

HOUSE BILL No. 2377

By Committee on Federal and State Affairs

2-19

1 AN ACT concerning optometrists and ophthalmologists; relating to
2 liability for charitable vision screenings and donated eyeglasses;
3 amending K.S.A. 65-1501a and 65-1504b and repealing the existing
4 sections.

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

7 New Section 1. (a) Except for damages or injuries resulting from
8 gross negligence or willful misconduct, a nonprofit charitable
9 organization, and any participating licensed optometrist, ophthalmologist
10 or any trained volunteer working with a nonprofit charitable organization
11 in providing vision screenings shall not be liable for any damages or
12 injuries resulting from the performance of any vision screening or the
13 provision of donated or recycled eyeglasses, provided that:

14 (1) The vision screening is provided to address ocular health
15 concerns, and, if applicable, to provide a temporary solution in the form of
16 donated or recycled eyeglasses, until the patient is able to receive a full
17 examination;

18 (2) the vision screening is not intended to replace a full ocular health
19 examination provided by a licensed optometrist or ophthalmologist;

20 (3) the patient signs a waiver acknowledging that the services
21 provided are a temporary solution until the patient can get a full
22 examination by a licensed optometrist or ophthalmologist;

23 (4) each vision screening is supervised by an attending licensed
24 optometrist or ophthalmologist;

25 (5) the eyeglass prescription determinations and ocular health
26 recommendations are provided by an attending licensed optometrist or
27 ophthalmologist;

28 (6) a written prescription is not provided to the patient;

29 (7) the eyeglasses provided to the patients are a close or approximate
30 match, within tolerances allowed by the attending licensed optometrist or
31 ophthalmologist, to the prescription determined during the vision
32 screening;

33 (8) the vision screening and eyeglasses are provided without a charge;

34 (9) the licensed optometrist, ophthalmologist or trained volunteer is
35 authorized by the nonprofit organization to provide the vision screening
36 and eyeglasses on behalf of the nonprofit organization and is acting within

1 the scope of such individual's authorized responsibilities and the guidelines
2 of the nonprofit charitable organization when providing the vision
3 screening or eyeglasses; and

4 (10) the nonprofit charitable organization provides procedural, risk
5 management and quality control training, as applicable, to the participating
6 licensed optometrist, ophthalmologist or trained volunteer who provides
7 the vision screening or eyeglasses.

8 (b) The limitation of liability provided in subsection (a) is not
9 applicable:

10 (1) In any cause of action brought by a state agency or municipality
11 pursuant to state or local law; or

12 (2) if the conduct of the nonprofit charitable organization, licensed
13 optometrist, licensed ophthalmologist or trained volunteer includes any of
14 the following types of misconduct:

15 (A) Any of the offenses described in article 54 of chapter 21 of the
16 Kansas Statutes Annotated, and amendments thereto;

17 (B) any felony offense that was motivated entirely, or in part, by the
18 race, color, religion, ethnicity or national origin of the victim or was
19 motivated by the offender's belief or perception, entirely, or in part, of the
20 race, color, religion, ethnicity or national origin of the victim, regardless of
21 whether the offender's belief or perception was correct;

22 (C) any unlawful sexual act, as defined in K.S.A. 2018 Supp. 21-
23 5501, and amendments thereto;

24 (D) any act involving misconduct in violation of federal or state civil
25 rights laws; or

26 (E) any act performed while the defendant was under the influence of
27 drugs or alcohol.

28 Sec. 2. K.S.A. 65-1501a is hereby amended to read as follows: 65-
29 1501a. For the purposes of this act the following terms shall have the
30 meanings respectively ascribed to them unless the context requires
31 otherwise:

32 (a) "Board" means the board of examiners in optometry established
33 under K.S.A. 74-1501, and amendments thereto.

34 (b) "License" means a license to practice optometry granted under the
35 optometry law.

36 (c) "Licensee" means a person licensed under the optometry law to
37 practice optometry.

38 (d) "Adapt" means the determination, selection, fitting or use of
39 lenses, prisms, orthoptic exercises or visual training therapy for the aid of
40 any insufficiencies or abnormal conditions of the eyes after or by
41 examination or testing.

42 (e) "Lenses" means any type of ophthalmic lenses, which are lenses
43 prescribed or used for the aid of any insufficiencies or abnormal conditions

1 of the eyes.

2 (f) "Prescription" means a verbal, written or electronic order
3 transmitted directly or by electronic means from a licensee giving or
4 containing the name and address of the prescriber, the license registration
5 number of the licensee, the name and address of the patient, the
6 specifications and directions for lenses, prisms, orthoptic exercises, low
7 vision rehabilitation services or visual training therapy to be used for the
8 aid of any insufficiencies or abnormal conditions of the eyes, including
9 instructions necessary for the fabrication or use thereof and the date of
10 issue.

11 (g) "Prescription for topical pharmaceutical drugs or oral drugs"
12 means a verbal, written or electronic order transmitted directly or by
13 electronic means from a licensee giving or containing the name and
14 address of the prescriber, the license registration number of the licensee,
15 the name and address of the patient, the name and quantity of the drug
16 prescribed, directions for use, the number of refills permitted, the date of
17 issue and expiration date.

18 (h) "Topical pharmaceutical drugs" means drugs administered
19 topically and not by other means.

20 (i) "Dispense" means to deliver prescription-only medication or
21 ophthalmic lenses to the ultimate user pursuant to the lawful prescription
22 of a licensee and dispensing of prescription-only medication by a licensee
23 shall be limited to a twenty-four hour supply or minimal quantity
24 necessary until a prescription can be filled by a licensed pharmacist,
25 except that the twenty-four hour supply or minimal quantity shall not
26 apply to lenses described in ~~subsection (a)(2) of K.S.A. 65-1501(a)(2)~~, and
27 amendments thereto.

28 (j) "False advertisement" means any advertisement which is false,
29 misleading or deceptive in a material respect. In determining whether any
30 advertisement is misleading, there shall be taken into account not only
31 representations made or suggested by statement, word, design, device,
32 sound or any combination thereof, but also the extent to which the
33 advertisement fails to reveal facts material in the light of such
34 representations made.

35 (k) "Advertisement" means all representations disseminated in any
36 manner or by any means, for the purpose of inducing, or which are likely
37 to induce, directly or indirectly, the purchase of professional services or
38 ophthalmic goods.

39 (l) "Health care provider" shall have the meaning ascribed to that
40 term in ~~subsection (f) of K.S.A. 40-3401(f)~~, and amendments thereto.

41 (m) "Medical facility" shall have the meaning ascribed to that term in
42 ~~subsection (e) of K.S.A. 65-411(c)~~, and amendments thereto.

43 (n) "Medical care facility" shall have the meaning ascribed to that

1 term in K.S.A. 65-425, and amendments thereto.

2 (o) "Ophthalmologist" means a person licensed to practice medicine
3 and surgery by the state board of healing arts who specializes in the
4 diagnosis and medical and surgical treatment of diseases and defects of the
5 human eye and related structures.

6 (p) "Low vision rehabilitation services" means the evaluation,
7 diagnosis, management and care of the low vision patient including low
8 vision rehabilitation therapy, education and interdisciplinary consultation
9 under the direction and supervision of an ophthalmologist or optometrist.

10 (q) "Oral drugs" means oral antibacterial drugs, oral antiviral drugs,
11 oral antihistamines, oral analgesic drugs, oral steroids, oral antiglaucoma
12 drugs and other oral drugs with clinically accepted ocular uses.

13 (r) *"Nonprofit charitable organization" means an organization*
14 *exempt from federal income tax as an organization described in section*
15 *501(c)(3) of the internal revenue code.*

16 (s) *"Vision screening" means a test or examination of an individual*
17 *using a portion of the usual examination procedures in a comprehensive*
18 *eye examination and refraction, that are selected or directed by an*
19 *attending licensed optometrist or ophthalmologist, and are within the*
20 *guidelines of a nonprofit charitable organization.*

21 Sec. 3. K.S.A. 65-1504b is hereby amended to read as follows: 65-
22 1504b. *Except as provided in section 1, and amendments thereto*, it shall
23 be unlawful for any person to dispense an ophthalmic lens or lenses
24 without first having obtained a valid, unexpired prescription as defined in
25 K.S.A. 65-1501a, and amendments thereto, or order therefor from a duly
26 licensed optometrist or a person licensed to practice medicine and surgery.
27 An ophthalmic lens shall include a contact lens with or without power.

28 Sec. 4. K.S.A. 65-1501a and 65-1504b are hereby repealed.

29 Sec. 5. This act shall take effect and be in force from and after its
30 publication in the statute book.