

By: Madla

S.B. No. 1025

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of the practice of optometry and
3 therapeutic optometry.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. (a) This Act may be called the Eye Doctor
6 Competition Act.

7 (b) It is the policy of this state to:

8 (1) promote maximum patient access to quality eye care
9 in this state, both geographically and economically;

10 (2) promote vigorous competition among well-trained
11 optometrists and therapeutic optometrists so as to encourage better
12 service and competitive pricing for eye care services while
13 maintaining high quality care;

14 (3) fully utilize the training and capabilities of
15 this state's relatively scarce pool of highly skilled optometrists
16 and therapeutic optometrists and to remove unreasonable
17 impediments that prevent this state's highly skilled optometrists
18 and therapeutic optometrists from being utilized to the full extent
19 of their capabilities; and

20 (4) remove outdated restrictions that effectively
21 prevent highly skilled optometrists and therapeutic optometrists
22 from using the latest health care technology as it is developed.

23 (c) This Act is adopted to effectuate the policies of this
24 state as outlined in this section. This Act shall be liberally

1 construed to achieve that purpose.

2 SECTION 2. Section 104.003, Occupations Code, is amended by
3 amending Subsection (f) and adding Subsection (f-1) to read as
4 follows:

5 (f) A person who is licensed by the Texas Optometry Board as
6 an optometrist shall use:

- 7 (1) optometrist;
- 8 (2) doctor, optometrist;
- 9 (3) doctor of optometry; ~~or~~
- 10 (4) doctor, O.D.; or
- 11 (5) O.D.

12 (f-1) A person who is licensed by the Texas Optometry Board
13 as a therapeutic optometrist shall use a designation approved and
14 authorized by the board.

15 SECTION 3. Section 351.002, Occupations Code, is amended by
16 amending Subdivisions (1), (6), and (7) and adding Subdivisions
17 (2-a), (2-b), (3-a), (3-b), (5-a), and (10) to read as follows:

18 (1) "Adnexa" means the lids, ~~and~~ drainage system,
19 and adjacent structures of the eye.

20 (2-a) "Contact lens" means any lens designed to be
21 placed directly on the eye, including a plano lens.

22 (2-b) "CPT code" means the Current Procedural
23 Terminology code, as published by the American Medical Association,
24 in effect on January 1, 2004.

25 (3-a) "Major surgery" means a surgical procedure other
26 than a procedure that is minor surgery. The term includes cataract
27 removal surgery.

1 (3-b) "Minor surgery" means surgical procedures that:

2 (A) are rational to the treatment of the human
3 eye, adnexa, or visual system;

4 (B) do not require general or retrobulbar
5 anesthesia or opening the globe of the eye; and

6 (C) are listed or approved for use by therapeutic
7 optometrists under Section 351.3585 or 351.3586.

8 (5-a) "Pharmaceutical agent" means any medication,
9 drug, diagnostic agent, or therapeutic agent, including a
10 controlled narcotic substance other than one listed in Schedule I
11 of the Comprehensive Drug Abuse Prevention and Control Act of 1970
12 (21 U.S.C. Section 801 et seq.), that is rational to the diagnosis
13 or treatment of the human eye, adnexa, or visual system.

14 (6) "Practice of optometry" means the examination and
15 diagnosis of any disease, condition, or disorder of the human eye,
16 adnexa, or visual system. The term does not include treatment with
17 drugs or surgery. The term includes the performance or ordering of
18 appropriate laboratory and diagnostic tests and procedures and the
19 administration or prescription of:

20 (A) lenses, prisms, or corrective devices,
21 including spectacles or contact lenses;

22 (B) vision therapy or low vision rehabilitation
23 services; and

24 (C) topical ocular pharmaceutical agents for
25 diagnostic purposes [~~using objective or subjective means, with or~~
26 ~~without the use of topical ocular pharmaceutical agents, to:~~

27 [~~(A) determine or measure the powers of vision of~~

1 ~~the human eye as provided by Section 351.355,~~

2 ~~[(B) examine or diagnose visual defects,~~
3 ~~abnormal conditions, or diseases of the human eye or adnexa, or~~

4 ~~[(C) prescribe or fit lenses or prisms to correct~~
5 ~~or remedy a defect or abnormal condition of vision as provided by~~
6 ~~Section 351.356].~~

7 (7) "Practice of therapeutic optometry" means the
8 examination, diagnosis, and treatment of any disease, condition, or
9 disorder of the human eye, adnexa, or visual system by any
10 appropriate means. The term does not include the treatment of
11 cancer or treatment with major surgery. The term includes the
12 performance or ordering of appropriate laboratory and diagnostic
13 tests and procedures, physical treatments, nonsurgical primary
14 care procedures, and minor surgery, and the administration or
15 prescription of:

16 (A) lenses, prisms, or corrective devices,
17 including spectacles or contact lenses;

18 (B) vision therapy or low vision rehabilitation
19 services; and

20 (C) pharmaceutical agents to be administered in
21 any manner rational to the diagnosis or treatment of the human eye,
22 adnexa, or visual system ~~[using objective or subjective means, not~~
23 ~~including surgery or laser surgery, to:~~

24 ~~[(A) determine or measure the powers of vision of~~
25 ~~the human eye as provided by Section 351.355,~~

26 ~~[(B) examine or diagnose visual defects,~~
27 ~~abnormal conditions, or diseases of the human eye or adnexa,~~

1 ~~[(C) prescribe or fit lenses or prisms to correct~~
2 ~~or remedy a defect or abnormal condition of vision as provided by~~
3 ~~Section 351.356,~~

4 ~~[(D) administer or prescribe a drug or physical~~
5 ~~treatment in the manner authorized by this chapter, or~~

6 ~~[(E) treat the visual system, including the eye~~
7 ~~or adnexa as authorized by this chapter].~~

8 (10) "Vision therapy" means the use of orthoptics,
9 hand-eye coordination exercises, visual training, and
10 developmental vision therapy and the evaluation and remediation of
11 learning or behavioral disabilities associated with or caused by a
12 defective or abnormal condition of vision.

13 SECTION 4. Section 351.004, Occupations Code, is amended to
14 read as follows:

15 Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board
16 is subject to Chapter 325, Government Code (Texas Sunset Act).
17 Unless continued in existence as provided by that chapter, the
18 board is abolished and this chapter expires September 1, 2017
19 [~~2005~~].

20 SECTION 5. Section 351.051(a), Occupations Code, is amended
21 to read as follows:

22 (a) The Texas Optometry Board consists of nine members
23 appointed by the governor with the advice and consent of the senate
24 as follows:

25 (1) six [~~optometrists or~~] therapeutic optometrists;
26 and

27 (2) three members who represent the public.

1 SECTION 6. Section 351.052(a), Occupations Code, is amended
2 to read as follows:

3 (a) A [~~An optometrist or~~] therapeutic optometrist member of
4 the board must have been a resident of this state engaged in the
5 practice of optometry or therapeutic optometry in this state for
6 the five years preceding the date of the member's appointment.

7 SECTION 7. Section 351.053(a), Occupations Code, is amended
8 to read as follows:

9 (a) A member or employee of the board may not:

10 (1) be [~~a member of the faculty of a college of~~
11 ~~optometry or~~] an agent, paid consultant, officer, or employee of a
12 wholesale optical company;

13 (2) have a financial interest in a college of
14 optometry or wholesale optical company;

15 (3) be an officer, employee, or paid consultant of a
16 trade association in the field of health care; or

17 (4) be related within the second degree by affinity or
18 consanguinity, as determined under Chapter 573, Government Code, to
19 a person who is an officer, employee, or paid consultant of a trade
20 association in the field of health care.

21 SECTION 8. Section 351.054, Occupations Code, is amended to
22 read as follows:

23 Sec. 351.054. TERMS. (a) Members of the board serve
24 staggered six-year terms. The terms of two [~~optometrist or~~]
25 therapeutic optometrist members and one public member expire on
26 January 31 of each odd-numbered year.

27 (b) A member may not serve more than two complete terms.

1 ~~[Service on the board before September 1, 1981, does not count~~
2 ~~toward that limitation.]~~

3 SECTION 9. Section 351.154(b), Occupations Code, is amended
4 to read as follows:

5 (b) The board shall deposit in the University of Houston
6 development fund 25 ~~[15]~~ percent of each annual renewal fee
7 collected by the board under Section 351.152. The money paid to
8 that fund under this subsection may be used solely for scholarships
9 or improvements in the physical facilities, including library
10 facilities, of the College of Optometry.

11 SECTION 10. Section 351.251, Occupations Code, is amended
12 to read as follows:

13 Sec. 351.251. LICENSE REQUIRED. (a) A person may not
14 practice optometry ~~[or therapeutic optometry]~~ unless the person
15 holds a license to practice optometry issued under this chapter.

16 (b) A person may not practice therapeutic optometry unless
17 the person holds a license to practice therapeutic optometry issued
18 under this chapter.

19 SECTION 11. The heading to Section 351.260, Occupations
20 Code, is amended to read as follows:

21 Sec. 351.260. ~~[LIMITED LICENSE FOR]~~ CLINICAL FACULTY.

22 SECTION 12. Section 351.260, Occupations Code, is amended
23 by adding Subsection (d) to read as follows:

24 (d) A faculty member of an institution of higher education
25 of this state who provides instruction in optometry or therapeutic
26 optometry and who holds a license under this chapter may, in the
27 course of teaching, perform and teach any procedure that may

1 lawfully be performed by a licensed optometrist, therapeutic
2 optometrist, or optometric physician in any other state.

3 SECTION 13. Section 351.308(a), Occupations Code, is
4 amended to read as follows:

5 (a) An optometrist or therapeutic optometrist must take
6 annual courses in subjects relating to the use and application of
7 scientific, technical, and clinical advances in subjects relating
8 to the practice of optometry or therapeutic optometry regularly
9 taught in recognized optometric universities and schools[
10 ~~including:~~

- 11 [~~(1) vision care;~~
- 12 [~~(2) vision therapy; and~~
- 13 [~~(3) visual training~~].

14 SECTION 14. Section 351.351(b), Occupations Code, is
15 amended to read as follows:

16 (b) Not later than the 30th [~~10th~~] day after the date of a
17 change in the information required to be filed with the board under
18 Subsection (a), the license holder shall file with the board a
19 written notice of the change.

20 SECTION 15. Section 351.353, Occupations Code, is amended
21 to read as follows:

22 Sec. 351.353. INITIAL EXAMINATION OF PATIENT. To ensure
23 adequate examination of a patient for whom an optometrist or
24 therapeutic optometrist signs or causes to be signed an ophthalmic
25 lens prescription, in the initial examination of the patient the
26 optometrist or therapeutic optometrist shall make and record, if
27 possible, the following findings concerning the patient's

1 condition:

2 (1) case history, consisting of ocular, physical,
3 occupational, and other pertinent information;

4 (2) visual acuity;

5 (3) the results of a biomicroscopy examination,
6 including an examination of the anterior segment of the eye and
7 lids~~[, cornea, and sclera]~~;

8 (4) the results of an internal ophthalmoscopic
9 examination, including an examination of media and fundus;

10 (5) objective and subjective refractive status [~~the~~
11 ~~results of a static retinoscopy, O.D., O.S., or autorefractor]~~;

12 (6) [~~subjective findings, far point and near point,~~

13 [~~(7)~~] assessment of binocular function;

14 (7) assessment of functional near vision;

15 (8) [~~amplitude or range of accommodation,~~

16 [~~(9)~~] tonometry; and

17 (9) assessment of visual fields

18 [~~(10) angle of vision, to right and to left]~~.

19 SECTION 16. Subchapter H, Chapter 351, Occupations Code, is
20 amended by adding Sections 351.3585, 351.3586, and 351.3587 to read
21 as follows:

22 Sec. 351.3585. MINOR SURGICAL PROCEDURES THAT MAY BE
23 PERFORMED BY THERAPEUTIC OPTOMETRIST. (a) The CPT code numbers in
24 this section are provided only for reference.

25 (b) A therapeutic optometrist may perform the minor
26 surgical procedures listed in this section:

27 (1) removal of foreign body, external eye;

- 1 conjunctival superficial (CPT code 65205);
2 (2) removal of foreign body, external eye;
3 conjunctival embedded (includes concretions), subconjunctival, or
4 scleral nonperforating (CPT code 65210);
5 (3) removal of foreign body, external eye; corneal,
6 without slit lamp (CPT code 65220);
7 (4) removal of foreign body, external eye; corneal,
8 with slit lamp (CPT code 65222);
9 (5) repair of laceration; application of tissue glue,
10 wounds of cornea or sclera (CPT code 65286);
11 (6) scraping of cornea, diagnostic, for smear or
12 culture (CPT code 65430);
13 (7) correction of trichiasis; by forceps only (CPT
14 code 67820);
15 (8) removal of embedded foreign body, eyelid (CPT code
16 67938);
17 (9) removal of foreign body or dacryolith, lacrimal
18 passages (CPT code 68530);
19 (10) closure of lacrimal punctum; by plug (CPT code
20 68761);
21 (11) dilation of lacrimal punctum, with or without
22 irrigation (CPT code 68801);
23 (12) probing of lacrimal canaliculi, with or without
24 irrigation (CPT code 68840);
25 (13) probing of nasolacrimal duct, with or without
26 irrigation (CPT code 68810);
27 (14) removal of corneal epithelium; with or without

1 chemocauterization (abrasion, curettage) (CPT code 65435);

2 (15) removal of corneal epithelium; with application
3 of chelating agent (EDTA, for example) (CPT code 65436);

4 (16) multiple punctures of anterior cornea (for
5 corneal erosion or tattoo, for example) (CPT code 65600);

6 (17) blepharotomy, drainage of abscess, eyelid (CPT
7 code 67700);

8 (18) destruction of lesion of lid margin (up to one
9 centimeter) (CPT code 67850);

10 (19) incision of conjunctiva, drainage of cyst (CPT
11 code 68020);

12 (20) expression of conjunctival follicles (for
13 trachoma, for example) (CPT code 68040);

14 (21) subconjunctival injection (CPT code 68200);

15 (22) injection of contrast medium for
16 dacryocystography (CPT code 68850); and

17 (23) any other surgical procedures for which the
18 therapeutic optometrist has been certified by the board under
19 Section 351.3586.

20 Sec. 351.3586. MINOR SURGICAL PROCEDURES REQUIRING
21 CERTIFICATION. (a) The CPT code numbers in this section are
22 provided only for reference.

23 (b) A therapeutic optometrist who has completed the
24 education and testing requirements established for a procedure
25 listed in this section may perform that procedure.

26 (c) The board by rule shall adopt additional education and
27 testing requirements that a therapeutic optometrist must complete

1 before being certified to perform a minor surgical procedure listed
2 in this section:

3 (1) repair of laceration; conjunctiva, with or without
4 nonperforating laceration sclera, direct closure (CPT code 65270);

5 (2) corneal relaxing incision for correction of
6 surgically induced astigmatism (CPT code 65772);

7 (3) trabeculoplasty by laser surgery (CPT code 65855);

8 (4) severing adhesions of anterior segment, laser
9 technique (CPT code 65860);

10 (5) iridotomy/iridectomy by laser surgery (for
11 glaucoma, for example) (CPT code 66761);

12 (6) iridoplasty by photocoagulation (for improvement
13 of vision or for widening of anterior chamber angle, for example)
14 (CPT code 66762);

15 (7) discission of secondary membranous cataract
16 (opacified posterior lens capsule or anterior hyaloid); laser
17 surgery (YAG laser, for example) (CPT code 66821);

18 (8) prophylaxis of retinal detachment (retinal break
19 or lattice degeneration, for example) without drainage, one or more
20 sessions; photocoagulation (laser or xenon arc) (CPT code 67145);

21 (9) destruction of localized lesion of choroid
22 (choroidal neovascularization, for example); photodynamic therapy
23 (includes intravenous infusion) (CPT codes 67221 and 67225);

24 (10) injection of medication or another substance into
25 Tenon's capsule (CPT code 67515);

26 (11) severing of tarsorrhaphy (CPT code 67710);

27 (12) excision of chalazion (CPT codes 67800, 67801,

- 1 and 67805);
2 (13) biopsy of eyelid (CPT code 67810);
3 (14) correction of trichiasis; epilation by other than
4 forceps (by electrosurgery, cryotherapy, or laser surgery, for
5 example) (CPT code 67825);
6 (15) excision of lesion of eyelid (except chalazion)
7 without closure or with simple direct closure (CPT code 67840);
8 (16) temporary closure of eyelids by suture (Frost
9 suture, for example) (CPT code 67875);
10 (17) repair of ectropion, thermocauterization (CPT
11 code 67915);
12 (18) biopsy of conjunctiva (CPT code 68100);
13 (19) incision, drainage of lacrimal sac
14 (dacryocystotomy or dacryocystostomy) (CPT code 68420);
15 (20) snip incision of lacrimal punctum (CPT code
16 68440);
17 (21) correction of everted punctum, cautery (CPT code
18 68705);
19 (22) closure of lacrimal punctum; by
20 thermocauterization, ligation, or laser surgery (CPT code 68760);
21 (23) cosmetic tattoo of the lid or adnexa;
22 (24) photo-refractive keratectomy (PRK);
23 (25) laser-assisted in situ keratomileusis (Lasik);
24 (26) conductive keratoplasty (CK);
25 (27) photo-therapeutic keratectomy (PTK); and
26 (28) other minor surgical procedures approved by the
27 board that:

1 (A) do not require general anesthesia,
2 retrobulbar anesthesia, or opening of the globe of the eye; and

3 (B) are rational to the treatment of the human
4 eye, adnexa, or visual system.

5 Sec. 351.3587. REMOVAL FOR ORGAN DONATION. A therapeutic
6 optometrist may remove all or part of the eye from a deceased person
7 for transplant or other scientific purposes.

8 SECTION 17. Section 351.360, Occupations Code, is amended
9 to read as follows:

10 Sec. 351.360. PROFESSIONAL STANDARD OF THERAPEUTIC
11 OPTOMETRIST. A therapeutic optometrist[~~, including an optometric~~
12 ~~glaucoma specialist,~~] is subject to the same standard of
13 professional care and judgment as a person practicing as an
14 ophthalmologist under Subtitle B.

15 SECTION 18. Section 351.362(b), Occupations Code, is
16 amended to read as follows:

17 (b) An optometrist or therapeutic optometrist practicing in
18 this state shall display the actual name under which the
19 optometrist or therapeutic optometrist is licensed by the board, so
20 that the name is visible to the public before entry into the
21 optometrist's or therapeutic optometrist's office reception area.
22 This subsection does not apply to a person acting as a temporary
23 relief optometrist or a temporary relief therapeutic optometrist.

24 SECTION 19. Subchapter H, Chapter 351, Occupations Code, is
25 amended by adding Section 351.367 to read as follows:

26 Sec. 351.367. COMANAGED CARE. (a) In this section,
27 "comanage" means to share peri-operative or other diagnosis and

1 treatment responsibilities between a physician licensed under
2 Subtitle B and a therapeutic optometrist.

3 (b) Notwithstanding any other law, a physician licensed
4 under Subtitle B may:

5 (1) comanage surgery or other procedures with a
6 therapeutic optometrist, provided that the services provided by the
7 therapeutic optometrist must be within the scope of practice of the
8 therapeutic optometrist; and

9 (2) rely on the professional judgment of a therapeutic
10 optometrist if the professional judgment relates to a matter within
11 the scope of practice of the therapeutic optometrist.

12 SECTION 20. Section 351.404, Occupations Code, is amended
13 to read as follows:

14 Sec. 351.404. OPHTHALMIC GOODS OR SERVICES [~~EYEGLASSES~~] AS
15 PRIZE OR INDUCEMENT. A person in this state may not give or
16 deliver, or cause to be given or delivered, in any manner,
17 ophthalmic goods or services as an inducement to sell nonophthalmic
18 goods or services. This section is not intended to prevent the
19 donation of ophthalmic goods or services for charitable purposes
20 [~~eyeglasses as:~~

21 [~~(1) a prize or premium, or~~
22 [~~(2) an inducement to sell an item of merchandise,~~
23 ~~including a book, paper, magazine, or work of literature or art].~~

24 SECTION 21. Section 351.452, Occupations Code, is amended
25 to read as follows:

26 Sec. 351.452. PROHIBITED USE OF SCHEDULE I CONTROLLED
27 SUBSTANCE [~~PHARMACEUTICAL AGENT~~]. A therapeutic optometrist may

1 not administer or prescribe a controlled substance included in
2 Schedule I of the Comprehensive Drug Abuse Prevention and Control
3 Act of 1970 (21 U.S.C. Section 801 et seq.) [~~use a pharmaceutical~~
4 ~~agent not authorized by the board or by law~~].

5 SECTION 22. Section 351.4521, Occupations Code, is amended
6 to read as follows:

7 Sec. 351.4521. PERFORMANCE OF MAJOR SURGERY PROHIBITED. A
8 therapeutic optometrist may not perform major surgery [~~or laser~~
9 ~~surgery~~].

10 SECTION 23. Section 351.552(a), Occupations Code, is
11 amended to read as follows:

12 (a) The amount of an administrative penalty may not exceed
13 \$5,000 [~~\$2,500~~] for each violation. Each day a violation continues
14 or occurs is a separate violation.

15 SECTION 24. Subchapter B, Chapter 531, Government Code, is
16 amended by adding Section 531.078 to read as follows:

17 Sec. 531.078. REDUCED PAYMENT FOR CERTAIN MINOR SURGICAL
18 PROCEDURES. The commissioner shall set the reimbursement rate
19 payable to a therapeutic optometrist under the state Medicaid
20 program for a procedure listed in Sections 351.3585(b)(14)-(23) and
21 351.3586(c), Occupations Code, at 90 percent of the reimbursement
22 rate payable to an ophthalmologist for the same procedure.

23 SECTION 25. Sections 351.160, 351.165, 351.354, 351.355,
24 351.358, and 351.3581, Occupations Code, are repealed.

25 SECTION 26. (a) The change in law made by this Act to
26 Section 351.051, Occupations Code, does not affect the entitlement
27 of an optometrist serving on the Texas Optometry Board immediately

1 before the effective date of this Act to continue to serve as a
2 board member for the remainder of the member's term. An optometrist
3 who is serving on the Texas Optometry Board on the effective date of
4 this Act may be reappointed to the board if the optometrist has the
5 qualifications required for a board member under Subchapter B,
6 Chapter 351, Occupations Code, as amended by this Act.

7 (b) The change in law made by this Act does not prohibit a
8 person certified by the Texas Optometry Board as an "optometric
9 glaucoma specialist" on the effective date of this Act from
10 continuing to use that designation if the person is licensed by the
11 board as a therapeutic optometrist.

12 (c) It is the intention of the legislature that the changes
13 in law made by this Act are not intended to and will not have the
14 effect of preventing an optometrist or therapeutic optometrist from
15 performing any act that the optometrist or therapeutic optometrist
16 could legally perform before the enactment of this Act.

17 SECTION 27. This Act takes effect September 1, 2005.