

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL NO. 902

By: David

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5  
6 AS INTRODUCED

7 An Act relating to the practice of optometry;  
8 amending 59 O.S. 2011, Section 585, which relates to  
9 revocation of licenses; removing certain grounds for  
10 determination of unprofessional or unethical conduct;  
11 providing certain conduct not to be deemed  
12 unprofessional and unethical; updating statutory  
13 language; amending 59 O.S. 2011, Section 593, which  
14 relates to public policy; removing certain provisions  
15 relating to commercialism; amending 59 O.S. 2011,  
16 Section 944, which relates to the sale of optical  
17 goods; removing provisions related to soliciting of  
18 business; providing that optometrists may rent areas  
19 within retail stores; phasing in the number of stores  
20 in which a retailer may rent to optometrists;  
21 providing that optical goods may be sold within a  
22 retail store; providing that an optometrist, optical  
23 supplier, or retail store may seek declaratory  
24 judgment as to the validity of conflicting laws and  
rules; updating statutory references; repealing 59  
O.S. 2011, Sections 594 and 596, which relate to the  
retail sale of optometric goods; providing for  
noncodification; and providing an effective date.

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

1 this chapter, for fraud, conviction of crime, unprofessional and  
2 unethical conduct, habitual drunkenness, exorbitant charges, false  
3 representation of goods, gross incompetency, contagious disease, any  
4 violation of any rule or regulation promulgated by the Board  
5 pursuant to the provisions of this chapter or any violation of this  
6 chapter. The following acts shall be deemed by the Board as  
7 unprofessional and unethical conduct:

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

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

15 3. Acceptance of employment, either directly or indirectly, by  
16 a licensed optometrist from an unlicensed optometrist or person  
17 engaged in any profession or business or owning or operating any  
18 profession or business to assist it, him, or them in practicing  
19 optometry in this state; provided that renting a separate area or  
20 room within or adjacent to a retail store shall not be considered as  
21 direct or indirect employment; and

22 4. Publishing or displaying, or knowingly causing or permitting  
23 to be published or displayed by newspaper, radio, television, window  
24 display, poster, sign, billboard, or any other advertising media any

1 statement or advertisement of any price or fee offered or charged by  
2 an optometrist for any optometric services or materials including  
3 lenses, frames, eyeglasses, or spectacles or parts thereof,  
4 including statements or advertisements of discount, premium, or  
5 gifts, if ~~said~~ the statements or advertisements are fraudulent,  
6 deceitful, misleading or in any manner whatsoever tend to create a  
7 misleading impression or are likely to mislead or deceive because in  
8 context ~~said~~ the statements or advertisements make only a partial  
9 disclosure of relevant facts; and

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

15 Before any certificate is revoked or suspended, the holder thereof  
16 shall be provided with notice and hearing as provided for in the  
17 Administrative Procedures Act, Sections 301 through 326 of Title 75  
18 of the Oklahoma Statutes. The Board, after the expiration of the  
19 period of three (3) months after the date of ~~said~~ the revocation,  
20 may entertain application for the reissuance of ~~said~~ the revoked  
21 certificate and may reissue ~~said~~ the certificate upon payment of a  
22 reinstatement fee not to exceed three times the annual renewal fee.  
23 The Board shall have the right to promulgate such rules and  
24 regulations as may be necessary to put into effect the provisions of

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

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

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

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

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

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

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

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

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

14 B. A person, firm, or corporation engaged in the business of  
15 retailing merchandise to the general public shall may rent space,  
16 sublease departments, or otherwise permit any person purporting to  
17 do eye examination or visual care to occupy space in such a separate  
18 area or room within a retail store to an optometrist or optometric  
19 professional corporation for the practice of optometry. Renting a  
20 separate area or room within a retail store shall not be considered  
21 a rebate, kickback, reward or premium. A separate area or room  
22 rented by an optometrist or optometric professional corporation may  
23 be directly accessible from inside the retail store, and an entrance  
24 opening on a public street, hall, lobby, or corridor shall not be

1 required. A person, firm, or corporation operating multiple retail  
2 stores may rent a separate area or room to an optometrist or  
3 optometric professional corporation for the practice of optometry in  
4 no more than twenty retail stores in the State of Oklahoma before  
5 January 1, 2020. Each subsequent year until January 1, 2030, a  
6 person, firm, or corporation operating multiple retail stores may  
7 rent a separate area or room to an optometrist or optometric  
8 professional corporation for the practice of optometry in five  
9 additional retail stores in the State of Oklahoma. After January 1,  
10 2030, there shall be no limit on the number of retail stores in  
11 which a person, firm, or corporation operating multiple retail  
12 stores may rent a separate area or room to an optometrist or  
13 optometric professional corporation for the practice of optometry.  
14 A person, firm, or corporation engaged in the business of retailing  
15 merchandise to the general public may sell optical goods,  
16 appliances, or materials and function as an optical supplier in a  
17 retail store, regardless whether a majority of the retail store's  
18 income is derived from the sale of prescription optical goods,  
19 appliances, and materials or whether an optometrist is practicing  
20 optometry in such retail store.

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

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

3 Upon the effective date of this act, all laws and administrative  
4 rules of the Board of Examiners in Optometry in conflict with this  
5 act shall be null and void. After the effective date of this act,  
6 an optometrist, optical supplier, or a person, firm, or corporation  
7 engaged in the business of retailing merchandise to the general  
8 public may bring a declaratory judgment action to determine whether  
9 this act affects the validity of a law or administrative rule.

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

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

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