

An Act

ENROLLED SENATE
BILL NO. 100

By: David, Standridge, Sharp,
Rosino, Pemberton,
Pederson, Hall, Haste,
Dugger, Jech, Scott,
Murdock, Kidd, Leewright,
Rader, Coleman, Bullard,
Quinn, Thompson, Silk and
Bice of the Senate

and

Newton and Luttrell of the
House

An Act relating to the practice of optometry; amending 59 O.S. 2011, Sections 585 and 593, which relate to revocation of licenses; removing certain grounds for determination of unprofessional or unethical conduct; clarifying compliance with certain signage requirements; providing certain conduct not to be deemed unprofessional and unethical; updating statutory language; modifying provisions related to rental of certain space; amending 59 O.S. 2011, Section 944, which relates to the sale of optical goods; providing that optometrists may rent areas within retail stores; providing for applicability of provisions based upon county population; prescribing method for determination of population; prescribing time periods based upon changes in population; providing that optical goods may be sold within a retail store; defining terms; imposing requirements related to assessment mechanisms with respect to certain prescriptions; imposing duties on Oklahoma-licensed optometrists; requiring information to be provided prior to use of assessment mechanisms; imposing requirement related to practice standards; providing for scope and applicability of

requirements; imposing requirements related to contact lens prescriptions; authorizing information to be contained in prescription for contact lenses; imposing requirements related to visual aid glasses; prohibiting refusal with respect to release of certain prescriptions; imposing requirements related to expiration date of contact lens prescriptions; imposing requirement related to verification of information; imposing requirements related to verification of information by telephonic communications; prohibiting dispensing of contact lenses through mail unless pursuant to prescription; imposing duties on certain physicians; imposing requirements related to contact lens fitting; updating statutory references; repealing 59 O.S. 2011, Sections 594 and 596, which relate to the retail sale of optometric goods; providing for codification; and providing an effective date.

SUBJECT: The practice of optometry

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 585, is amended to read as follows:

Section 585. A. The Board shall have the power to revoke or suspend any certificate granted by it pursuant to the provisions of this chapter, for fraud, conviction of crime, unprofessional and unethical conduct, ~~habitual drunkenness~~ alcohol or narcotic impairment, exorbitant charges, false representation of goods, gross incompetency, contagious disease, any violation of any rule or regulation promulgated by the Board pursuant to the provisions of this chapter or any violation of this chapter. The following acts shall be deemed by the Board as unprofessional and unethical conduct:

1. Employment by ~~a licensed~~ an Oklahoma-licensed optometrist of any person to solicit from house to house the sale of lenses, frames, spectacles, or optometric services or examinations; and

2. Selling, advertising, or soliciting the sale of spectacles, eyeglasses, lenses, frames, mountings, eye examinations, or optometric services by house-to-house canvassing either in person or through solicitors; and

3. Acceptance of employment, either directly or indirectly, by ~~a licensed~~ an Oklahoma-licensed optometrist from an unlicensed optometrist or person engaged in any profession or business or owning or operating any profession or business to assist it, him, or them in practicing optometry in this state; provided that renting a separate area or room within or adjacent to a retail store pursuant to Section 944 of this title shall not be considered as direct or indirect employment, but any signage and advertisement of the optometric practice shall conform with Section 943.1 of this title; and

4. Publishing or displaying, or knowingly causing or permitting to be published or displayed by newspaper, radio, television, window display, poster, sign, billboard, or any other advertising media any statement or advertisement of any price or fee offered or charged by an optometrist for any optometric services or materials including lenses, frames, eyeglasses, or spectacles or parts thereof, including statements or advertisements of discount, premium, or gifts, if ~~said~~ the statements or advertisements are fraudulent, deceitful, misleading or in any manner whatsoever tend to create a misleading impression or are likely to mislead or deceive because in context ~~said~~ the statements or advertisements make only a partial disclosure of relevant facts; and

5. No person shall practice optometry under any name other than the proper name of ~~said~~ the person and it shall be the same name as used in the license issued by the Board of Examiners to ~~said~~ the person; provided that renting a separate area or room and practicing optometry within or adjacent to a retail store pursuant to Section 944 of this title shall not be considered a violation of this section. Before any certificate is revoked or suspended, the holder thereof shall be provided with notice and hearing as provided for in the Administrative Procedures Act, Sections 301 through 326 of Title

75 of the Oklahoma Statutes. The Board, after the expiration of the period of three (3) months after the date of ~~said~~ the revocation, may entertain application for the reissuance of ~~said~~ the revoked certificate and may reissue ~~said~~ the certificate upon payment of a reinstatement fee not to exceed three times the annual renewal fee. The Board shall have the right to promulgate such rules and regulations as may be necessary to put into effect the provisions of this chapter. ~~Said~~ The rules may prescribe which acts are detrimental to the general public health or welfare and may prescribe a minimum standard of sanitation, hygiene, and professional surroundings, and which acts constitute unprofessional or unethical conduct. ~~Said~~ The conduct shall be grounds for revocation or suspension of the license or certificate issued pursuant to the provisions of Section 584 of this title.

B. If an out-of-state license or certificate of an optometrist who also holds an Oklahoma license or certificate is suspended or revoked for any reason, his Oklahoma license may come under review by the Board. Should the out-of-state suspension or revocation be on grounds the same or similar to grounds for suspension or revocation in Oklahoma, the Board, after notice and hearing pursuant to the provisions of this section, may suspend or revoke the certificate of ~~said~~ the optometrist to practice in Oklahoma.

C. The following acts shall not be deemed by the Board as unprofessional and unethical conduct:

1. An optometrist practicing optometry within or adjacent to a retail store pursuant to Section 944 of this title, regardless of whether the retail store derives income from the sale of prescription optical goods and materials; and

2. An optometrist renting a separate area or room within a retail store pursuant to Section 944 of this title to practice optometry.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 593, is amended to read as follows:

Section 593. It is the public policy of the State of Oklahoma that optometrists rendering visual care to its citizens shall practice in an ethical, professional manner; that their practices be

free from any appearance of commercialism; that the visual welfare of the patient be the prime consideration at all times; and that optometrists shall not be associated with any nonprofessional person or persons in any manner which might degrade or reduce the quality of visual care received by the citizens of this state; provided that renting a separate area or room and practicing optometry within or adjacent to a retail store pursuant to Section 944 of this title shall not be considered a violation of this section.

SECTION 3. AMENDATORY 59 O.S. 2011, 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 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 11 or 13 of ~~Title 59, Oklahoma Statutes~~ this title. It shall be unlawful for 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 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 shall not apply to the University of Oklahoma School of Medicine and Hospitals, OSU College of Osteopathic Medicine or to a bona fide resident physician of a licensed hospital, and provided further that renting a separate area or room and practicing optometry within or adjacent to a retail store shall not be considered a violation of this section. ~~No~~

B. A person, firm, or corporation engaged in the business of retailing merchandise to the general public ~~shall~~ may rent ~~space,~~ sublease departments, or otherwise permit any person purporting to

do eye examination or visual care to occupy space in such a separate area or room within a retail store to an optometrist or optometric professional corporation for the practice of optometry in the following counties:

1. For the period beginning November 1, 2019, through October 31, 2024, in counties having a population of three hundred thousand (300,000) or more persons according to the latest Federal Decennial Census or most recent population estimate;

2. For the period beginning November 1, 2024, through October 31, 2029, in counties having a population of one hundred thirty thousand (130,000) persons or more according to the latest Federal Decennial Census or most recent population estimate;

3. For the period beginning November 1, 2029, through October 31, 2036, in counties having a population of one hundred thousand (100,000) persons or more according to the latest Federal Decennial Census or most recent population estimate;

4. For the period beginning November 1, 2036, through October 31, 2042, in counties having a population of fifty thousand (50,000) persons or more according to the latest Federal Decennial Census or most recent population estimate; and

5. For the period beginning November 1, 2042, and for all periods thereafter, all counties of the state.

C. For separate areas or rooms rented for the practice of optometry pursuant to subsection B of this section, the area or room rented for the practice of optometry must be definite and apart from space used by other occupants of the premises. Solid, opaque partitions or walls from floor to ceiling, which may contain doors and windows, must separate the area or room rented for the practice of optometry from space used by other occupants. The area or room rented for the practice of optometry must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby or corridor; provided that the space rented for the practice of optometry can also be accessible for a patient from the retail store if the access is through a second room with a door such that the patient does not have access to the space rented for the practice of optometry directly from the general retail area of the

retail store. Renting a separate area or room and practicing optometry within or adjacent to a retail store shall not be considered a rebate, kickback, reward or premium.

D. No lessor shall include a requirement in any lease of real property pursuant to which an optometrist or the professional business entity owned by the optometrist is required to maintain specific hours of operation or which provides for payment of rent or reduction of rent based on the gross revenues of the optometrist or the professional business entity, whether characterized as production goals, patient visits or similar economic metrics or that requires or provides any type of incentive through the lease terms based on referrals by the optometrist or the professional business entity owned by the optometrist for purposes of the sale of any form of tangible personal property sold by the lessor, including, but not limited to, eyeglasses, frames, eye care products, eyeglass accessories or similar tangible personal property related to care of the human eye.

E. A person, firm or corporation engaged in the business of retailing merchandise to the general public may sell optical goods, appliances or materials and function as an optical supplier in a retail store, regardless of whether a majority of the retail store's income is derived from the sale of prescription optical goods, appliances and materials or whether an optometrist is practicing optometry in such retail store.

F. Optical goods, appliances or materials shall be subject to all provisions regarding below cost sales set forth in the Unfair Sales Act created in Section 598.1 et seq. of Title 15 of the Oklahoma Statutes.

G. 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Assessment mechanism":

- a. means automated or virtual equipment, application or technology designed to be used on a telephone, a computer or an Internet-based device that may be used either in person or remotely to conduct an eye assessment, and
- b. includes artificial intelligence devices and any equipment, electronic or nonelectronic, that is used to perform an eye assessment;

2. "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic or corrective lens;

3. "Eye assessment" means an assessment of the ocular health and/or visual refractive status of a patient that may include but is not limited to objective refractive data or information generated by an automated testing device, including an autorefractor or Internet-based assessment method, in order to establish a medical diagnosis or refractive diagnosis for the correction of vision disorders;

4. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity;

5. "Prescription" means a handwritten or electronic order issued by an Oklahoma-licensed optometrist, or an oral order issued directly by an Oklahoma-licensed optometrist;

6. "Seller" means an individual or entity that sells contact lenses or visual aid glasses and dispenses them to Oklahoma residents in any manner; and

7. "Visual aid glasses":

- a. means eyeglasses, spectacles or lenses designed or used to correct visual defects, including spectacles that may be adjusted by the wearer to achieve

different types or levels of visual correction or enhancement, and

b. does not include optical instruments or devices that are:

- (1) not intended to correct or enhance vision,
- (2) sold without consideration of the visual status of the individual who will use the optical instrument or device, including sunglasses that are designed and used solely to filter out light, or
- (3) completely assembled eyeglasses or spectacles designed and used solely to magnify.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An assessment mechanism to conduct an eye assessment or to generate a prescription for contact lenses or visual aid glasses to a patient in Oklahoma shall:

1. Provide synchronous or asynchronous interaction between the patient and the Oklahoma-licensed optometrist;

2. Collect the patient's medical history, previous prescription for corrective eyewear and length of time since the patient's most recent in-person comprehensive eye health examination;

3. Provide any applicable accommodation required by the federal Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq., as amended;

4. Gather and transmit protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as amended;

5. Be used to perform a procedure with a recognized Current Procedural Terminology code maintained by the American Medical Association, if applicable; and

6. Maintain liability insurance, through its owner or lessee, in an amount adequate to cover claims made by individuals examined, diagnosed, or treated based on information and data, including any photographs, and scans, and other digital data generated by the assessment mechanism.

B. An Oklahoma-licensed optometrist shall:

1. Read and interpret the diagnostic information and data, including any photographs and scans, gathered by the assessment mechanism;

2. Verify the identity of the patient requesting treatment via the assessment mechanism;

3. Create and maintain a medical record for each patient, which is for use during the ongoing treatment of a patient and complies with all state and federal laws regarding maintenance and accessibility and is HIPAA-compliant; and

4. Provide a handwritten or electronic signature, along with their Oklahoma state license number, certifying their diagnosis, evaluation, treatment of the patient, and prescription or consultation recommendations for the patient.

C. Prior to using an assessment mechanism, each Oklahoma patient shall be provided with and shall accept as a term of use a disclosure that includes the following information:

1. This assessment is not a replacement for an in-person comprehensive eye health examination;

2. This assessment cannot be used to generate an initial prescription for contact lenses or a follow-up or first renewal of the initial prescription;

3. This assessment may only be used if the patient has had an in-person comprehensive eye health examination within the previous

twenty-four (24) months if the patient is conducting an eye assessment or receiving a prescription for visual aid glasses; and

4. The United States Centers for Disease Control and Prevention (CDC) advises contact lens wearers to be examined by an eye doctor one time a year or more often if needed.

D. Evaluation, treatment and consultation recommendations by an Oklahoma-licensed optometrist utilizing an assessment mechanism as required in this section, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice guidelines and standard of care as those in traditional in-person clinical settings.

E. This section shall not:

1. Limit the discretion of an Oklahoma-licensed optometrist to direct a patient to utilize any telehealth service deemed appropriate for any treatment and care of the patient;

2. Limit the sharing of patient information, in whatever form, by an optometrist; or

3. Apply beyond ocular health and eye care.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A contact lens prescription shall include the following:

1. The ophthalmic information necessary to accurately fabricate or dispense the lenses, including the lens manufacturer, lens series/brand name and the lens material, if applicable;

2. Power and base curve;

3. Name, license number, telephone number and, for written orders, the signature of the prescribing optometrist;

4. Patient's name and address, expiration date of the prescription and number of refills or lenses permitted; and

5. The date of issuance.

B. A contact lens prescription may also include the diameter, axis, add power, cylinder, peripheral curve, optical zone and center thickness.

C. A prescription for visual aid glasses shall include the following:

1. The name, license number, telephone number and, for written orders, the signature of the prescribing optometrist;

2. The patient's name;

3. The date of issuance; and

4. The value of all parameters the Oklahoma-licensed optometrist has deemed necessary to dispense corrective lenses appropriate for a patient.

D. An Oklahoma-licensed optometrist shall not refuse to release a prescription for contact lenses or visual aid glasses to a patient.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

Unless a health-related reason for the limitation is noted in the patient's medical records, contact lens prescriptions shall not have an expiration date of less than twelve (12) months from the date the prescription is authorized or the last date of the contact lens evaluation by an Oklahoma-licensed optometrist, whichever date is later. In no event shall a contact lens prescription be valid twelve (12) months after the date of authorization by an Oklahoma-licensed optometrist.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. All contact lens sellers authorized to dispense contact lenses in this state shall verify the contact lens prescription by the following:

1. Receipt of a written or faxed valid contact lens prescription signed by the prescribing optometrist; or
2. An electronic or oral affirmative communication of the complete contact lens prescription from the prescribing optometrist.

B. If a contact lens seller authorized to dispense contact lenses in this state finds it necessary to contact the prescribing optometrist via telephone in order to verify a contact lens prescription, the following protocols shall be followed:

1. Calls shall be made during regular business hours, which for purposes of this act shall be defined as Monday through Friday during the hours of 9:00 a.m. and 5:00 p.m. Central Standard Time excluding federal holidays;
2. Any verification requests shall include the name, address and telephone number of the patient;
3. The toll-free telephone number shall be included in voice mail or messages left on answering machines;
4. Contact lens prescriptions shall not be mailed, sent, delivered or dispensed before verification by the optometrist;
5. Touch-tone telephone options offered by a contact lens seller or any person authorized to dispense contact lenses in this state shall not constitute verification;
6. Response-time options stated by a contact lens seller or any person authorized to dispense contact lenses in this state shall not constitute verification; and
7. Calls shall comply with federal statutes.

C. In the absence of a prescription as defined and described in Section 10 of this act, it shall be a violation of this act to

dispense contact lenses through the mail or otherwise to an Oklahoma resident.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any seller or any person authorized to dispense contact lenses or visual aid glasses in this state who fills a prescription bears the full responsibility for the accurate dispensing of the contact lenses or visual aid glasses provided under the prescription. At no time shall any changes or substitutions be made, including brand, type of lenses or ophthalmic parameters, without the direction of the optometrist who issued the contact lens or visual aid glasses prescription.

B. The optometrist shall not be liable for any damages for injury resulting from the packaging or manufacturing of the contact lenses or visual aid glasses.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 646.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

A contact lens fitting shall be complete and a contact lens prescription may be written when:

1. The optometrist has completed all measurements, tests and examinations necessary to satisfy his or her professional judgment that the patient is a viable candidate to wear contact lenses, recognizing that more than one visit between the patient and the optometrist may be required; and

2. Contact lenses suitable for the patient's eyes have been evaluated and fitted by the optometrist to the patient's eyes and the optometrist is satisfied with the fitting based on ocular health and the visual needs of the patient.

The patient shall be entitled to receive a copy of the contact lens prescription with the appropriate number of lenses to fulfill the prescription until its expiration date.

SECTION 11. REPEALER 59 O.S. 2011, Sections 594 and 596,
are hereby repealed.

SECTION 12. The provisions of this act are severable and if any
part or provision shall be held void the decision of the court so
holding shall not affect or impair any of the remaining parts or
provisions of this act. Furthermore, any provision of this act in
conflict with federal law is void.

SECTION 13. This act shall become effective November 1, 2019.

Passed the Senate the 13th day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of May, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____