

A bill for an act

relating to occupations and professions; changing provisions related to the practice of optometry; allowing optometrists to dispense a legend drug at retail under certain conditions; amending Minnesota Statutes 2006, sections 145.711, by adding a subdivision; 148.56; 148.57; 148.571; 148.573, subdivision 1; 148.574; 148.575; repealing Minnesota Statutes 2006, section 148.573, subdivisions 2, 3; Minnesota Rules, part 6500.2100.

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

Section 1. Minnesota Statutes 2006, section 145.711, is amended by adding a subdivision to read:

Subd. 1a. **Contact lens.** "Contact lens" means any device placed on the anterior surface of the eye for refractive, cosmetic, diagnostic, or therapeutic purposes.

Sec. 2. Minnesota Statutes 2006, section 148.56, is amended to read:

148.56 OPTOMETRISTS.

Subdivision 1. **Optometry defined.** (a) Any person shall be deemed to be practicing optometry within the meaning of sections 148.52 to 148.62 ~~who shall display a sign, such as an eye, a pair of eyes, a pair of glasses or spectacles, or~~ who shall in any way:

- (1) advertise as an optometrist; ~~or who shall~~
- (2) employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid thereof; ~~or~~
- (3) possess testing appliances for the purpose of the measurement of the powers of vision; ~~or~~
- (4) diagnose any disease, optical deficiency or deformity, or visual or muscular anomaly of the human eye; ~~or~~

(5) prescribe lenses, prisms, or ocular exercises for the correction or the relief of same; or

(6) prescribe or administer legend drugs to aid in the diagnosis, cure, mitigation, prevention, treatment, or management of disease, deficiency, deformity, or abnormality of the human eye and adnexa included in the curricula of accredited schools or colleges of optometry, and as limited by Minnesota statute and rules adopted by the Board of Optometry, or who holds oneself out as being able to do so.

(b) In the course of treatment, nothing in this section shall allow:

(1) legend drugs to be administered intravenously, intramuscularly, or by injection, except for treatment of anaphylaxis;

(2) invasive surgery including, but not limited to, surgery using lasers;

(3) schedule II and III oral legend drugs and oral steroids to be administered or prescribed;

(4) oral antivirals to be prescribed or administered for more than ten days; or

(5) oral carbonic anhydrase inhibitors to be prescribed or administered for more than seven days.

Subd. 2. **Unlawful practices.** It shall be unlawful for any person who is not licensed as an optometrist in this state to:

(1) perform any of the actions contained in subdivision 1;

(2) fit, sell, or dispose of, or to take, receive, or solicit any order for the fitting, sale, or disposition of, any spectacles, eye glasses, or lenses for the correction of vision in any place within the state other than an established place of business ~~wherein such~~ where spectacles, eye glasses, or lenses are commonly sold and dealt in; ~~and it shall be unlawful for any person, not licensed as an optometrist thereunder, to; or~~

(3) sell or dispose of, at retail, any spectacles, eye glasses, or lenses for the correction of vision in any established place of business or elsewhere in this state except under the supervision, direction, and authority of a duly licensed optometrist ~~holding~~ who holds a certificate under sections 148.52 to 148.62, ~~who shall be~~ and is in charge of and in personal attendance at the booth, counter, or place where such articles are sold or disposed of.

Subd. 3. **Unregulated sales.** Nothing in sections 148.52 to 148.62 shall be construed to apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses or to the replacement of duplications of broken lenses, nor to sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor, nor shall it apply to regularly licensed physicians and surgeons. Sections 148.52 to 148.62 also do not apply to the sale of spectacles, used for reading and containing only simple lenses having a

plus power of up to and including 3.25, if no attempt is made to test the eyes. The term "simple lenses" does not include bifocals. The seller shall prominently display a sign on the counter or rack or other display device where the spectacles are offered for sale that reads as follows: "If you have experienced a vision loss, the selection of these glasses should not take the place of an eye exam."

Subd. 4. **License required.** It shall be unlawful for any person to engage in the practice of optometry without first procuring ~~and filing for record a certificate of registration as a licensed optometrist pursuant to this section~~ a license from the state Board of Optometry.

Sec. 3. Minnesota Statutes 2006, section 148.57, is amended to read:

148.57 LICENSE.

Subdivision 1. **Examination.** (a) A person not authorized to practice optometry in the state and desiring to do so shall apply to the ~~director of the state Board of Optometry and pay to the board~~ by filling out and swearing to an application for a license granted by the board and accompanied by a fee in an amount set by the board of \$87. ~~The candidate desiring to apply to the board shall complete a form furnished by the board.~~ With the submission of the application form, the candidate shall prove that the candidate:

(1) is of good moral character;

(2) has obtained a clinical doctorate degree from an optometry board-approved school ~~requiring at least two academic years of preprofessional training for admittance to the school and which has been approved by the board~~ or college of optometry, or is currently enrolled in the final year of study at such ~~a school~~ an institution; and

(3) has passed all parts of an examination.

(b) The examination shall include both a written portion and a clinical practical portion and shall thoroughly test the fitness of the candidate to practice in this state. In regard to the written and clinical practical examinations, the board may:

(1) prepare, administer, and grade the examination itself;

(2) recognize and approve in whole or in part an examination prepared, administered and graded by a national board of examiners in optometry; or

(3) administer a recognized and approved examination prepared and graded by or under the direction of a national board of examiners in optometry.

(c) The board shall issue a license to each applicant who satisfactorily passes the examinations and fulfills the other requirements stated in this section and section 148.575 for board certification for the use of legend drugs. Applicants for initial licensure do not need to apply for or possess a certificate as referred to in sections 148.571 to 148.574.

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~~The applicant shall pay to the board a fee as set by the board upon issuance of the license. In the event the candidate fails to pass a part of the examination, upon the payment of an additional fee as set by the board, the candidate may reapply to the Board of Optometry. The fees mentioned in this section are for the use of the board and in no case shall be refunded.~~

Subd. 2. **Reciprocity Endorsement.** ~~A person~~ An optometrist who holds a ~~certificate of registration, or current~~ license; from another state, and who has practiced ~~in that state~~ not less than three years ~~in that state~~ immediately preceding application, may apply for licensure in Minnesota by filling out and swearing to an application for license by ~~reciprocity form~~ endorsement furnished by the board ~~and by filing that form with the board secretary along with a fee as set by the board at least two weeks prior to the regular meeting at which the board is considering such applications.~~ The completed application with all required documentation shall be filed at the board office along with a fee of \$87. The application fee ~~as set by the board~~ shall be for the use of the board and in no case shall be refunded. To verify that the applicant possesses the knowledge and ability essential to the practice of optometry in this state, ~~the board may for good cause request the applicant to perform a practical demonstration to its satisfaction.~~ applicant must provide evidence of:

(1) having obtained a clinical doctorate degree from a board-approved school or college of optometry;

(2) successful completion of both written and practical examinations for licensure in the applicant's original state of licensure that thoroughly tested the fitness of the applicant to practice;

(3) successful completion of an examination of Minnesota state optometry laws;

(4) compliance with the requirements for board certification in section 148.575;

(5) compliance with all continuing education required for license renewal in every state in which the applicant currently holds an active license to practice; and

(6) being in good standing with every state board from which a license has been issued.

Documentation from a national certification system or program, approved by the board, which supports any of the listed requirements, may be used as evidence. The applicant may then be issued a license if the requirements for ~~registration or~~ licensure in the other state are deemed by the board to be equivalent to those of sections 148.52 to 148.62; ~~provided, that the other state accords like privileges to holders of certificates from the Minnesota board.~~

Subd. 3. **Revocation, suspension.** The board may revoke the license or suspend or restrict the right to practice of any person who has been convicted of any violation of

sections 148.52 to 148.62 or of any other criminal offense, or who violates any provision of sections 148.571 to 148.576 or who is found by the board to be incompetent or guilty of unprofessional conduct. "Unprofessional conduct" means any conduct of a character likely to deceive or defraud the public, including, among other things, free examination advertising, the loaning of a license by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business; splitting or dividing a fee with any person; the obtaining of any fee or compensation by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by sections 148.52 to 148.62; the advertising by any means of optometric practice or treatment or advice in which untruthful, improbable, misleading, or impossible statements are made. After one year, upon application and proof that the disqualification has ceased, the board may reinstate such person.

Subd. 4. **Peddling or canvassing forbidden.** Every licensed optometrist who shall temporarily practice optometry outside or away from the regular registered place of business shall display the license and deliver to each customer or person there fitted or supplied with glasses a receipt or record which shall contain the signature, permanent registered place of business or post office address, and number of license of the optometrist, together with the amount charged therefor, but nothing contained in this section shall be construed as to permit peddling or canvassing by licensed optometrists.

Sec. 4. Minnesota Statutes 2006, section 148.571, is amended to read:

148.571 USE OF TOPICAL OCULAR DRUGS.

Subdivision 1. **Authority.** Subject to the provisions of sections ~~148.57, subdivision 3, and~~ 148.571 to 148.574, ~~licensed~~ optometrists who are currently licensed on August 1, 2007, and are not board certified under section 148.575 may possess a valid topical ocular drug certificate, referred to in sections 148.571 to 148.574, allowing them to administer topical ocular drugs to the anterior segment of the human eye during an eye examination in the course of practice in their normal practice setting, solely for the purposes of determining the refractive, muscular, or functional origin of sources of visual discomfort or difficulty, and detecting abnormalities which may be evidence of disease. Authority granted under sections 148.571 to 148.574 is granted to optometrists who are board certified under section 148.575.

Subd. 2. **Drugs specified.** For purposes of sections ~~148.57, subdivision 3, and~~ 148.571 to 148.574, "topical ocular drugs" means:

(1) commercially prepared topical anesthetics as follows: proparacaine HC1 0.5 percent, tetracaine HC1 0.5 percent, and benoxinate HC1 0.4 percent;

(2) commercially prepared mydriatics as follows: phenylephrine HCl in strength not greater than 2.5 percent and hydroxyamphetamine HBr in strength not greater than 1 percent; and

(3) commercially prepared cycloplegics/mydriatics as follows: tropicamide in strength not greater than 1 percent and cyclopentolate in strength not greater than 1 percent.

Sec. 5. Minnesota Statutes 2006, section 148.573, subdivision 1, is amended to read:

Subdivision 1. **Certificate required.** A licensed optometrist shall not purchase, possess, or administer any topical ocular drugs unless, ~~after August 1, 1982,~~ the optometrist has obtained a topical ocular drug certificate from the Board of Optometry certifying that the optometrist has complied with the ~~following~~ requirements: in paragraphs (a) and (b).

(a) Successful completion of 60 classroom hours of study in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on the use of topical ocular drugs for examination purposes. At least 30 of the 60 classroom hours shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to topical ocular drugs, including the emergency management and referral of any adverse reactions that may occur. The course of study shall be approved by the Board of Optometry, and shall be offered by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the Council on Postsecondary Education or the United States Department of Education or their successors. The course shall be completed prior to entering the examination required by this section.

(b) Successful completion of an examination approved by the Board of Optometry on the subject of general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular drugs, including emergency management and referral of any adverse reactions that may occur.

~~(c) Successful completion, after August 1, 1982, of a course in cardiopulmonary resuscitation offered or approved by the Red Cross, American Heart Association, an accredited hospital, or a comparable organization or institution; and~~

~~(d) Establishment, after August 1, 1982, of an emergency plan for the management and referral to appropriate medical services of patients who may experience adverse drug reactions resulting from the application of topical ocular drugs. The plan must be approved by the Board of Optometry and shall, at least, require the optometrist to:~~

~~(1) Refer patients who notify the optometrist of an adverse drug reaction to appropriate medical specialists or facilities;~~

~~(2) Routinely advise the patient to immediately contact the optometrist if the patient experiences an adverse reaction;~~

~~(3) Place in the patient's permanent record information describing any adverse drug reaction experienced by the patient, and the date and time that any referral was made; and~~
~~(4) Include in the plan the names of at least three physicians, physician clinics, or hospitals to whom the optometrist will refer patients who experience an adverse drug reaction. At least one of these physicians shall be skilled in the diagnosis and treatment of diseases of the eye.~~

Sec. 6. Minnesota Statutes 2006, section 148.574, is amended to read:

**148.574 PROHIBITIONS RELATING TO LEGEND DRUGS;
AUTHORIZING SALES BY PHARMACISTS UNDER CERTAIN CONDITIONS.**

An optometrist shall not purchase, possess, administer, prescribe or give any legend drug as defined in section 151.01 or 152.02 to any person except as is expressly authorized by sections 148.571 to 148.577. Nothing in chapter 151 shall prevent a pharmacist from selling topical ocular drugs to an optometrist authorized to use such drugs according to sections 148.571 to 148.577. Notwithstanding sections 151.37 and 152.12, an optometrist is prohibited from dispensing legend drugs at retail, unless the legend drug is within the scope designated in section 148.576, subdivision 1, and is administered to the eye through a contact lens that is intended to correct vision.

Sec. 7. Minnesota Statutes 2006, section 148.575, is amended to read:

**148.575 CERTIFICATE REQUIRED FOR USE OF TOPICAL LEGEND
DRUGS.**

Subdivision 1. **Certificate required for use of legend drugs.** A licensed optometrist must be board certified to use legend drugs for therapy under section 148.576.

Subd. 2. **Board certified defined.** "Board certified" means that a licensed optometrist has been issued a certificate by the Board of Optometry certifying that the optometrist has complied with the following requirements for the use of legend drugs described in section 148.576:

(1) successful completion of at least 60 hours of study in general and ocular pharmacology emphasizing drugs used for examination or treatment purposes, their systemic effects and management or referral of adverse reactions;

(2) successful completion of at least 100 hours of study in the examination, diagnosis, and treatment of conditions of the human eye with legend drugs;

(3) successful completion of two years of supervised clinical experience in differential diagnosis of eye disease or disorders as part of optometric training or one year of that experience and ten years of actual clinical experience as a licensed optometrist; and

(4) successful completion of a nationally standardized examination approved or administered by the board on the subject of treatment and management of ocular disease ~~prepared, administered, and graded by the International Association of Boards of Examiners in Optometry or an equivalent national board examination.~~

Subd. 3. **Display of certificate required.** A certificate issued under this section to a licensed optometrist by the Board of Optometry supersedes any previously issued certificate limited to topical ocular drugs described in sections 148.571 to 148.574 and must be displayed in a prominent place in the licensed optometrist's office.

Subd. 4. **Accreditation of courses.** The Board of Optometry may approve courses of study in general or ocular pharmacology and examination, diagnosis, and treatment of conditions of the human eye only if they are taught by an institution that meets the following criteria:

(1) the institution has facilities for both didactic and clinical instruction in pharmacology and ocular disease treatment;

(2) the institution certifies to the Board of Optometry that the course of instruction is comparable in content to courses of instruction required by other health-related licensing boards whose license holders or registrants are permitted to administer pharmaceutical agents in their professional practice for either diagnostic or therapeutic purposes or both; and

(3) the institution is accredited by a regional or professional accrediting organization recognized by the ~~Council on Postsecondary Accreditation or the United States Department of Education, Council for Higher Education Accreditation or their successors~~ its successor agency.

Subd. 5. **Notice to Board of Pharmacy.** The Board of Optometry shall notify the Board of Pharmacy of each licensed optometrist who meets the certification requirements in this section.

Subd. 6. **Board certification required.** Optometrists who were licensed in this state prior to August 1, 2007, must have met the board certification requirements under this section by August 1, 2012, in order to renew their license.

Sec. 8. **REPEALER.**

(a) Minnesota Rules, part 6500.2100, is repealed.

(b) Minnesota Statutes 2006, section 148.573, subdivisions 2 and 3, are repealed.

APPENDIX
Repealed Minnesota Statutes: H3924-1

148.573 PREREQUISITES TO DRUG USE.

Subd. 2. **Exception.** The course and examination required by clauses (a) and (b) of subdivision 1 shall be completed after August 1, 1982 except that the Board of Optometry may certify applicants who have graduated from an accredited school of optometry within two years prior to August 1, 1982 if the school's curriculum includes a course and examination meeting the requirements of clauses (a) and (b) of subdivision 1.

Subd. 3. **Consultation required.** Approvals of the course, examination and emergency plan required by clauses (a), (b) and (d) of subdivision 1 shall be given by the Board of Optometry only after consultation with the Board of Medical Practice and Board of Pharmacy, provided that the recommendations of the Board of Medical Practice and Board of Pharmacy are made within 120 days after they are requested by the Board of Optometry.