

By: Zerwas

H.B. No. 3812

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of opticians.

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

SECTION 1. Section 351.005(a), Occupations Code, is amended to read as follows:

(a) This chapter does not:

(1) apply to an officer or agent of the United States or this state in performing official duties;

(2) prevent or interfere with the right of a physician licensed by the Texas [~~State Board of~~] Medical Board [~~Examiners~~] to:

(A) treat or prescribe for a patient; or

(B) direct or instruct a person under the physician's control, supervision, or direction to aid or attend to the needs of a patient according to the physician's specific direction, instruction, or prescription;

(3) prevent a person from selling ready-to-wear eyeglasses as merchandise at retail;

(4) prevent an unlicensed person from making simple repairs to eyeglasses;

(5) prevent or interfere with the right of a registered [~~dispensing~~] optician or a registered contact lens technician under Chapter 352 to engage in spectacle or contact lens dispensing under that chapter;

1 (6) prevent an ophthalmic dispenser who does not
2 practice optometry or therapeutic optometry from measuring
3 interpupillary distances or making facial measurements to dispense
4 or adapt an ophthalmic prescription, lens, product, or accessory in
5 accordance with the specific directions of a written prescription
6 signed by an optometrist, therapeutic optometrist, or licensed
7 physician;

8 (7) prevent the administrator or executor of the
9 estate of a deceased optometrist or therapeutic optometrist from
10 employing an optometrist or therapeutic optometrist to continue the
11 practice of the deceased during estate administration; or

12 (8) prevent an optometrist or therapeutic optometrist
13 from working for the administrator or executor of the estate of a
14 deceased optometrist or therapeutic optometrist to continue the
15 practice of the deceased during estate administration.

16 SECTION 2. Section 352.002, Occupations Code, is amended to
17 read as follows:

18 Sec. 352.002. DEFINITIONS. (a) In this chapter:

19 (1) "Contact lens dispenser" means a person, other
20 than a physician, optometrist, therapeutic optometrist, or
21 registered contact lens technician, who provides contact lens
22 dispensing services or products. [~~"Board" means the Texas Board of~~
23 ~~Health.]~~

24 (2) "Contact lens dispensing" means fabricating,
25 ordering, mechanically adjusting, dispensing, selling, and
26 delivering to a consumer contact lenses in accordance with a
27 physician's authorization or a written prescription from a

1 physician, optometrist, or therapeutic optometrist, along with
2 appropriate instructions for the care and handling of the lenses.
3 The term includes, but only if authorized [~~does not include, unless~~
4 ~~directed or approved~~] by a physician:

5 (A) taking any measurements of the eye or the
6 cornea; [~~or~~]

7 (B) evaluating the physical fit of contact
8 lenses;

9 (C) adapting, modifying, repairing, or adjusting
10 a contact lens for proper fit and function;

11 (D) instructing a wearer in the care and handling
12 of a contact lens; and

13 (E) replacing or duplicating contact lenses
14 before any expiration date in the authorization.

15 (3) "Contact lens prescription" means a written
16 specification from a physician, optometrist, or therapeutic
17 optometrist for therapeutic, corrective, or cosmetic contact
18 lenses that states the refractive power of the product and other
19 information required to be in the specification by the physician,
20 optometrist, therapeutic optometrist, Texas [~~State Board of~~
21 Medical Board [~~Examiners~~], or Texas Optometry Board.

22 (4) "Department" means the [~~Texas~~] Department of State
23 Health Services.

24 (5) "Executive commissioner" means the executive
25 commissioner of the Health and Human Services Commission

26 [~~"Dispensing optician" or "ophthalmic dispenser" means a person who~~
27 ~~provides or offers to provide spectacle or contact lens dispensing~~

1 ~~services or products to the public].~~

2 (5-a) "Physician's authorization" means a verbal or
3 written direction, approval, instruction, order, prescription,
4 delegation, or communication from a physician directed to a
5 registered optician or a registered contact lens technician, who
6 may be separate from and independent of the physician's office,
7 that is of a scope and content and communicated in a form and manner
8 that, in the professional judgment of the physician, best serves
9 the health, safety, and welfare of the physician's patient.

10 (5-b) "Registered contact lens technician" means a
11 person registered under this chapter who provides or offers to
12 provide contact lens dispensing services or products to the public.

13 (5-c) "Registered optician" means a person registered
14 under this chapter who provides or offers to provide spectacle
15 dispensing services or products to the public.

16 (6) "Spectacle dispensing" means designing,
17 verifying, fitting, adjusting, selling, or delivering to a consumer
18 fabricated and finished ophthalmic devices, including spectacle
19 lenses and frames but excluding contact lenses, in accordance with
20 a physician's authorization or a spectacle prescription from a
21 physician, therapeutic optometrist, or optometrist. The term
22 includes:

23 (A) prescription analysis and interpretation;

24 (B) the measurement of the face, including
25 interpupillary distances, to determine the size, shape, and
26 specifications of the spectacle lenses or frames best suited to the
27 wearer's needs;

1 (C) the preparation and delivery of a work order
2 to a laboratory technician engaged in grinding lenses and
3 fabricating spectacles;

4 (D) the verification of the quality of finished
5 spectacle lenses;

6 (E) the adjustment of spectacle lenses or frames
7 to the wearer's face; and

8 (F) the adjustment, repair, replacement, or
9 reproduction of a previously prepared, specially fabricated
10 ophthalmic device.

11 (7) "Spectacle prescription" means a written
12 specification by a physician, therapeutic optometrist, or
13 optometrist for therapeutic or corrective lenses that states the
14 refractive power of the lenses and other information included in
15 the specification by the physician, therapeutic optometrist, or
16 optometrist.

17 (b) A reference in this chapter to a rule of the board means
18 a rule of the executive commissioner.

19 SECTION 3. Section 352.003, Occupations Code, is amended to
20 read as follows:

21 Sec. 352.003. EFFECT OF CHAPTER. (a) This chapter does
22 not:

23 (1) authorize a registered [~~dispensing~~] optician to
24 perform an act on the optician's own authority that the optician is
25 not otherwise authorized to perform, including an act that
26 constitutes the practice of medicine, therapeutic optometry, or
27 optometry;

1 (2) prevent or restrict a person licensed in this
2 state under another law from engaging in the profession or
3 occupation for which the person is licensed without being
4 registered under this chapter;

5 (3) prevent or restrict an employee of a person
6 licensed in this state from performing an employment duty required
7 by the licensed person without being registered under this chapter;

8 (4) prevent or restrict an individual, firm, or
9 corporation from employing a person registered under this chapter
10 or from engaging in spectacle or contact lens dispensing through a
11 person registered under this chapter who is employed at the
12 location at which the dispensing occurs;

13 (5) prevent or restrict an individual, firm, or
14 corporation from employing a person as an assistant, trainee, or
15 apprentice to:

16 (A) engage in spectacle or contact lens
17 dispensing; or

18 (B) provide instruction in the care and handling
19 of contact lenses;

20 (6) prohibit the Texas [~~State Board of~~ Medical Board
21 ~~Examiners~~], the Texas Optometry Board, the attorney general, or
22 another person authorized by law from bringing an appropriate
23 action to enforce a state statute relating to the practice of
24 medicine, therapeutic optometry, or optometry without a license;
25 or

26 (7) require that a person be registered:

27 (A) under this chapter to sell or dispense

1 contact lenses; or

2 (B) as a contact lens dispenser to work in a
3 contact lens manufacturing facility that does not sell its finished
4 product directly to the public.

5 (b) This chapter or another state law relating to a
6 registered [~~dispensing~~] optician does not prevent or restrict a
7 physician from:

8 (1) treating or prescribing for a patient; or

9 (2) directing or instructing a person under the
10 physician's control or supervision to aid or minister to the needs
11 of a patient according to a specific direction, order, instruction,
12 or prescription.

13 SECTION 4. Section 352.053(b), Occupations Code, is amended
14 to read as follows:

15 (b) The board may adopt substantive and procedural rules
16 relating to:

17 (1) establishing minimum requirements for the
18 registration of a registered [~~dispensing~~] optician;

19 (2) suspending, denying, or revoking a certificate of
20 registration or placing a certificate holder on probation;

21 (3) prescribing fees under this chapter; and

22 (4) adopting forms required by this chapter.

23 SECTION 5. Sections 352.101(a) and (b), Occupations Code,
24 are amended to read as follows:

25 (a) A person may not represent to the public that the person
26 is a "Registered [~~Dispensing~~] Optician" [~~or "Registered Spectacle~~
27 ~~Dispenser"~~] unless the person is a registered [~~as a spectacle~~

1 ~~dispensing~~] optician and complies with this chapter.

2 (b) A person may not represent to the public that the person
3 is a [~~"Registered Contact Lens Dispenser" or~~] "Registered Contact
4 Lens Technician" unless the person is a registered [~~as a~~] contact
5 lens technician [~~dispenser~~] and complies with this chapter.

6 SECTION 6. Sections 352.102(a) and (c), Occupations Code,
7 are amended to read as follows:

8 (a) The department shall issue a certificate of
9 registration as a registered optician or registered contact lens
10 technician to an applicant who:

11 (1) applies and pays a registration fee;

12 (2) presents evidence satisfactory to the department
13 that the applicant:

14 (A) has been actively engaged in spectacle
15 dispensing or contact lens dispensing for at least six years;

16 (B) has completed a four-year apprenticeship in
17 spectacle dispensing or contact lens dispensing; or

18 (C) holds a degree or the equivalent in the field
19 of ophthalmic optics and has engaged in spectacle dispensing or
20 contact lens dispensing for at least two years; [~~successfully~~
21 ~~completed the number of classroom hours of training required by the~~
22 ~~board, and]~~

23 (3) completes educational requirements established by
24 executive commissioner rule that:

25 (A) are offered by an entity approved by the
26 department;

27 (B) include at least 130 hours of classroom

1 instruction; and

2 (C) include advanced training in ophthalmic
3 optics; and

4 (4) passes the appropriate examination required under
5 Section 352.103.

6 (c) A person may qualify and be registered as:

7 (1) a registered optician;

8 (2) a registered contact lens technician; or

9 (3) both a registered optician and a registered
10 contact lens technician [a spectacle dispenser, contact lens
11 dispenser, or both].

12 SECTION 7. Section 352.153(b), Occupations Code, is amended
13 to read as follows:

14 (b) The board may not require more than:

15 (1) 10 classroom hours of continuing education courses
16 in spectacle dispensing each year for registration as a registered
17 optician;

18 (2) 12 classroom hours of contact lens technician
19 continuing education courses each year for registration as a
20 registered contact lens technician; or

21 (3) 18 classroom hours of continuing education courses
22 each year for registration as both a registered optician and a
23 registered contact lens technician, provided that half of the hours
24 are courses in spectacle dispensing and half of the hours are
25 courses for contact lens technician continuing education.

26 SECTION 8. Section 352.201, Occupations Code, is amended to
27 read as follows:

1 Sec. 352.201. DIRECTIONS FOR REGISTERED [~~DISPENSING~~
2 OPTICIAN. A physician's directions, instructions, or orders may
3 be performed or a physician's prescription may be filled by a
4 registered [~~dispensing~~] optician who is separate from and
5 independent of the physician's office only if the directions,
6 instructions, orders, or prescription is:

7 (1) in writing;

8 (2) of a scope and content and communicated to the
9 registered [~~dispensing~~] optician in a form and manner that, in the
10 physician's professional judgment, best serves the health, safety,
11 and welfare of the physician's patient; and

12 (3) in a form and detail consistent with the
13 particular registered [~~dispensing~~] optician's skill and knowledge.

14 SECTION 9. Section 352.202, Occupations Code, is amended by
15 amending Subsections (a) and (b) and adding Subsection (d) to read
16 as follows:

17 (a) Except as provided by Subsection (d), a registered
18 contact lens technician [~~A person registered under this chapter~~]
19 may not dispense contact lenses other than from a contact lens
20 prescription that specifies that the prescription is for contact
21 lenses.

22 (b) Except as provided by Section 351.005 or 352.203, a
23 registered contact lens technician [~~dispenser~~] may not:

24 (1) dispense contact lenses from the prescription of a
25 physician, optometrist, or therapeutic optometrist in a manner that
26 adjusts or alters the specific, written instructions of the
27 prescribing practitioner; or

1 (2) unless directed or approved by a physician:

2 (A) take any measurements of the eye or the
3 cornea; or

4 (B) evaluate the physical fit of contact lenses.

5 (d) Notwithstanding Subsection (b) and Section 351.357, if
6 a physician's authorization specifies "fit contact lenses" or
7 similar language, a registered contact lens technician may:

8 (1) take measurements of the eye or the cornea
9 necessary to determine the specification of contact lenses;

10 (2) evaluate the physical fit and function of the
11 contact lenses;

12 (3) adapt, modify, repair, or adjust the contact
13 lenses for proper fit and function;

14 (4) instruct the wearer regarding the care and
15 handling of contact lenses; and

16 (5) replace or duplicate contact lenses, except that
17 replacement or duplicate contact lenses may not be dispensed after
18 an expiration date if one is specified in the physician's
19 authorization.

20 SECTION 10. Section 352.203, Occupations Code, is amended
21 to read as follows:

22 Sec. 352.203. DELEGATION BY PHYSICIAN. A registered
23 contact lens technician [~~dispenser~~] may take measurements of the
24 eye or cornea and evaluate the physical fit of lenses for a patient
25 of a physician if the physician has delegated in writing to the
26 dispenser those responsibilities for that specific patient in
27 accordance with Sections 351.005 and 352.201.

1 SECTION 11. Sections 352.101(d) and 352.102(b),
2 Occupations Code, are repealed.

3 SECTION 12. (a) The changes in law made by this Act apply
4 only to a certificate of registration issued or renewed under
5 Chapter 352, Occupations Code, on or after the effective date of
6 this Act. An issuance or renewal of a certificate of registration
7 that occurs before the effective date of this Act is governed by the
8 law in effect immediately before that date, and the former law is
9 continued in effect for that purpose.

10 (b) The Department of State Health Services shall issue a
11 new certificate of registration:

12 (1) as a registered optician to a person registered as
13 a dispensing optician before the effective date of this Act; and

14 (2) as a registered contact lens technician to a
15 person registered as a contact lens dispenser before the effective
16 date of this Act.

17 SECTION 13. This Act takes effect September 1, 2007.