

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 8, 2019

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 100

By: David et al of the Senate and Newton and Luttrell of the House

Title: Practice of optometry; revocation of licenses; unprofessional or unethical conduct; providing optometrists may rent areas within retail stores; prescriptions. Effective date.

_____ together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

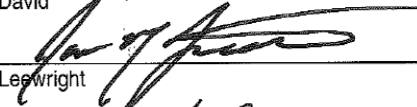
SENATE CONFEREES:



David



Newhouse



Legwright



Brooks



McCortney



Young

HOUSE CONFEREES:

Conference Committee on Business and Commerce

Senate Action _____ Date _____ House Action _____ Date _____



STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

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

CONFERENCE COMMITTEE SUBSTITUTE

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;

1 imposing requirement related to practice standards;
2 providing for scope and applicability of
3 requirements; imposing requirements related to
4 contact lens prescriptions; authorizing information
5 to be contained in prescription for contact lenses;
6 imposing requirements related to visual aid glasses;
7 prohibiting refusal with respect to release of
8 certain prescriptions; imposing requirements related
9 to expiration date of contact lens prescriptions;
10 imposing requirement related to verification of
11 information; imposing requirements related to
12 verification of information by telephonic
13 communications; prohibiting dispensing of contact
14 lenses through mail unless pursuant to prescription;
15 imposing duties on certain physicians; imposing
16 requirements related to contact lens fitting;
17 updating statutory references; repealing 59 O.S.
18 2011, Sections 594 and 596, which relate to the
19 retail sale of optometric goods; providing for
20 codification; and providing an effective date.

21
22
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 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

1 shall be deemed by the Board as unprofessional and unethical
2 conduct:

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

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

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

20 4. Publishing or displaying, or knowingly causing or permitting
21 to be published or displayed by newspaper, radio, television, window
22 display, poster, sign, billboard, or any other advertising media any
23 statement or advertisement of any price or fee offered or charged by
24 an optometrist for any optometric services or materials including

1 lenses, frames, eyeglasses, or spectacles or parts thereof,
2 including statements or advertisements of discount, premium, or
3 gifts, if ~~said~~ the statements or advertisements are fraudulent,
4 deceitful, misleading or in any manner whatsoever tend to create a
5 misleading impression or are likely to mislead or deceive because in
6 context ~~said~~ the statements or advertisements make only a partial
7 disclosure of relevant facts; and

8 5. No person shall practice optometry under any name other than
9 the proper name of ~~said~~ the person and it shall be the same name as
10 used in the license issued by the Board of Examiners to ~~said~~ the
11 person; provided that renting a separate area or room and practicing
12 optometry within or adjacent to a retail store pursuant to Section
13 944 of this title shall not be considered a violation of this
14 section. Before any certificate is revoked or suspended, the holder
15 thereof shall be provided with notice and hearing as provided for in
16 the Administrative Procedures Act, Sections 301 through 326 of Title
17 75 of the Oklahoma Statutes. The Board, after the expiration of the
18 period of three (3) months after the date of ~~said~~ the revocation,
19 may entertain application for the reissuance of ~~said~~ the revoked
20 certificate and may reissue ~~said~~ the certificate upon payment of a
21 reinstatement fee not to exceed three times the annual renewal fee.
22 The Board shall have the right to promulgate such rules and
23 regulations as may be necessary to put into effect the provisions of
24 this chapter. ~~Said~~ The rules may prescribe which acts are

1 detrimental to the general public health or welfare and may
2 prescribe a minimum standard of sanitation, hygiene, and
3 professional surroundings, and which acts constitute unprofessional
4 or unethical conduct. ~~Said~~ The conduct shall be grounds for
5 revocation or suspension of the license or certificate issued
6 pursuant to the provisions of Section 584 of this title.

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

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

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

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

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

3 Section 593. It is the public policy of the State of Oklahoma
4 that optometrists rendering visual care to its citizens shall
5 practice in an ethical, professional manner; that their practices be
6 free from any appearance of commercialism; that the visual welfare
7 of the patient be the prime consideration at all times; and that
8 optometrists shall not be associated with any nonprofessional person
9 or persons in any manner which might degrade or reduce the quality
10 of visual care received by the citizens of this state; provided that
11 renting a separate area or room and practicing optometry within or
12 adjacent to a retail store pursuant to Section 944 of this title
13 shall not be considered a violation of this section.

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

16 Section 944. A. It shall be unlawful for any optometrist,
17 physician or other person doing, or purporting or pretending to do
18 eye examination or visual correction to receive or accept any
19 rebate, kickback, reward or premium from any optical company or any
20 other person, firm or corporation dealing in optical goods,
21 appliances or materials, or knowingly allow or permit any person
22 engaged in or interested in the sale of such optical goods,
23 appliances, or materials, to solicit business for any person
24 licensed under the provisions of Chapters 11 or 13 of ~~Title 59,~~

1 ~~Oklahoma Statutes~~ this title. It shall be unlawful for any
2 optometrist, physician, or other person to make an eye examination,
3 or do visual correction in any manner, either directly or indirectly
4 as an employee or associate of a person, firm, corporation, lay
5 body, organization, group or lay person and it shall be likewise
6 unlawful for any corporation, lay body, organization, group or lay
7 person in any manner to make an eye examination or perform any
8 visual correction through the means of engaging the services on a
9 salary, commission or any other compensatory basis of a person
10 licensed under the provisions of Chapters 11 or 13 of ~~Title 59,~~
11 ~~Oklahoma Statutes 1951~~ this title, provided that this sentence shall
12 not apply to the University of Oklahoma School of Medicine and
13 Hospitals, OSU College of Osteopathic Medicine or to a bona fide
14 resident physician of a licensed hospital, and provided further that
15 renting a separate area or room and practicing optometry within or
16 adjacent to a retail store shall not be considered a violation of
17 this section. ~~No~~

18 B. A person, firm, or corporation engaged in the business of
19 retailing merchandise to the general public ~~shall~~ may rent ~~space,~~
20 ~~sublease departments, or otherwise permit any person purporting to~~
21 ~~do eye examination or visual care to occupy space in such~~ a separate
22 area or room within a retail store to an optometrist or optometric
23 professional corporation for the practice of optometry in the
24 following counties:

1 1. For the period beginning November 1, 2019, through October
2 31, 2024, in counties having a population of three hundred thousand
3 (300,000) or more persons according to the latest Federal Decennial
4 Census or most recent population estimate;

5 2. For the period beginning November 1, 2024, through October
6 31, 2029, in counties having a population of one hundred thirty
7 thousand (130,000) persons or more according to the latest Federal
8 Decennial Census or most recent population estimate;

9 3. For the period beginning November 1, 2029, through October
10 31, 2036, in counties having a population of one hundred thousand
11 (100,000) persons or more according to the latest Federal Decennial
12 Census or most recent population estimate;

13 4. For the period beginning November 1, 2036, through October
14 31, 2042, in counties having a population of fifty thousand (50,000)
15 persons or more according to the latest Federal Decennial Census or
16 most recent population estimate; and

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

19 C. For separate areas or rooms rented for the practice of
20 optometry pursuant to subsection B of this section, the area or room
21 rented for the practice of optometry must be definite and apart from
22 space used by other occupants of the premises. Solid, opaque
23 partitions or walls from floor to ceiling, which may contain doors
24 and windows, must separate the area or room rented for the practice

1 of optometry from space used by other occupants. The area or room
2 rented for the practice of optometry must have a patient's entrance
3 opening on a public thoroughfare, such as a public street, hall,
4 lobby or corridor; provided that the space rented for the practice
5 of optometry can also be accessible for a patient from the retail
6 store if the access is through a second room with a door such that
7 the patient does not have access to the space rented for the
8 practice of optometry directly from the general retail area of the
9 retail store. Renting a separate area or room and practicing
10 optometry within or adjacent to a retail store shall not be
11 considered a rebate, kickback, reward or premium.

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

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1 accessories or similar tangible personal property related to care of
2 the human eye.

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

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

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

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

21 As used in this act:

22 1. "Assessment mechanism":

23 a. means automated or virtual equipment, application or
24 technology designed to be used on a telephone, a

1 computer or an Internet-based device that may be used
2 either in person or remotely to conduct an eye
3 assessment, and

4 b. includes artificial intelligence devices and any
5 equipment, electronic or nonelectronic, that is used
6 to perform an eye assessment;

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

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

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

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

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

4 7. "Visual aid glasses":

5 a. means eyeglasses, spectacles or lenses designed or
6 used to correct visual defects, including spectacles
7 that may be adjusted by the wearer to achieve
8 different types or levels of visual correction or
9 enhancement, and

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

12 (1) not intended to correct or enhance vision,

13 (2) sold without consideration of the visual status
14 of the individual who will use the optical
15 instrument or device, including sunglasses that
16 are designed and used solely to filter out light,
17 or

18 (3) completely assembled eyeglasses or spectacles
19 designed and used solely to magnify.

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

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

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

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

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

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

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

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

23 B. An Oklahoma-licensed optometrist shall:
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1 1. Read and interpret the diagnostic information and data,
2 including any photographs and scans, gathered by the assessment
3 mechanism;

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

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

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

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

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

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

22 3. This assessment may only be used if the patient has had an
23 in-person comprehensive eye health examination within the previous
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1 twenty-four (24) months if the patient is conducting an eye
2 assessment or receiving a prescription for visual aid glasses; and

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

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

12 E. This section shall not:

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

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

18 3. Apply beyond ocular health and eye care.

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

22 A. A contact lens prescription shall include the following:
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- 1 1. The ophthalmic information necessary to accurately fabricate
2 or dispense the lenses, including the lens manufacturer, lens
3 series/brand name and the lens material, if applicable;
 - 4 2. Power and base curve;
 - 5 3. Name, license number, telephone number and, for written
6 orders, the signature of the prescribing optometrist;
 - 7 4. Patient's name and address, expiration date of the
8 prescription and number of refills or lenses permitted; and
 - 9 5. The date of issuance.
- 10 B. A contact lens prescription may also include the diameter,
11 axis, add power, cylinder, peripheral curve, optical zone and center
12 thickness.
- 13 C. A prescription for visual aid glasses shall include the
14 following:
- 15 1. The name, license number, telephone number and, for written
16 orders, the signature of the prescribing optometrist;
 - 17 2. The patient's name;
 - 18 3. The date of issuance; and
 - 19 4. The value of all parameters the Oklahoma-licensed
20 optometrist has deemed necessary to dispense corrective lenses
21 appropriate for a patient.
- 22 D. An Oklahoma-licensed optometrist shall not refuse to release
23 a prescription for contact lenses or visual aid glasses to a
24 patient.

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

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

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

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

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

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

3 1. Calls shall be made during regular business hours, which for
4 purposes of this act shall be defined as Monday through Friday
5 during the hours of 9:00 a.m. and 5:00 p.m. Central Standard Time
6 excluding federal holidays;

7 2. Any verification requests shall include the name, address
8 and telephone number of the patient;

9 3. The toll-free telephone number shall be included in voice
10 mail or messages left on answering machines;

11 4. Contact lens prescriptions shall not be mailed, sent,
12 delivered or dispensed before verification by the optometrist;

13 5. Touch-tone telephone options offered by a contact lens
14 seller or any person authorized to dispense contact lenses in this
15 state shall not constitute verification;

16 6. Response-time options stated by a contact lens seller or any
17 person authorized to dispense contact lenses in this state shall not
18 constitute verification; and

19 7. Calls shall comply with federal statutes.

20 C. In the absence of a prescription as defined and described in
21 Section 10 of this act, it shall be a violation of this act to
22 dispense contact lenses through the mail or otherwise to an Oklahoma
23 resident.

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

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

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

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

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

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

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

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

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

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

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

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