

Substitute for HOUSE BILL No. 2285

AN ACT relating to contact and ophthalmic lenses; granting certain powers to and imposing certain duties and functions upon the state board of healing arts and the board of examiners in optometry; providing for registration of certain persons dispensing contact lenses through the mail; establishing a contact lens advisory council; amending K.S.A. 65-1504b and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 and 3 to 5, inclusive, and amendments thereto, shall be known as the patient's contact lens prescription release act.

Sec. 2. K.S.A. 65-1504b is hereby amended to read as follows: 65-1504b. It shall be unlawful for any person to dispense an ophthalmic lens or lenses without first having obtained a ~~prescription~~ *valid, unexpired prescription as defined in K.S.A. 65-1501a, and amendments thereto*, or order therefor from a duly licensed optometrist or a person licensed to practice medicine and surgery. *An ophthalmic lens shall include a contact lens with or without power.*

New Sec. 3. Each patient shall be entitled to receive a copy of such patient's contact lens prescription once the same prescription has been determined and the adaptation period has been completed. Any prescription for a specific brand of contact lenses available only from the licensed optometrist or person licensed to practice medicine and surgery, but which are generally marketed under an alternate brand, must disclose the name of the manufacturer and the trade name of the alternate brand. No contact lens prescription may be limited by an expiration date or otherwise to a period of less than 12 months from either the date the prescription is first determined or the last date of the contact lens evaluation by a licensed optometrist or a person licensed to practice medicine and surgery, whichever date is later, unless a health related reason for the limitation is noted in the patient's medical record.

New Sec. 4. (a) For purposes of this section a person dispensing contact lenses means a person or entity not licensed under K.S.A. 65-1505, and amendments thereto, or licensed to practice medicine and surgery in Kansas who mails contact lenses to patients in Kansas pursuant to a contact lens prescription which such person or entity did not determine.

(b) No person dispensing contact lenses as defined under subsection (a) may dispense contact lenses through the mail to Kansas residents unless such person meets the criteria of this section, is registered under this section and pays the annual registration fee set by the state board of healing arts. Registration fees shall not exceed the annual fee for an initial or renewal permit to practice optometry in this state as provided in K.S.A. 65-1505 and amendments thereto.

(c) Approval of the registration for dispensing contact lenses shall be provided by the state board of healing arts upon certification by the person dispensing the contact lenses that such person:

(1) Is licensed or registered to dispense contact lenses in the state where the dispensing facility is located, if required to be licensed or registered in such state;

(2) provides the location, names and titles of all principal corporate officers and of the individual who is responsible for overseeing the dispensing of contact lenses in Kansas;

(3) complies with directions and appropriate requests for information from the regulating agency of each state where such person is licensed or registered;

(4) will respond directly and within a reasonable period of time, not to exceed 15 days, to all communications from the state board of healing arts concerning the dispensing of contact lenses in Kansas;

(5) maintains records of contact lenses and their corresponding valid, unexpired prescription dispensed in Kansas;

(6) agrees to cooperate with the state board of healing arts in providing information to the regulatory agency of any state where it is licensed or registered concerning matters related to the dispensing of contact lenses in Kansas;

(7) provides a toll-free telephone service for responding to questions and complaints from individuals in Kansas during such person's regular hours of operation and agrees to (a) include the toll-free number in literature provided with mailed contact lenses and (b) refer all questions

relating to eye care for the lenses prescribed to the licensee who determined the contact lens prescription;

(8) provides the following, or substantially equivalent, written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE OR REDNESS;

(9) fills contact lens prescriptions according to the strict directions of a person licensed to practice optometry or person licensed to practice medicine and surgery in Kansas, without any deviation or substitution of lenses; and

(10) consents in writing to the personal and subject matter jurisdiction of the district courts of this state and the state board of healing arts for actions arising out of this act.

(d) The state board of healing arts shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the healing arts fee fund.

New Sec. 5. (a) The board of examiners in optometry may revoke the license of any person who is licensed by the board of examiners in optometry and who is dispensing contact lenses in Kansas under this act for failure to comply with the requirements set forth in the patient's contact lens prescription release act. The state board of healing arts may revoke the registration or license of any person who is registered under section 4, and amendments thereto, or licensed by the state board of healing arts and who is dispensing contact lenses in Kansas under this act for failure to comply with the requirements of the patient's contact lens prescription release act.

(b) (1) Upon a finding of any violation of the patient's contact lens prescription release act, in lieu of or in addition to any other action, the board of examiners in optometry for persons licensed by the board of examiners in optometry or the state board of healing arts for persons subject to the provisions of section 4, and amendments thereto, registered under section 4, and amendments thereto, or licensed by the state board of healing arts to practice medicine and surgery may assess a civil fine not in excess of \$10,000 against such person dispensing contact lenses under this act.

(2) The board of examiners in optometry shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall then deposit into the optometry fee fund an amount from such deposits equal to the board's actual costs, including attorney fees, related to fine assessment and enforcement as certified by the president of the board. All expenditures from such funds shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person designated by the president.

(3) The state board of healing arts shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall then deposit into the healing arts fee fund an amount from such deposits equal to the board's actual costs, including attorney fees, related to fine assessment and enforcement as certified by the president of the board. All expenditures from such funds shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person designated by the president.

(c) If a person dispensing contact lenses is operating in violation of the patient's contact lens prescription release act, for persons licensed by the board of examiners in optometry, the board of examiners in optometry or the attorney general may commence an action to enjoin such person from further violations. If a person dispensing contact lenses who is subject to the provisions of section 4, and amendments thereto, is registered

under section 4, and amendments thereto, or is licensed by the state board of healing arts, is operating in violation of the patient's contact lens prescription release act, the state board of healing arts or the attorney general may commence an action in the name of the state of Kansas to enjoin such person from further violations or from mailing, shipping or otherwise delivering contact lenses in Kansas.

(d) The board of examiners in optometry shall administer and enforce the provisions of the patient's contact lens prescription release act for persons licensed by the board of examiners in optometry, and the state board of healing arts shall administer and enforce the provisions of the patient's contact lens prescription release act for persons subject to the provisions of section 4, and amendments thereto, registered under section 4, and amendments thereto, or licensed by the state board of healing arts, and each such board is hereby granted such specific powers as are necessary for the purpose of administering and enforcing such law, including adopting rules and regulations, which rules and regulations shall not be inconsistent with the provisions of the law being enforced.

New Sec. 6. (a) There is hereby established a contact lens advisory council to advise the state board of healing arts in carrying out the provisions of the patient's contact lens prescription release act. The council shall consist of three members, all residents of the state of Kansas appointed by the state board of healing arts as follows: One member shall be a person licensed to practice medicine and surgery who specializes in ophthalmology, one member shall be a licensed optometrist and one member shall be a person dispensing contact lenses as defined in the patient's contact lens prescription release act.

(b) If a vacancy occurs on the council, the state board of healing arts shall appoint a person of like qualifications to fill the vacant position for the unexpired term, if any. The members appointed shall serve at the pleasure of the state board of healing arts.

(c) Members of the council attending meetings of the council, or attending a subcommittee meeting thereof authorized by the council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto from the healing arts fee fund.

Sec. 7. K.S.A. 65-1504b is hereby repealed.

Sec. 8. This act shall take effect and be in force from and after January 1, 2003, and its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.