

CHAPTER 105**(HB 394)**

AN ACT relating to ophthalmic dispensers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 326.010 is amended to read as follows:

As used in this chapter:

- (1) "Board" ~~means~~ ~~[as used in this chapter shall mean]~~ the "Kentucky Board of Ophthalmic Dispensers."
- (2) "Ophthalmic dispensing" ~~[]~~ **means that** a person ~~[practices ophthalmic dispensing within the meaning of the provisions of this chapter relating to ophthalmic dispensers, who]~~ prepares and dispenses lenses, spectacles, eyeglasses, or appurtenances thereto to the intended wearers ~~[thereof]~~ on written prescriptions from **licensed** physicians, osteopaths, or optometrists ~~[duly licensed to practice their profession]~~, and in accordance with ~~these~~ ~~[such]~~ prescriptions, interprets, measures, adapts, fits, and adjusts ~~the~~ ~~[such]~~ lenses, spectacles, eyeglasses, or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes. The services and appliances relating to ophthalmic dispensing shall be dispensed, furnished, or supplied to the intended wearer or user ~~[thereof]~~ only upon **a** written prescription issued by a physician, osteopath, or optometrist. ~~[but]~~ Duplications, replacements, reproductions, or repetitions may be ~~provided~~ ~~[done]~~ without prescriptions, ~~but~~ ~~[in which event any such act]~~ shall be construed to be ophthalmic dispensing the same as if performed on the basis of an original written prescription.
- (3) ***"Optical establishment" means any establishment where ophthalmic dispensing services for the general public are offered, advertised, or performed. Optical establishment shall not include any establishment that comes under the practice of medicine by a duly licensed physician, the practice of osteopathy by a duly licensed osteopath, or the practice of optometry by a duly licensed optometrist.***

Section 2. KRS 326.070 is amended to read as follows:

- (1) Nothing in the provisions of this chapter relating to ophthalmic dispensing shall be construed to limit or restrict, in any respect, the practice of medicine by duly licensed physicians, ~~[or]~~ the practice of osteopathy by duly licensed osteopaths, or the practice ~~[of]~~ optometry by duly licensed optometrists. ~~Al~~ ~~[, and such]~~ licensed physician, osteopath, or optometrist shall have all the rights and privileges ~~of~~ ~~[which may accrue under the provisions of this chapter to]~~ ophthalmic dispensers licensed ***under this chapter*** ~~[hereunder]~~.
- (2) This chapter shall not be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory, or shop.
- (3) Persons, firms, and corporations that sell completely assembled eyeglasses or spectacles without advice or aid as to ~~their~~ ~~[the]~~ selection ~~[thereof]~~, as merchandise, from permanently located or established places of business shall not be subject to this chapter.
- (4) Physicians, osteopaths, ~~[and]~~ optometrists, and their employees while working under their regulation and supervision shall have the right to practice ophthalmic dispensing without qualifying under this chapter and shall not be subject to any of the provisions ***of this chapter*** ~~[herein]~~.

Section 3. KRS 326.090 is amended to read as follows:

- (1) The board may refuse to issue a license, or may suspend, revoke, impose probationary conditions upon, impose an administrative fine upon, or issue a written reprimand against the holder of a license to practice ophthalmic dispensing or an apprentice license if the applicant or licensee has:
 - (a) Committed a dishonest or corrupt act. If the act is a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence are presumptive evidence of guilt at the ensuing disciplinary hearing of the licensee. Conviction includes all instances in which a plea of no contest is the basis of the conviction;
 - (b) Committed any unfair, false, misleading, or deceptive act or practice;
 - (c) Been incompetent or negligent in the practice of ophthalmic dispensing;
 - (d) Failed to comply with a lawful order of the board;
 - (e) Aided or abetted another person in falsely procuring or attempting to procure a license;

- (f) Aided or abetted an unlicensed person in activities which violate KRS 326.030 and which are not otherwise exempted from the provisions of this chapter;
 - (g) Exhibited chronic or persistent inebriety or addiction to a drug habit, to an extent that disqualifies the applicant or the licensee from practicing with safety to the public;
 - (h) Committed fraud or deception in the application or in the examination for the license; or
 - (i) Violated any provisions of this chapter or administrative regulations promulgated in accordance with this chapter.
- (2) ***The board may impose a fine against any person who:***
- (a) ***Operates an optical establishment without the supervision of a Kentucky-licensed ophthalmic dispenser;***
 - (b) ***Allows, aids, or abets an unlicensed person to perform activities that violate KRS 326.030 and are not otherwise exempted from the provisions of this chapter; or***
 - (c) ***Allows a Kentucky licensed ophthalmic dispenser to supervise more than one (1) optical establishment at the same time.***
- (3) After investigating an alleged violation and offering the licensee the opportunity to respond to the allegation, the board may issue a written reprimand to the licensee if the board determines that a violation that is not of a serious nature has occurred. A copy of the reprimand shall be placed in the permanent file of the licensee. The licensee may file a written response to the reprimand within thirty (30) days of receiving the reprimand or may request a hearing with the board. If the licensee responds to the reprimand, his or her response shall be placed in the licensee's permanent file. If the licensee requests a hearing, the board shall set aside the written reprimand, pending the outcome of a hearing by the board under the provisions of KRS Chapter 13B.

Section 4. KRS 326.100 is amended to read as follows:

- (1) The board before suspending, revoking, imposing probationary, or supervisory conditions upon, imposing an administrative fine, issuing a written reprimand, or taking any combination of these actions regarding any ***person***~~licensee~~ under this chapter shall conduct a hearing under the provisions of KRS Chapter 13B, upon the request of ***that person***~~the licensee~~.
- (2) After denying an application under the provisions of this chapter, the board shall grant a hearing to the denied applicant under the provisions of KRS Chapter 13B.
- (3) Any applicant aggrieved by a disciplinary action of the board may appeal the final order of the board to the Circuit Court in the county in which the licensee is practicing in accordance with KRS Chapter 13B.

Approved March 23, 2007.