To: Public Health and Welfare

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Senator(s) Dearing
To: Public Health and Welfare

SENATE BILL NO. 2538

AN ACT TO PROVIDE FOR THE REGULATION AND LICENSING OF
DISPENSING OPTICIANS IN THE STATE OF MISSISSIPPI; TO CREATE A
BOARD OF OPTICIANRY TO PROVIDE EXEMPTIONS FROM THE REQUIREMENTS OF
THIS ACT; TO PROVIDE FOR DISCIPLINARY PROCEEDINGS AND PENALTIES
FOR VIOLATING PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. It is the purpose of this act to provide for:

(a) The regulation of persons offering optical
dispensing services to the public;

(b) To protect the public health, safety and welfare;

and

(c) To protect the public by assuring that providers of
optical dispensing services and products meet minimum standards of
competence.

SECTION 2. The following terms shall have the meaning
ascribed herein, unless the context otherwise requires:

(a) "Optical aid" means an instrument or device
prescribed by a physician or optometrist licensed by any state to
correct human vision, including spectacles, eyeglasses, contact
lenses and accessories.

(b) "Optical dispensing" means providing, interpreting,
fitting, duplicating or replacing of optical aids to or for the
intended wearer.

(c) "Licensed dispensing optician" means a person
holding a current, valid license issued under Sections 8 through
11 of this act that authorizes the person to engage in optical
dispensing. Nothing in this section shall be construed to permit
a licensed dispensing optician to alter the specifications of a
prescription.

(d) "Licensed spectacle dispensing optician" means a
licensed dispensing optician authorized to engage in the
dispensing of optical aids other than contact lenses.

(e) "Licensed contact lens dispensing optician" means a
licensed dispensing optician authorized to engage only in the
dispensing of contact lenses.

(f) "Licensed spectacle-contact lens dispensing
optician" means a licensed dispensing optician authorized to
engage in the dispensing of any optical aid.

(g) "Apprentice" means any person dispensing optical
aids under the direct supervision of a licensed dispensing
optician.

(h) "Prescription" means the written or verbal
directions or instructions as specified by a physician or
optometrist licensed by any state for preparing an optical aid for
a patient.

(i) "Supervision" means the provision of direction and
control through personal inspection and evaluation of work and the
provision of such consultation and instruction as may be needed.

(j) "Board" means the Mississippi Board of Opticianry.

SECTION 3. Beginning one (1) year after the effective date
of this section, no person shall engage in optical dispensing or
hold himself out as being engaged in optical dispensing, except as
authorized under Section 8 of this act, unless he has fulfilled
the requirements of Sections 9 through 11 of this act and has been
certified as a licensed dispensing optician by the board.

SECTION 4. (1) There is hereby created the Mississippi
Board of Opticianry, consisting of the following five (5) members:

(a) Three (3) dispensing opticians appointed from a
list of six (6) nominees submitted by the Mississippi Association
of Dispensing Opticians, one (1) of whom shall be a contact lens
dispensing optician, and two (2) of whom shall be spectacle
dispensing opticians, licensed under Sections 9 through 11 of this
act, except as otherwise provided in this subsection;
(b) One (1) licensed optometrist; and
(c) One (1) licensed ophthalmologist.

The initial dispensing optician members of the board shall
meet the criteria for licensure as licensed dispensing opticians
specified in Section 8 of this act.

(2) The Governor, with the advice and consent of the Senate,
shall make initial appointments to the board in the following
manner:
(a) One (1) dispensing optician member, to serve for a
term ending on July 1, 2004;
(b) Two (2) dispensing optician members, to serve for a
term ending on July 1, 2005;
(c) The ophthalmologist member, to serve for a term
ending July 1, 2005; and
(d) The optometrist member, to serve for a term ending
on July 1, 2006.

Thereafter, members shall be appointed to the board for terms
of five (5) years, each term ending on the same day of the same
month of the year as did the term which it succeeds. Each member
of the board shall hold office from the date of his appointment
until the end of the term for which he was appointed, except that
if a successor member has not been appointed by the end of the
term, the member shall continue in office until such appointment.
No member shall serve more than two (2) consecutive terms. Any
vacancy occurring prior to the expiration of a member's term shall
be filled in the same manner as the original appointment. A
member appointed to fill a vacancy shall hold office for the
remainder of the unexpired term of the predecessor member of the
board.
SECTION 5. (1) The board shall elect a president and secretary and such other officers from its members as may be prescribed by rule of the board. The officers of the board shall hold their respective offices for a term of one (1) year.

(2) The board members shall have authority to employ the necessary personnel to carry out the provisions of this act, and to fix their tenure of employment and compensation out of the funds paid to the board as fees, as provided in this act. The members of the board shall file a bond with the Secretary of State in the sum of not less than Ten Thousand Dollars ($10,000.00) payable to the State of Mississippi for the faithful performance of their duties. Said bond shall be made by a surety company authorized to do business in this state, and the premium for such bond shall be paid out of the funds of the board.

(3) The board is further authorized to maintain and pay the expenses of an office to be located in the metro area of Jackson, Mississippi.

(4) The members of the board shall receive a per diem allowance as designated in Section 25-3-69, Mississippi Code of 1972, and shall receive reimbursement for expenses, including mileage, incurred in the performance of their duty on the board as provided in Section 25-3-41, Mississippi Code of 1972.

(5) The board shall meet at least once in each calendar year in the metro area of Jackson. A majority of the board shall constitute a quorum for the purpose of conducting business of the board. No action of the board is valid without the concurrence of three (3) members. The board shall also meet at such additional times and in such places as are specified by rule or directed by the president, or pursuant to a written request submitted to the secretary by a majority of the board members.

SECTION 6. It shall be the duty of the board to select a depository in the same manner or form as now provided by Section 7-9-43, Mississippi Code of 1972, and to deposit therein all funds
collected by the board, which funds shall be subject to the
requirements of Section 27-105-21, Mississippi Code of 1972. All
funds deposited therein shall be disbursed on checks signed by the
president and countersigned by the secretary. On or before the
15th day of March, the board shall file with the Department of
Finance and Administration a report, attested by the affidavits of
the president and secretary of the board, of its transactions for
the preceding year, covering all receipts and disbursements and
showing the balance of monies on hand. The Governor, in his
discretion, shall have the power from time to time to require an
audit of the accounts of the board, the same to be made by the
Department of Finance and Administration upon request of the
Governor. The Governor shall have the power to suspend any member
of the board who shall be found deficient in any account until
such time as it shall be definitely determined whether such
deficiency was the result of an act of dishonesty on the part of
said member.

SECTION 7. The board shall have the following general powers
and duties:

(a) To examine and determine the qualifications and
fitness of applicants for licenses to practice optical dispensing
in this state and prepare all examinations of applicants for
licensure.

(b) To issue, renew, deny, suspend or revoke licenses
to practice optical dispensing in this state, or otherwise
discipline licensed dispensing opticians.

(c) To investigate alleged or suspected violations of
the provisions of this act or other laws of this state pertaining
to optical dispensing, and any rules and regulations adopted by
the board.

(d) To establish reasonable fees for application for
examination, certificates of licensure and renewal, and other
services provided by the board.
(e) To adopt, amend or repeal any rules or regulations necessary to carry out the purposes of this act and the duties and responsibilities of the board, in accordance with Section 25-43-1 et seq., Mississippi Code of 1972.

SECTION 8. (1) Within one (1) year from the effective date of this section, any person who has or is engaged in optical dispensing and who desires to continue or recommence the practice of optical dispensing without having to satisfy the requirements of Sections 9 through 11 of this act shall submit to the board a properly completed written application on an approved form accompanied by a fee of not more than Two Hundred Dollars ($200.00). The application shall contain information sufficient to establish that the applicant:

(a) Is at least eighteen (18) years of age;
(b) Is of good moral character;
(c) Is a graduate of an accredited high school of any state, or has received an education equivalent thereto; and
(d) Has had at least two (2) years of optical dispensing experience as prescribed by rule of the board, and is currently certified by the American Board of Opticianry and/or is currently certified by the National Contact Lens Examiner.

(2) If an application submitted under subsection (1) of this section establishes that the applicant meets the criteria set forth therein, the board shall license the applicant as a licensed dispensing optician of the state. Such licensee shall be designated as a spectacle dispensing optician, contact lens dispensing optician, or spectacle-contact lens dispensing optician, in accordance with the requirements of this act.

(3) Any license issued under this section shall be renewed in accordance with Section 11 of this act.

SECTION 9. (1) Beginning one (1) year after the effective date of this section, any person who desires to engage in optical dispensing, except as provided in Section 8 of this act, shall
file a properly completed written application for an examination, accompanied by a fee of not more than Two Hundred Dollars ($200.00) with the board.

No person shall be eligible to take any examination under this section, unless he is at least eighteen (18) years of age, of good moral character, and a graduate of an accredited high school of any state, or has received an education equivalent thereto.

(2) Each person who desires to dispense optical aids shall be eligible to take the qualifying examination for such practice if, in addition to satisfying the criteria of subsection (1) of this section, he has successfully completed the following:

(a) Licensed spectacle dispensing optician:

   (i) Supervised experience by either a licensed spectacle dispensing optician, optometrist or physician engaged in the practice of ophthalmology for the two (2) years prior to application; or

   (ii) A two-year course in optical dispensing as prescribed by the board, which includes, but is not limited to, courses of study in English, mathematics, accounting, psychology, ophthalmic optics, ophthalmic dispensing and optical theory and instrumentation.

(b) Licensed contact lens dispensing optician: two (2) years of supervised experience by either a licensed contact lens dispensing optician, optometrist or physician engaged in the practice of ophthalmology.

(c) Licensed spectacle-contact lens dispensing optician: same as paragraphs (a) and (b) of this subsection.

SECTION 10. (1) The board shall administer qualifying examinations at least twice during each calendar year in the metro area of Jackson. Every person desiring to be licensed as provided in this act, shall file with the board an application, verified by oath, setting forth the facts which entitle the applicant to examination and licensure under the provisions of this act. An
applicant who fails the qualifying examination for licensure shall be eligible to take the next qualifying examination.

(2) Each person who qualifies for licensure under this act shall receive from the board, under its seal, a certificate of licensure entitling him to practice as a licensed spectacle dispensing optician, licensed contact lens dispensing optician, or a licensed spectacle-contact lens dispensing optician.

(3) Each licensed dispensing optician shall display his certificate of licensure in a conspicuous place in his office or place of business. A licensed dispensing optician who maintains more than one (1) office or place of business shall display a duplicate copy of such certificate at each location, and the board shall issue duplicate copies of the appropriate certificate of licensure for this purpose upon the filing of an application form therefor and the payment of a Ten Dollar ($10.00) fee for each duplicate copy. Each such location or place of business, however, shall have a licensed dispensing optician on the premises.

SECTION 11. (1) Each license issued under this act shall expire two (2) years after the date of its issuance, but each person holding a valid, current license under this act may apply to the board for the extension of such license. Each application for renewal shall be accompanied by a fee set by the board, not more than Two Hundred Dollars ($200.00). The applicant shall also submit evidence of having completed a continuing education program as hereinafter defined:

(a) Licensed spectacle dispensing opticians shall complete twelve (12) hours of continuing education in spectacle dispensing, approved by the board, during the two-year licensure period.

(b) Licensed contact lens dispensing opticians shall complete twelve (12) hours of continuing education in contact lens dispensing, approved by the board, during the two-year licensure period.
(c) Licensed spectacle-contact lens dispensing opticians shall have completed eighteen (18) hours of continuing education, at least twelve (12) of which must be contact lens hours in the subjects designated under paragraphs (a) and (b) of this subsection.

(2) In the event the renewal registration fee is not paid as herein specified, or the required continuing education hours have not been satisfied, the board may revoke such license; however, the holder thereof may be reinstated by complying with the conditions set forth in this act.

(3) No license shall be revoked without giving sixty (60) days' notice to the delinquent applicant who, within such period, shall have the right to renew such license upon completion of the required continuing education hours and payment of the renewal fee with a penalty of not more than Fifteen Dollars ($15.00).

SECTION 12. (1) Persons licensed under this act may utilize apprentices to engage in ophthalmic dispensing as defined herein under their supervision and at the same location where the licensed person dispenses, except that no licensed ophthalmic dispenser shall supervise more than two (2) apprentices. Apprentices may be employed upon submission of an application for registration to the board.

(2) Persons licensed under this act may employ other ancillary personnel to perform clerical and office duties. Such personnel need not register as apprentices.

SECTION 13. An applicant for licensure as a dispensing optician who is currently licensed in another state shall be accorded the full privileges of practice within this state, upon the payment of a Two Hundred Dollar ($200.00) fee and the submission of a certified copy of the license or certificate issued by such other state, without the necessity of examination, if the board determines that the applicant meets the criteria of Section 9 of this act.
SECTION 14. After each licensed contact lens dispensing optician has dispensed contact lenses pursuant to the written prescription of a licensed physician or a licensed optometrist, the licensee shall, in writing, immediately inform the patient to return back to the prescribing physician or optometrist for final evaluation.

SECTION 15. (1) This act does not apply to:

(a) Any physician licensed by the State Medical Board, or to persons while in the employment and under the supervision of a physician.

(b) Licensed optometrists, or persons while in the employment and under the supervision of an optometrist.

(2) Nothing in this act shall prevent or restrict any individual, firm or corporation from employing, or from engaging in optical dispensing through, persons licensed or registered under such act. Nothing in this act shall be construed to authorize or permit any person to hold himself out as being able, or offer, undertake or attempt, by any means or method, to examine eyes, or to diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease, injury, pain or physical condition. Nothing in this act shall be construed to impede, limit, prevent or restrict the furnishing, selling or supplying of any commodities or services by any manufacturer, wholesaler, jobber, vendor or distributor of any commodities or services to any manufacturer, wholesaler, jobber, vendor or distributor thereof, or to, or as agent for any physician, optometrist or dispensing optician, or to any clinic, infirmary or hospital, or to any school, college or university. Nothing in this act shall be construed to prohibit an unlicensed person from performing merely mechanical work upon inert materials in an optical office or laboratory. The services and appliances relating to optical dispensing shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon
prescription issued by a physician or an optometrist; but
duplications, replacement, reproductions or repetitions may be
done without prescription, in which event any such act shall be
construed to be optical dispensing the same as if performed on the
basis of an original written prescription. Any prescription for
contact lenses shall specify "for contact lenses." Nothing in
this act shall be construed to prevent the sale of eyeglasses for
reading purposes, toy glasses, goggles or sunglasses consisting of
plano white, plano colored or plano tinted glasses, or ready-made
nonprescription glasses, nor shall anything in this act be
construed to affect in any way the manufacturing and sale of
plastic or glass artificial eyes or any persons engaged in the
manufacturing or sale of plastic or glass artificial eyes.

SECTION 16. Violation of any provision of this act is a
misdemeanor punishable upon conviction by a fine of not less than
One Hundred Dollars ($100.00), nor more than Five Hundred Dollars
($500.00), or by imprisonment for not more than ninety (90) days
in the county jail, or by both.

SECTION 17. This act shall take effect and be in force from
and after July 1, 2003.