

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1545

By: McCorkell

AS INTRODUCED

An Act relating to professions and occupations;
amending 59 O.S. 1991, Section 944, which relates
to unlawful acts of optometrists; modifying and
adding to the list of such unlawful acts;
authorizing certain leasing and subleasing of
certain space; stating purpose; providing certain
limitations; providing certain exceptions under
certain conditions for such leasing and subleasing;
requiring certain signage; prohibiting certain
acts; defining term; repealing 59 O.S. 1991,
Section 596, which relates to optometrists; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 944, is
amended to read as follows:

Section 944. A. It shall be unlawful for any optometrist,
physician or other person doing, or purporting or pretending to do
eye examination or visual correction to ~~receive~~.

1. Receive or accept any rebate, kickback, reward or premium from any optical company or any other person, firm or corporation dealing in optical goods, appliances or materials, ~~or knowingly;~~

2. Knowingly allow or permit any person engaged in or interested in the sale of such optical goods, appliances, or materials, to solicit business for any person licensed under the provisions of Chapters 11 or 13 of ~~Title 59, Oklahoma Statutes.~~ ~~It shall be unlawful for any optometrist, physician, or other person to~~ make this title;

3. Make an eye examination, or do visual correction in any manner, either directly or indirectly as an employee or associate of a person, firm, corporation, lay body, organization, group or lay person and it shall be likewise unlawful for any corporation, lay body, organization, group or lay person in any manner to make an eye examination or perform any visual correction through the means of engaging the services on a salary, commission or any other compensatory basis of a person licensed under the provisions of Chapters 11 or 13 of ~~Title 59, Oklahoma Statutes 1951~~ this title, provided that this ~~sentence~~ paragraph shall not apply to the University of Oklahoma School of Medicine and Hospitals, or to a bona fide resident physician of a licensed hospital. ~~No person, firm, or corporation engaged in the business of retailing merchandise to the general public shall rent space, sublease departments, or otherwise permit any person purporting to do eye examination or visual care to occupy space in such retail store; or~~

4. Upon the request of a patient or client, refuse to provide such client or patient with a copy of such person's eyeglass or contact lens prescription.

B. 1. Nothing in this statute shall prohibit any person, firm or corporation engaged in the business of optometry or optical retailing or in the business of retailing merchandise to the general public from leasing or subleasing space to a licensed optometrist

purporting to do eye examinations or visual care in accordance with the provisions of this subsection. The purpose of this subsection is to ensure that the practice of optometry shall be carried out in such a manner that it is separate from the business of any dispensing optician or mercantile establishment, with control of one by the other.

2. If an optometrist rents, leases or subleases space from a person, firm or corporation that engages in the business of optometry, optical retailing or retailing merchandise that is next to the premises where said business is conducted, such space occupied by the optometrist shall be separated from the space occupied by the optician, optical or general retailer by solid partitions or walls from floor to ceiling. Provided, however, nothing in this subsection shall prohibit a doorway between the optometric office space and the optical dispensary, optical retailing space or retail mercantile establishment, provided that appropriate signage appears on such doorway identifying:

- a. the optometrist who occupies such space,
- b. that the optometrist is an "independent doctor of optometry",
- c. the phone number, and
- d. office hours of the optometrist who occupies such space;

and provided, further, that the optometric office space has a separate public entrance and exit to the outside or to any other public corridor or hallway.

3. No agreement entered into pursuant to this subsection shall allow an unlicensed person, firm, association or corporation to control or attempt to control the professional judgment of the optometrist. For the purpose of this subsection, the term "control" or "attempt to control" the professional judgment of the optometrist shall include but not be limited to:

- a. setting or attempting to set professional fees,
- b. restricting or attempting to restrict an optometrist's freedom to see patients on an appointment basis,
- c. attempting to limit the amount of time an optometrist spends with the patient,
- d. attempting to dictate the type or number of prescriptions written by an optometrist,
- e. limiting the type of equipment which the optometrist may have on the premises or use in the conduct of an eye examination,
- f. attempting to limit the ability of the optometrist to offer the full scope of optometric services as provided by law,
- g. terminating or threatening to terminate any lease, agreement or other relationship in an effort to control the professional judgment of an optometrist,
- h. making or guaranteeing a loan to an optometrist in excess of the value of the collateral securing the loan, and
- i. an agreement to divide or split fees received for professional services with any person, firm, association, or corporation for the solicitation or referral of a patient or client.

4. Any agreement entered into pursuant to this subsection

shall:

- a. be in writing with the lessor and specifically grant the optometrist independence in the exercise of professional judgment,
- b. provide that the patient files are under the control of the optometrist,
- c. not limit the optometrist's ability to advertise as the optometrist sees fit, and

d. not base any payments to be made on the number or volume of prescriptions written by the optometrist.

C. Nothing in this section shall prohibit a person licensed under Chapter 11 or Chapter 13 of ~~Title 59, Oklahoma Statutes,~~ this title from organizing or maintaining a professional association with other persons so licensed.

SECTION 2. REPEALER 59 O.S. 1991, Section 596, is hereby repealed.

SECTION 3. This act shall become effective November 1, 1995.

45-1-6093 MCD