

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on January 25, 1996 in Room 423-S of the State Capitol.

All members were present

Committee staff present: Emalene Correll, Legislative Research Department  
Norman Furse, Revision of Statutes  
Francie Marshall, Committee Secretary

Conferees appearing before the committee: None

Others attending: See Guest List, Attachment 1.

The minutes of the meetings held on January 18 and January 22, 1996, were approved.

Chairperson Mayans opened the meeting by stating the purpose was to amend and take action on **HB 2164** (see Attachment 2). Chairperson Mayans distributed copies of the bill with the proposed amendments from KOA and Lens/Cole and opened the changes to the committee for discussion.

On motion of Representative O'Connor, seconded by Representative Hutchins, the committee voted to accept KOA's proposal to delete the word "have" in Line 32, and insert the word "possess", (see Attachment 2)

Following a lengthy discussion about language which constitutes a wall, on motion of Representative O'Connor, seconded by Representative Merritt, the committee voted to add the language as written in Attachment 3 to Line 38.

On motion of Representative Goodwin, seconded by Representative O'Connor, the committee voted to accept the (A) Lens/Cole's proposal amending Line 41 reading, "Agreement as to the amount and method of payment of rent; except that rent may not be based on the number, volume, or type of prescriptions written, number of patients seen, referrals between parties or percentage of income realized by a license from the practice of optometry; and provided, however, that such prohibition shall not be construed to prohibit payment by a licensee for business services on a percentage of gross revenue basis." Representative Freeborn requested her "No" vote be recorded.

On motion of Representative Kirk, seconded by Representative O'Connor, the committee amended (B) Lens/Cole's proposal with amendments reading, "agreements as to hours of operation; provided however a non- licensee may not require that the licensee agree to personally practice a specified number of hours" (see Attachment 2).

On motion of Representative Merritt, seconded by Representative Kirk, the committee voted to accept KOA's proposal for (D) and (G); and Lens/Cole's proposal for (E) (see Attachment 2).

On substitute motion of Representative Landwehr, seconded by Representative Morrison, the committee voted by a division vote not to accept KOA's recommendations reading, "Any such lease must contain written statement that the unlicensed person will not interfere, directly or indirectly with the exercise of the optometrist's professional judgement and shall attest to the licensee's sole ownership and possession of the patient records." The substitute motion failed. The original motion passed.

On motion of Representative Geringer, seconded by O'Connor, the committee voted to adopt the (Lens/Cole) recommendation without any changes (see Attachment 3). Representative Freeborn requested her "No" vote be recorded.

On motion of Representative Merritt, seconded by Representative Goodwin, the committee voted on **HB 2164** to be passed as amended. Representative Mayans will carry the legislation. Representatives Freeborn

and Landwehr requested their "No" vote be recorded.

The meeting was adjourn at 3:20 p.m.

Next meeting is scheduled for January 29, 1996.

House Health & Human Services COMMITTEE GUEST LIST

DATE January 25, 1996

NAME	REPRESENTING
GARY Robbins	Ks Opt ASSN
JOHN FEDERICO	Pepe McGill + ASSOC
Amy Campbell	KSOS
DUD GRANT	KCC

H&HS Comm  
1-25-96  
Altn #1

# HOUSE BILL No. 2164

By Committee on Health and Human Services

1-24

HHS Comm.  
1-25-96  
Action #2

9 AN ACT concerning optometry; office lease provisions; amending K.S.A.  
10 65-1502 and repealing the existing section.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 65-1502 is hereby amended to read as follows: 65-  
14 1502. (a) Except as provided in K.S.A. 65-1508 and amendments thereto,  
15 a person shall be deemed to be practicing optometry within the meaning  
16 of the optometry law if such person in any manner:

17 (1) Holds oneself out to the public as being engaged in or who main-  
18 tains an office for the practice of optometry as defined in K.S.A. 65-1501  
19 and amendments thereto;

20 (2) makes a test or examination of the eye or eyes of another to  
21 ascertain the refractive, the muscular or the pathological condition  
22 thereof;

23 (3) adapts lenses to the human eye for any purpose, either directly  
24 or indirectly; or

25 (4) conducts or performs orthoptic exercises or visual training therapy  
26 for the correction, remedy or relief of any insufficiencies or abnormal  
27 conditions of the eyes.

28 (b) "Maintains an office for the practice of optometry" for the pur-  
29 poses of this section and the optometry law means:

30 (1) To directly or indirectly control or attempt to control the profes-  
31 sional judgment or the practice of a licensee; or

32 (2) to bear any of the expenses of or to have, own or acquire any  
33 interest in the practice, books, records, files or materials of a licensee.

34 (c) (1) Nothing herein contained shall be construed to prohibit a li-  
35 censee from entering into leases, agreements, mortgages or other types  
36 of debt instruments not in violation of this section or any other section  
37 of the optometry law.

38 (2) "Maintaining an office" shall not be interpreted as prohibiting an  
39 optometrist and an optical company from entering into a lease which  
40 provides for the following:

41 (A) Agreements as to the amount and method of payment of rent;  
42 except, that rent may not be based on the number or type of prescriptions  
43 written, number of patients seen or referrals between the parties;

"possess"(KOA)

(2) (KOA) "Maintaining an office" shall not be interpreted as prohibiting an optometrist from entering into a written lease with a person not licensed to practice optometry of space that is separate and apart from the unlicensed person's business which provides the licensee the covenant of quiet enjoyment of the leased premises and for the following;

(2) (Lens/Cole) "Maintaining an office shall not be interpreted as prohibiting an optometrist from entering into a written lease with a person not licensed to practice optometry of space that is distinguished by signage from the unlicensed person's business which provides the licensee the covenant of quiet enjoyment of the leased premises and for the following;

(A) (KOA) Agreements as to the amounts of payment of rent; except, that rent must reflect the unlicensed person's investment in the premises and fixtures over the term of the lease, and rent may not be based on the number, volume or type of prescription written, number of patients seen, referrals between parties, or percentage of income realized by a licensee from the practice of optometry.

(A) (Lens/Cole) Agreement as to the amount and method of payment of rent; except that rent may not be based on the number, volume or type of prescriptions written, number of patients seen, referrals between parties or percentage of income realized by a licensee from the practice of optometry; and provided, however, that such prohibition shall not be construed to prohibit payment by a licensee for business services on a percentage of gross revenue basis.

*LICENSEE*

*A SPECIFIED*

*2-2*

- 1 (B) ~~agreements as to hours of operation;~~
- 2 (C) ~~insurance requirements for the premises;~~
- 3 (D) ~~noncompetition in the sale of product during and for a reasonable~~
- 4 ~~time and geographic area after the term of the lease;~~
- 5 (E) ~~lease of equipment and furnishings;~~
- 6 (F) ~~provision of utilities; and~~
- 7 (G) ~~agreements to participate in third-party programs.~~

8 ~~Any such lease must contain a written statement that the landlord will~~  
 9 ~~not interfere, directly or indirectly, with the exercise of the optometrist's~~  
 10 ~~professional judgment and acknowledge the ownership of the patient re-~~  
 11 ~~records in the optometrist's office. Any optometrist entering into such a lease~~  
 12 ~~shall ensure through appropriate signage at the entrance to the office that~~  
 13 ~~the public is notified of the independence of such optometrists from the~~  
 14 ~~landlord. For purposes of this section, the phrase "independent doctor of~~  
 15 ~~optometry" or words to similar effect, used in conjunction with the op-~~  
 16 ~~tometrists name shall suffice. In the case of an office setting, whereby the~~  
 17 ~~optometrist is located next to an optical shop, similar sign printing, color~~  
 18 ~~schemes or office frontage decoration shall not be construed as illegal or~~  
 19 ~~deceptive advertising so long as the optometrist displays signage as re-~~  
 20 ~~quired above indicating that the optometrist is an independent practi-~~  
 21 ~~tioner.~~

22 Sec. 2. K.S.A. 65-1502 is hereby repealed.  
 23 Sec. 3. This act shall take effect and be in force from and after its  
 24 publication in the statute book.

- (B) (KOA) delete
- (B) (Lens/Cole) agreements as to hours of operation; provided however a non-licensee may not require that the ~~specific optometrist agree to personally practice in excess of forty-five hours weekly, but such licensee may agree to personally do so or to provide for such coverage through the use of licensed temporary or relief personnel;~~
- (D) (KOA) delete ✓
- (E) (KOA) delete ✓
- (E) (Lens/Cole) lease of equipment and furnishings; and
- (G) (KOA) delete
- (G) (Lens/Cole) agreements to participate in third party programs, provided that the licensee is free to stipulate a minimum fee for services under such third party programs
- (KOA) Any such lease must contain a written statement that the unlicensed person will not interfere, directly or indirectly with the exercise of the optometrist's professional judgement and shall attest to the licensee's sole ownership and possession of the patient records.
- (Lens/Cole) Any such lease must contain a written statement that the unlicensed person will not interfere, directly or indirectly with the exercise of the optometrist's professional judgement and shall attest to the licensee's sole ownership and possession of the patient records. Wherever a licensee is located next to an unlicensed person's business, similar sign painting, color schemes or office frontage decoration shall not be construed as illegal or deceptive advertising.

AMENDMENT #1 - "separate and apart"

Revise Section 1. (2) to read: "(2) "Maintaining an office" shall not be interpreted as prohibiting an optometrist from entering into a written lease with a person not licensed to practice optometry of space that is SEPARATE AND APART from the unlicensed person's business which provides the licensee the covenant of quiet enjoyment of the leased premises PROVIDED HOWEVER, A WALL SHALL SEPARATE THE PRACTICE OF OPTOMETRY SPACE FROM THE UNLICENSED PERSON'S BUSINESS AND SHALL BE DEEMED TO BE IN FULL COMPLIANCE WITH THIS SECTION and for the following;"

H & H SComm  
1-25-96  
Attn #3