

1 **SENATE FLOOR VERSION**

2 February 28, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 902

By: David of the Senate

and

Martinez of the House

6
7
8 **[practice of optometry - revocation of licenses -**
9 **unprofessional or unethical conduct - public policy -**
10 **optometrists may rent areas within retail stores -**
11 **repealers - noncodification - effective date]**

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

8 3. Acceptance of employment, either directly or indirectly, by
9 a licensed optometrist from an unlicensed optometrist or person
10 engaged in any profession or business or owning or operating any
11 profession or business to assist it, him, or them in practicing
12 optometry in this state; provided that renting a separate area or
13 room within or adjacent to a retail store shall not be considered as
14 direct or indirect employment; and

15 4. Publishing or displaying, or knowingly causing or permitting
16 to be published or displayed by newspaper, radio, television, window
17 display, poster, sign, billboard, or any other advertising media any
18 statement or advertisement of any price or fee offered or charged by
19 an optometrist for any optometric services or materials including
20 lenses, frames, eyeglasses, or spectacles or parts thereof,
21 including statements or advertisements of discount, premium, or
22 gifts, if ~~said~~ the statements or advertisements are fraudulent,
23 deceitful, misleading or in any manner whatsoever tend to create a
24 misleading impression or are likely to mislead or deceive because in

1 context ~~said~~ the statements or advertisements make only a partial
2 disclosure of relevant facts; and

3 5. No person shall practice optometry under any name other than
4 the proper name of ~~said~~ the person and it shall be the same name as
5 used in the license issued by the Board of Examiners to ~~said~~ the
6 person; provided that practicing optometry within or adjacent to a
7 retail store shall not be considered a violation of this section.

8 Before any certificate is revoked or suspended, the holder thereof
9 shall be provided with notice and hearing as provided for in the
10 Administrative Procedures Act, Sections 301 through 326 of Title 75
11 of the Oklahoma Statutes. The Board, after the expiration of the
12 period of three (3) months after the date of ~~said~~ the revocation,
13 may entertain application for the reissuance of ~~said~~ the revoked
14 certificate and may reissue ~~said~~ the certificate upon payment of a
15 reinstatement fee not to exceed three times the annual renewal fee.
16 The Board shall have the right to promulgate such rules and
17 regulations as may be necessary to put into effect the provisions of
18 this chapter. ~~Said~~ The rules may prescribe which acts are
19 detrimental to the general public health or welfare and may
20 prescribe a minimum standard of sanitation, hygiene, and
21 professional surroundings, and which acts constitute unprofessional
22 or unethical conduct. ~~Said~~ The conduct shall be grounds for
23 revocation or suspension of the license or certificate issued
24 pursuant to the provisions of Section 584 of this title.

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

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

11 1. An optometrist practicing optometry within or adjacent to a
12 retail store, regardless whether the retail store derives income
13 from the sale of prescription optical goods and materials; and

14 2. An optometrist renting a separate area or room within a
15 retail store to practice optometry, regardless whether the separate
16 area or room is directly accessible from within the retail store.

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

19 Section 593. It is the public policy of the State of Oklahoma
20 that optometrists rendering visual care to its citizens shall
21 practice in an ethical, professional manner; ~~that their practices be~~
22 ~~free from any appearance of commercialism;~~ that the visual welfare
23 of the patient be the prime consideration at all times; and that
24 optometrists shall not ~~be associated with any nonprofessional person~~

1 ~~or persons~~ act in any manner which might degrade or reduce the
2 quality of visual care received by the citizens of this state.

3 SECTION 3. AMENDATORY 59 O.S. 2011, Section 944, is
4 amended to read as follows:

5 Section 944. A. It shall be unlawful for any optometrist,
6 physician or other person doing, or purporting or pretending to do
7 eye examination or visual correction to receive or accept any
8 rebate, kickback, reward or premium from any optical company or any
9 other person, firm or corporation dealing in optical goods,
10 appliances or materials, ~~or knowingly allow or permit any person~~
11 ~~engaged in or interested in the sale of such optical goods,~~
12 ~~appliances, or materials, to solicit business for any person~~
13 ~~licensed under the provisions of Chapters 11 or 13 of Title 59,~~
14 ~~Oklahoma Statutes.~~ It shall be unlawful for any optometrist,
15 physician, or other person to make an eye examination, or do visual
16 correction in any manner, either directly or indirectly as an
17 employee or associate of a person, firm, corporation, lay body,
18 organization, group or lay person and it shall be likewise unlawful
19 for any corporation, lay body, organization, group or lay person in
20 any manner to make an eye examination or perform any visual
21 correction through the means of engaging the services on a salary,
22 commission or any other compensatory basis of a person licensed
23 under the provisions of ~~Chapters 11 or 13 of Title 59, Oklahoma~~
24 ~~Statutes 1951~~ Chapter 11 or 13 of this title, provided that this

1 sentence shall not apply to the University of Oklahoma School of
2 Medicine and Hospitals, or to a bona fide resident physician of a
3 licensed hospital, and provided further that renting a separate area
4 or room within or adjacent to a retail store shall not be considered
5 a violation of this section. ~~No~~

6 B. A person, firm, or corporation engaged in the business of
7 retailing merchandise to the general public ~~shall~~ may rent ~~space,~~
8 ~~sublease departments, or otherwise permit any person purporting to~~
9 ~~do eye examination or visual care to occupy space in such a separate~~
10 area or room within a retail store to an optometrist or optometric
11 professional corporation for the practice of optometry. Renting a
12 separate area or room within a retail store shall not be considered
13 a rebate, kickback, reward or premium. A separate area or room
14 rented by an optometrist or optometric professional corporation may
15 be directly accessible from inside the retail store, and an entrance
16 opening on a public street, hall, lobby, or corridor shall not be
17 required. A person, firm, or corporation operating multiple retail
18 stores may rent a separate area or room to an optometrist or
19 optometric professional corporation for the practice of optometry in
20 no more than twenty retail stores in the State of Oklahoma before
21 January 1, 2020. Each subsequent year until January 1, 2030, a
22 person, firm, or corporation operating multiple retail stores may
23 rent a separate area or room to an optometrist or optometric
24 professional corporation for the practice of optometry in five

1 additional retail stores in the State of Oklahoma. After January 1,
2 2030, there shall be no limit on the number of retail stores in
3 which a person, firm, or corporation operating multiple retail
4 stores may rent a separate area or room to an optometrist or
5 optometric professional corporation for the practice of optometry.
6 A person, firm, or corporation engaged in the business of retailing
7 merchandise to the general public may sell optical goods,
8 appliances, or materials and function as an optical supplier in a
9 retail store, regardless whether a majority of the retail store's
10 income is derived from the sale of prescription optical goods,
11 appliances, and materials or whether an optometrist is practicing
12 optometry in such retail store.

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

17 SECTION 4. NEW LAW A new section of law, which shall not
18 be codified in the Oklahoma Statutes, reads as follows:

19 Upon the effective date of this act, all laws and administrative
20 rules of the Board of Examiners in Optometry in conflict with this
21 act shall be null and void. After the effective date of this act,
22 an optometrist, optical supplier, or a person, firm, or corporation
23 engaged in the business of retailing merchandise to the general
24

1 public may bring a declaratory judgment action to determine whether
2 this act affects the validity of a law or administrative rule.

3 SECTION 5. REPEALER 59 O.S. 2011, Sections 594 and 596,
4 are hereby repealed.

5 SECTION 6. This act shall become effective November 1, 2019.

6 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
7 February 28, 2019 - DO PASS AS AMENDED
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24