

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2832

By: Smith (Hopper)

AS INTRODUCED

An Act relating to optometrists and optical equipment; amending 59 O.S. 2001, Sections 594, 595 and 596, which relate to the practice of optometry; clarifying and updating language; removing prohibition from rendering optometric care and dispensing certain optic products in a retail or mercantile establishment; amending 59 O.S. 2001, Sections 941, 942, 943.1, 943.2, 943.3, 944, 945, 946 and 947, which relate to optical goods; updating and clarifying language; removing certain restrictions; repealing 59 O.S. 2001, Section 597, which relates to penalties for certain practices; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 594, is amended to read as follows:

Section 594. No optometrist, licensed ~~under Chapter 13 of Title 59 of the Oklahoma Statutes pursuant to this chapter~~, shall practice his or her profession adjacent to or in such geographical proximity to a retail optical outlet, optical store, optical dispensary or any establishment where optical goods and materials are purveyed to the public ~~so as to induce patronage for himself thereby~~.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 595, is amended to read as follows:

Section 595. No optometrist, licensed ~~under Chapter 13 of Title 59 of the Oklahoma Statutes pursuant to this chapter~~, shall enter into any agreement, contract, arrangement, practice, or understanding, written or otherwise, with any optical supplier engaged in the sale of optical goods and materials to the public, whereby persons are referred by the optical supplier to ~~said~~

~~licensed person~~ the optometrist, and/or whereby persons are referred back to the optical supplier for the purchase of optical goods and materials.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 596, is amended to read as follows:

Section 596. It shall be ~~unlawful~~ lawful for any optometrist licensed pursuant to this chapter to ~~render~~:

1. Render optometric care in any retail, mercantile establishment which sells merchandise to the general public; and ~~it shall be unlawful for any person to display~~

2. Display, dispense, sell, provide or otherwise purvey to the public, prescription eyeglasses, prescription lenses, frames or mountings for prescription lenses, within or on the premises of in any manner, any retail or mercantile establishment in which the majority of the establishment's income is not derived from the sale of such prescription optical goods and materials.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 941, is amended to read as follows:

Section 941. A. It is the public policy of the State of Oklahoma that the citizens of Oklahoma shall receive the best possible visual care, through the efforts of well trained and qualified physicians licensed ~~under Chapter~~ pursuant to Chapters 11, Title 59, Oklahoma Statutes and 14 of this title and optometrists licensed ~~under~~ pursuant to Chapter 13, of Title 59, Oklahoma Statutes and that no of this title.

B. No unqualified person shall be permitted to visually correct for compensation the eyes of another.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 942, is amended to read as follows:

Section 942. A. It shall be unlawful for any ~~person~~ physician, firm, corporation, company, or partnership not licensed under the

provisions of Chapter 11 ~~or Chapter~~, 13 or 14 of ~~Title 59, Oklahoma Statutes 1951~~ this title, to ~~fit~~:

1. Fit, adjust, adapt, or to in any manner apply lenses, frames, prisms, or any other optical appliances to the face of a person, ~~or to duplicate~~;

2. Duplicate or attempt to duplicate, or to place or replace into the frames, any lenses or other optical appliances which have been prescribed, fitted, or adjusted for visual correction, or which are intended to aid human vision or to give any treatment or training designed to aid human vision, ~~;~~ or to represent

3. Represent or hold himself or herself out to the public as being qualified to do any of the acts listed in this section, ~~except that persons.~~

B. Persons licensed under the provisions of Chapters 11 ~~or~~, 13 and 14 of ~~Title 59, Oklahoma Statutes 1951~~ this title may, in a written prescription, or its duplicate, authorize any optical supplier to interpret such a prescription for optical appliances specified by this section, and who in accordance therewith may measure, adapt, fit, prepare, dispense, or adjust such lenses, spectacles, eyeglasses, prisms, tinted lenses, frames or appurtenances thereto, to the human face for the aid or correction of visual or ocular anomalies of the human eye; ~~and~~. The optical supplier may continue to do ~~the said such~~ acts on the ~~aforsaid~~ written prescription, or its duplicate, provided however, ~~that~~ the physician or optometrist writing ~~such the~~ prescription shall remain responsible for the full effect of the appliances so furnished by ~~such other person~~ the optical supplier. ~~Provided that~~

C. The provisions of this section shall not prevent a qualified person from making repairs to eyeglasses.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 943.1, is amended to read as follows:

Section 943.1 A. No person, firm or corporation shall publish or display, or cause or permit to be published or displayed in any newspaper or by radio, television, window display, poster, sign, billboard or any other means, any statement or advertisement concerning ophthalmic lenses, frames, eyeglasses, spectacles or parts thereof, that is fraudulent, deceitful or misleading, including, but not limited to, statements or advertisements of discount, premiums, price, gifts or any statements or advertisements of a similar nature, import or meaning or which is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.

B. No person, firm or corporation shall publish or display or cause or permit to be published or displayed in any newspaper, or by radio, television, window display, poster, sign, billboard or any other means of media, any statement or advertisement of or reference to the price or prices of any eyeglasses, spectacles, lenses, frames or any other optical device or materials or parts thereof requiring a prescription from a licensed physician or optometrist unless such person, firm or corporation complies with the provisions of subsections C through E of this section.

C. Any advertisement or statement published or displayed that contains the price of an item in any of the following categories:

1. Single vision lenses;
2. Kryptok bifocal lenses;
3. Regular bifocal lenses;
4. Trifocal lenses;
5. Aphakic lenses;
6. Prism lenses;
7. Double segment bifocal lenses;
8. Subnormal vision lenses;
9. Tinted lenses; and
10. Frames;

or any other items advertised shall also contain the prices of all items in the same category. All items and prices shall be published or displayed with equal prominence. No advertisement that shows the price of items listed in the categories shown above shall contain any language which directly or indirectly compares the prices so quoted with any other prices of similar items. In showing the price of all items in any category, it shall be permissible to combine two or more categories into one general category of "all other lenses" and designate the price thereby of "up to \$\_\_\_\_," which represents the highest price of any lenses included within this combined general category. Should there be a category in which two or more price differentials exist, it shall be permissible for the category to have a single listing in the advertisement with the lowest and the highest price in the category designated.

D. In the event the dispensing optician owns more than one office, the prices for all eyeglasses, spectacles, lenses, frames or other optical devices or materials or parts thereof in the same category shall be the same in all offices located within the same county or city regardless of the name under which the dispensing optician operates the offices.

E. All items advertised by price in accordance with this section shall be available at the advertised price without limit to quantity unless the advertisement contained quantity limitations to all persons including, but not limited to, individuals, physicians, optometrists and dispensing opticians.

F. Any advertisement quoting a price or prices of spectacles, eyeglasses and other optical appliances only, shall contain a readily legible statement that the quoted price or prices "Does not include professional services of an examining optometrist or physician."

G. Dispensers of optical appliances or devices are subject to the Oklahoma Deceptive Trade Practices Act, as provided in Sections

51 through 55 of Title 78 of the Oklahoma Statutes, and in addition to the civil remedies provided therein, it shall be deemed a misdemeanor for any dispenser of optical appliances or devices as defined herein to knowingly commit a deceptive trade practice as defined in the Oklahoma Deceptive Trade Practices Act.

H. A person who violates any provision of this ~~act~~ is section shall be deemed guilty of a misdemeanor and upon conviction is punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or by confinement in the county jail for not less than two (2) months nor more than six (6) months, or both such fine and imprisonment. A separate offense is committed each day a violation of this act occurs or continues. ~~Should~~ If the violator ~~be~~ is an optometrist, such a violation also constitutes grounds for revocation of ~~his~~ the license of the optometrist to practice optometry. ~~Provided, however, the~~ The owner, officer or employee of any advertising media, not otherwise having a pecuniary interest in any advertising authorized by the provisions of this ~~act~~ section, shall not be guilty of the misdemeanor ~~hereinabove defined~~ specified by this section by reason of the publishing or other delivery of any advertising furnished by a vendor of the service or material so advertised.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 943.2, is amended to read as follows:

Section 943.2 A. Any person who requests a copy of his or her prescription for spectacles or eyeglasses, following an eye examination by a person licensed ~~under Sections 481 through 518 or Sections 581 through 606 of Title 59~~ pursuant to Chapters 11, 13 and 14 of this title, shall be provided a written, signed copy of such prescription.

B. No extra charge shall be made for the prescription if the patient chooses to take the prescription elsewhere.

C. The examining optometrist or physician shall not be responsible for the accuracy of the optical materials furnished by another person.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 943.3, is amended to read as follows:

Section 943.3 All eyeglasses, spectacles, lenses or other optical devices or materials or parts thereof shall conform to the most current version of the standards of quality as promulgated by the American Standards Association, Inc. and commonly known as Z80.1 1964 Standards, as amended.

SECTION 9. AMENDATORY 59 O.S. 2001, Section 944, is amended to read as follows:

Section 944. A. It shall be unlawful for ~~any~~:

1. Any optometrist, physician or other person doing, or purporting or pretending to do eye examination or visual correction to 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 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~~ Chapter 11 ~~or~~, 13 or 14 of ~~Title 59, Oklahoma Statutes.~~ ~~It shall be unlawful for any~~ this title;

2. Any optometrist, physician, or other person to 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~~

3. 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~~ Chapter 11 or, 13 or 14 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.~~

B. Nothing in this section shall prohibit a person licensed ~~under pursuant to Chapter 11 or Chapter, 13 or 14 of Title 59, Oklahoma Statutes~~ this title, from organizing or maintaining a professional association with other persons so licensed.

SECTION 10. AMENDATORY 59 O.S. 2001, Section 945, is amended to read as follows:

Section 945. A. No department, commission, board, official, employee, or agency of the State of Oklahoma, or of any county, municipality or other subdivision of the State of Oklahoma shall, in the performance of its duties and functions in obtaining examination for refractions and visual training or correction for citizens of this state discriminate between persons licensed to perform examination for refraction and visual training or correction within the field for which their respective license entitle them to practice; ~~and no such.~~

B. No department, commission, board, official or agency of the state, county, municipality, or other subdivision shall send any resident of the State of Oklahoma out of this state to receive or be furnished such services.

C. This section shall have no application with respect to any person confined in the ~~Oklahoma Medical Center~~ University Hospitals.

SECTION 11. AMENDATORY 59 O.S. 2001, Section 946, is amended to read as follows:

Section 946. A. Any person, firm, company, corporation, or partnership violating any of the provisions, of ~~this act~~ Sections 941 through 945 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for each such offense, as provided by law, and in addition thereto may be enjoined by a court of competent jurisdiction for any further violations of the provisions of ~~this act~~ Sections 941 through 945 of this title.

B. It shall be the mandatory duty of the district attorneys of the respective counties to bring such injunction suits when a verified complaint is filed with such district attorney alleging any violations of ~~this act~~ Sections 941 through 945 of this title.

C. ~~This act~~ Sections 941 through 945 of this title shall not supercede other laws, but shall be cumulative to other statutes of the State of Oklahoma.

SECTION 12. AMENDATORY 59 O.S. 2001, Section 947, is amended to read as follows:

Section 947. ~~The~~ Except as otherwise specifically provided by Sections 941, 942 and 946 of this title, the provisions of Sections 1, 2 and 6 941, 942 and 946 of this act title shall not extend, limit or affect the legal scope of practice of persons licensed under the provisions of Chapter 11, 13 or 14, Title 59, Oklahoma Statutes 1951 of this title.

SECTION 13. REPEALER 59 O.S. 2001, Section 597, is hereby repealed.

SECTION 14. This act shall become effective November 1, 2002.

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