapter, rule or regulation, and
26 the application of that provision to other persons or circumstances shall not be affected.

27 (b) The invalidity of any section or sections or parts of any section or sections of this
28 chapter does not affect the validity of the remainder of the chapter.

29 SECTION 3. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
30 is hereby amended by adding thereto the following chapter:

31 CHAPTER 35.2

32 OPTICIANS

33 **5-35.2-1. Definitions.** -- As used in this chapter:

34 (1) "Advisory committee" means the advisory committee of opticianry as established

1 herein.

2 (2) "Department" means the department of health

3 (3) "Director" means the director of the department of health.

4 (4) "Optician" means a person licensed in this state to practice opticianry pursuant to the
5 provisions of this chapter.

6 (5) "The Practice of Opticianry" means the preparation or dispensing of eyeglasses,
7 spectacles, lenses, or related appurtenances, for the intended wearers, or users, on prescription
8 from licensed physicians or optometrists, or duplications or reproductions of previously prepared
9 eyeglasses, spectacles, lenses, or related appurtenances; or the person who, in accordance with
10 such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses,
11 spectacles, lenses, including spectacles that add powers for task specific use or occupational use,
12 or appurtenances, to the human face. Provided, however, a person licensed under the provisions
13 of this chapter shall be specifically prohibited from engaging in the practice of ocular refraction,
14 orthoptics, visual training, the prescribing of subnormal vision aids, telescopic spectacles, fitting,
15 selling, replacing, or dispensing contact lenses.

16 **5-35.2-2. Qualification of optician applicants. --** (a) Every applicant for licensure shall
17 present satisfactory evidence, in the form of affidavits properly sworn to, that he or she:

18 (1) Is of good moral character; and

19 (2) Has graduated from a two (2) year school of opticianry approved by the New England
20 Association of Schools and Colleges or an equivalent regional accrediting authority or other
21 accrediting authority as may be approved by the department with consultation from the advisory
22 committee; and

23 (3) Has successfully completed one year of postgraduate internship with a licensed
24 optometrist or optician; and

25 (4) Has successfully passed the national opticianry competency examination or any other
26 written examination approved by the department with consultation from the advisory committee;
27 and

28 (5) Has successfully passed a practical examination approved by the department with
29 consultation from the advisory committee.

30 (b) Every applicant for licensure who is or has been licensed in an alternate jurisdiction
31 shall present satisfactory evidence in the form of affidavits properly sworn to that he or she:

32 (1) Is of good moral character; and

33 (2) Has graduated from high school; and

34 (3) Has graduated from a two (2) year school of opticianry approved by the New England

Association of Schools and Colleges or an equivalent regional accrediting authority or other accrediting authority as may be approved by the department with consultation from the advisory committee; or has successfully completed a two (2) year opticianry apprenticeship program; and

(4) Has held a valid license to practice opticianry in another state for at least one year and was in good standing during that time; and

(5) Has practiced opticianry in this or any other state for a period of not less than one year; and

(6) Has successfully passed the national opticianry competency examination or any other written examination approved by the department with consultation from the advisory committee; and

(7) Has successfully passed a practical exam approved by the department with consultation from the advisory committee.

5-35.2-3. Optician's biennial license fee. – Every applicant shall pay to the department a fee of ninety dollars (\$90) which shall accompany his or her application for a license. No one shall be permitted to practice opticianry without a valid license.

5-35.2-4. Advertising by opticians. – This division of professional regulation, in addition to conducting the examinations, licensing, and registering of opticians, shall make rules and regulations governing advertising by opticians. The division shall have the power to revoke the license of any optician violating those rules and regulations.

5-35.2-5 Unlawful sale of spectacles. – It is unlawful for any person, firm, or corporation to sell, as merchandise, in any store or established place of business in the state, any eyeglasses, spectacles, or lenses for incorrective vision, unless a licensed optometrist, physician, or optician under the laws of this state is in charge and in personal attendance at the booth, counter, or place where those articles are sold in that store or established place of business. The provisions of this section shall not be construed to apply to the sale of simple reading magnifying glasses, toy glasses, goggles consisting of piano white or piano colored lenses or ordinary colored glasses, or to optometrists, physicians, or opticians who sell spectacles, eyeglasses, or lenses in prescription; provided, that seller of simple reading magnifying glasses shall have the following notice permanently affixed in plain view to the top of any point of sale display: "These magnifiers are not intended to be substitute for corrective lenses; only a professional eye examination can determine your eye health status and vision needs." This notice shall also be prominently displayed in all newspaper, magazine, and other advertisements for simple reading magnifying glasses. As used in this section, "simple reading magnifying glasses" do not include lenses of bifocal design or single vision lenses of over plus 2.5 diopters or equivalent magnification.

1 **5-35.2-6. Freedom of choice for eye care.** – Where the contracts call for the expenditure
2 of public or private funds involving Medicaid and RIt Care, Medicare, or supplemental coverage
3 for any purpose relating to eyewear, and as it pertains to opticianry, the distribution, dispensing,
4 filling, duplication and fabrication of eyeglasses or optical prosthesis by opticians as defined in
5 section 5-35.1-1, those health plans or contracts are required to notify by publication in a public
6 newspaper published within and circulated and distributed throughout the state of Rhode Island,
7 to all providers, including, but not limited to, opticians, within the health plan’s or contract’s
8 geographic service area, of the opportunity to apply for credentials, and there is no discrimination
9 as to the rate or reimbursement for health care provided by an optician for similar services as
10 rendered by other professions pursuant to this section. Nothing contained in the chapter shall
11 require health plans to contract with any particular class of providers.

12 **5-35.2-7. Continuing education of opticians.** – Every person licensed to practice
13 opticianry who makes an application for renewal shall, as condition to his or her relicensure,
14 attest to the department of completion of continuing education in the preceding two (2) calendar
15 years in accordance with the rules and regulations promulgated hereunder.

16 **5-35.2-8. Advisory committee for opticianry.** – There is created an advisory committee
17 for opticianry, appointed by the director, to consist of five (5) members, who shall be residents of
18 the state, four (4) of whom shall be licensed as opticians under the provisions of this chapter, and
19 shall have practiced as opticians for a period of at least five (5) years, and one lay person who
20 shall be from the public. The members of the advisory committee shall be appointed for terms of
21 three (3) years; each member may serve a maximum of two (2) full terms. The duties of the
22 advisory committee for opticianry shall include but not be limited to advising the director on all
23 matters pertaining to the licensure and regulation of opticianry in this state.

24 **5-35.2-9. Persons exempt from requirements.** – Nothing in this chapter shall be
25 construed to apply to physicians licensed to practice medicine under the laws of this state,
26 optometrists, or persons engaged in optical work who do not conduct a retail or wholesale optical
27 business.

28 **5-35.2-10. Refusal, suspension or revocation of license for unprofessional conduct.** –
29 In addition to any and all other remedies provided in this chapter, the director may, after notice
30 and hearing, in the director's discretion, refuse to grants, refuse to renew, suspend, or revoke any
31 license provided for in this chapter to any person who is guilty of unprofessional conduct or
32 conduct of a character likely to deceive or defraud the public, or for any fraud or deception
33 committed in obtaining a license. “Unprofessional conduct” is defined as including, but is not
34 limited to:

1 (1) Conviction of one of the offenses set forth in section 23-17-37;
2 (2) Knowingly placing the health of a client a serious risk without maintaining proper
3 precautions;
4 (3) Advertising by means of false or deceptive statements;
5 (4) The use of drugs or alcohol to an extent that impairs that person's ability to properly
6 engage in the profession;
7 (5) The use of any false or fraudulent statement in any document connected with his or
8 her practice;
9 (6) The obtaining of any fee by fraud or willful misrepresentation of any kind either to a
10 patient or insurance plan;
11 (7) Knowingly performing any act which in any way aids or assists an unlicensed person
12 to practice in violation of this chapter;
13 (8) Violating or attempting to violate, directly or indirectly, or assisting in, or abetting,
14 the violation of, or conspiring to violate, any of the provisions of this chapter or regulations
15 previously or hereafter issued pursuant to this chapter;
16 (9) Incompetence;
17 (10) Repeated acts of gross misconduct;
18 (11) Failure to conform to acceptable and prevailing community standard of opticianry
19 practice.
20 **5-35.2-11. Construction of glass lenses – violations – penalty.** – (a) No person shall
21 distribute, sell, or delivery any eyeglasses or sunglasses unless those eyeglasses or sunglasses are
22 fitted with heat-treated glass lenses, plastic lenses, laminated lenses, or lenses made impact
23 resistant by other methods. The provisions of this subsection do not apply if a physician or
24 optometrist, having found that those lenses will not fulfill the visual requirements of a particular
25 patient, directs, in writing, the use of other lenses and gives written notification to the patient.
26 Before they are mounted in frames, all impact-resistant eyeglasses and sunglass lenses, except
27 plastic lenses, laminated lenses, and raised ledge multifocal lenses must withstand an impact test
28 of a steel ball five-eighths (5/8) of an inch in diameter weighing approximately fifty-six
29 hundredths of an ounce (0.56 oz) dropped from a height of fifty inches (50"). Raised ledge
30 multifocal lenses are capable of withstanding the impact test but do not need to be tested beyond
31 initial design testing. To demonstrate that all plastic lenses and laminated lenses are capable of
32 withstanding the impact test, the manufacturer of the lenses shall subject to the impact test a
33 statistically significant sampling of lenses from each production batch, and the tested lenses are
34 representative of the finished forms as worn by the wearer. Plastic prescription and plastic non-

1 prescription lenses, tested on the basis of statistical significance, may be tested in uncut finished
2 or semi-finished form at the point of original manufacture.

3 (b) Any person convicted of violating the provisions of this section shall be punished by a
4 fine of not less than five hundred dollars (\$500) for each violation.

5 **5-35.2-12. Penalty for violations.** – Any person who violates the provisions of this
6 chapter shall be punished by a fine or not more than two hundred dollars (\$200) or shall be
7 imprisoned for not more than three (3) months for each offense.

8 **5-35.2-13. Prosecution of violations.** – It shall be the duty of the director to enforce the
9 provisions of this chapter and to prosecute every person who violates those provisions.
10 Whenever a complaint is made by the department, or by any of its authorized agents, of any
11 violation of the provisions of this chapter, they shall not be required to furnish surety for costs,
12 nor are they liable for costs on that complaint.

13 **5-35.2-14. Rules and regulations.** – The department, in addition to approving the
14 examinations and licensing of opticians, shall make rules and regulations governing the practice
15 of opticianry. The department shall have the power to revoke the license of any optician violating
16 those rules and regulations.

17 **5-35.2-15. Severability.** – (a) If any provision of this chapter or of any rule or regulation
18 made under this chapter, or the application of this chapter to any person or circumstances, is held
19 invalid by a court of competent jurisdiction, the remainder of the chapter, rule or regulation, and
20 the application of that provision to other persons or circumstances shall not be affected.

21 (b) The invalidity of any section or sections of parts of any section or sections of this
22 chapter does not affect the validity of the remainder of this chapter.

23 SECTION 4. This act shall take effect upon passage.

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LC02526/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS - OPTOMETRISTS

- 1 This act would repeal the old chapter of the general laws which regulated optometrists
2 and create two new chapters, one of which would address the profession of optometrists and the
3 second of which would establish a chapter on opticians.
4 This act would take effect upon passage.

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