

SENATE BILL NO. 426

INTRODUCED BY HIMSL, S. BROWN

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE SENATE

February 10, 1981	Introduced and referred to Committee on Public Health, Welfare, and Safety.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading, do pass.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day.
	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

March 3, 1981	Introduced and referred to Committee on Human Services.
March 26, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, pass consideration to the 70th legislative day.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Second reading, concurred in as amended.

March 31, 1981

On motion rules suspended and bill placed on third reading this day.

Third reading, concurred in as amended. Ayes, 87; Noes, 9.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 7, 1981

On motion taken from second reading and referred to Committee on Bills and Journal. Sent to enrolling.

April 9, 1981

Correctly enrolled.

Signed by President.

April 10, 1981

Delivered to Governor.

April 16, 1981

Returned from Governor with recommended amendments.

April 17, 1981

Second reading, Governor's amendments concurred in.

On motion rules suspended. Governor's amendments placed on calendar for third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 43; Noes, 6. Transmitted to House.

IN THE HOUSE

April 20, 1981

Received from Senate.

April 22, 1981

Second reading, Governor's amendments concurred in.

April 22, 1981

On motion rules suspended and Governor's amendments placed on third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 85; Noes, 11.

IN THE SENATE

April 22, 1981

Returned from House.

April 23, 1981

Sent to enrolling.

Reported correctly enrolled.

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Senate BILL NO. *426*
Steve Brown

INTRODUCED BY _____
BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING; CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103, 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Optometrists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Optometrists be reestablished under existing statutory authority.

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

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Section 1. Reestablishment. The board of optometrists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read: "2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

1 (e) board of cosmetologists, department of
2 professional and occupational licensing, created by
3 2-15-1626;

4 (f) board of dentists, department of professional and
5 occupational licensing, created by 2-15-1606;

6 (g) board of hearing aid dispensers, department of
7 professional and occupational licensing, created by
8 2-15-1616;

9 (h) board of massage therapists, department of
10 professional and occupational licensing, created by
11 2-15-1627;

12 (i) Montana state board of medical examiners,
13 department of professional and occupational licensing,
14 created by 2-15-1605;

15 (j) board of morticians, department of professional
16 and occupational licensing, created by 2-15-1619;

17 (k) board of nursing, department of professional and
18 occupational licensing, created by 2-15-1610;

19 (l) board of nursing home administrators, department
20 of professional and occupational licensing, created by
21 2-15-1611;

22 ~~(m) board of optometrists, department of professional~~
23 ~~and occupational licensing, created by 2-15-1612~~

24 (n) board of osteopathic physicians, department of
25 professional and occupational licensing, created by

1 2-15-1607;

2 ~~(o)~~ board of pharmacists, department of
3 professional and occupational licensing, created by
4 2-15-1609;

5 ~~(p)~~ board of podiatry examiners, department of
6 professional and occupational licensing, created by
7 2-15-1608;

8 ~~(q)~~ board of psychologists, department of
9 professional and occupational licensing, created by
10 2-15-1617;

11 ~~(r)~~ board of radiologic technologists, department
12 of professional and occupational licensing, created by
13 2-15-1614;

14 ~~(s)~~ board of speech pathologists and audiologists,
15 department of professional and occupational licensing,
16 created by 2-15-1615;

17 ~~(t)~~ board of veterinarians, department of
18 professional and occupational licensing, created by
19 2-15-1618;

20 ~~(u)~~ board of veterans' affairs, department of
21 social and rehabilitation services, created by 2-15-2202;

22 ~~(v)~~ board of sanitarians, department of
23 professional and occupational licensing, created by
24 2-15-1631.

25 (3) The following units of state government shall

1 terminate on July 1, 1983:

2 (a) board of aeronautics, department of community
3 affairs, created by 2-15-1103;

4 (b) state board of hail insurance, department of
5 agriculture, created by 2-15-3003;

6 (c) board of horse racing, department of professional
7 and occupational licensing, created by 2-15-1662;

8 (d) board of livestock, department of livestock,
9 created by 2-15-3102;

10 (e) board of milk control, department of business
11 regulation, created by 2-15-1802;

12 (f) board of oil and gas conservation, department of
13 natural resources and conservation, created by 2-15-3303;

14 (g) Montana outfitters council, department of fish,
15 wildlife, and parks, created by 2-15-3403;

16 (h) public service commission, department of public
17 service regulation, created by 69-1-102;

18 (i) board of water and wastewater operators,
19 department of health and environmental sciences, created by
20 2-15-2105;

21 (j) board of water well contractors, department of
22 professional and occupational licensing, created by
23 2-15-1632.

24 (4) The following agencies terminate on July 1, 1985:

25 (a) the board of public accountants, created by

1 2-15-1641;

2 (b) the board of architects, created by 2-15-1651;

3 (c) state banking board, department of business
4 regulation, created by 2-15-1803;

5 (d) the state electrical board, created by 2-15-1654;

6 (e) the board of professional engineers and land
7 surveyors, created by 2-15-1653;

8 (f) office of commissioner of insurance and the
9 insurance department, state auditor's office, created by
10 2-15-1902 and 2-15-1903;

11 (g) office of the securities commissioner, state
12 auditor's office, created by 2-15-1901;

13 (h) the board of landscape architects, created by
14 2-15-1652;

15 (i) the board of county printing, created by
16 2-15-1102;

17 (j) the board of plumbers, created by 2-15-1655;

18 (k) board of physical therapy examiners, created by
19 2-15-1628.

20 15) The following agency terminates on July 1, 1987:
21 board of optometrists, department of professional and
22 occupational licensing, created by 2-15-1612."

23 Section 3. Section 2-15-1612, MCA, is amended to read:

24 "2-15-1612. Board of optometrists. (1) There is a
25 board of optometrists.

1 (2) The board consists of four members appointed by
2 the governor. Three members must be registered optometrists
3 of this state and actually engaged in the exclusive practice
4 of optometry in this state during their terms of office. One
5 member must be a representative of the public who is not
6 engaged in the practice of optometry.

7 (3) ~~Each member~~ Members shall serve ~~for a term of 4~~
8 ~~years staggered 4-year terms.~~

9 (4) The board is allocated to the department for
10 administrative purposes only as prescribed in 2-15-121."

11 Section 4. Section 37-10-301, MCA, is amended to read:

12 "37-10-301. Certificate required for practice --
13 unlawful acts -- injunction. (1) It is unlawful for a person
14 to:

15 (a) practice optometry in this state unless he has
16 first obtained a certificate of registration and filed it or
17 a certified copy with the county clerk and recorder of the
18 county of his residence;

19 (b) sell, barter, or offer to sell or barter a
20 certificate of registration issued by the department;

21 (c) purchase or procure by barter a certificate of
22 registration with intent to use it as evidence of the
23 holder's qualification to practice optometry;

24 (d) materially alter with fraudulent intent a
25 certificate of registration;

1 (e) use or attempt to use a certificate of
2 registration which has been purchased, fraudulently issued,
3 counterfeited, or materially altered as a valid certificate
4 of registration;

5 (f) practice optometry under a false or assumed name;

6 (g) willfully make a materially false statement in an
7 application for an examination by the department or for a
8 certificate of registration;

9 (h) advertise by displaying a sign or by otherwise
10 holding himself out to be an optometrist without having at
11 the time a valid certificate of registration;

12 (i) replace or duplicate ophthalmic lenses with or
13 without a prescription or to dispense ophthalmic lenses from
14 prescriptions without having at the time a valid certificate
15 of registration as an optometrist; however, this subsection
16 does not prevent an optical mechanic from;

17 *(i)* doing the merely mechanical work on an ophthalmic
18 lens which is ordered on a prescription signed by a
19 registered optometrist and is dispensed only by the
20 optometrist or a person employed by the optometrist and who
21 does so in the office of and under the direct personal
22 supervision of an optometrist; or

23 ~~(ii) replacing or duplicating an existing lens for~~
24 ~~glasses;~~

25 (j) take or make measurements for the purpose of

1 fitting or adapting ophthalmic lenses to the human eye
 2 without having at the time a valid certificate of
 3 registration. A person who takes or makes measurements or
 4 uses mechanical devices for this purpose or who, in the sale
 5 of spectacles, eyeglasses, or lenses, uses in the testing of
 6 the eyes lenses other than the lenses actually sold is
 7 practicing optometry. However, this section does not apply
 8 to the prescriptions of qualified optometrists when sent to
 9 a recognized optical laboratory.

10 ~~(k) advertise at a price or stated terms of a price or~~
 11 ~~as being free; the following:~~

12 ~~(i) the examination or treatment of the eyes;~~

13 ~~(ii) furnishing of optometrist services; or~~

14 ~~(iii) furnishing of lenses, glasses, contact lenses, contact~~
 15 ~~lenses, glasses, frames, or fitting thereof;--However--this~~
 16 ~~subsection--does--not--apply--to--advertising--goggles,~~
 17 ~~sunglasses, colored glasses, or occupational eye protective~~
 18 ~~devices--if--they--are--not--made--with--refractive--values--and--are~~
 19 ~~not--advertised--in--connection--with--the--practice--of--optometry~~
 20 ~~or--professional--services.~~

21 ~~(i)(k) measure, fit, place, or adapt a lens to direct,~~
 22 ~~contiguous contact to the human eyeball without having at~~
 23 ~~the time a valid certificate of registration as an~~
 24 ~~optometrist.~~

25 (2) When the board has reasonable cause to believe

1 that a person is violating this section or a rule issued
 2 under this chapter, it may, in addition to other remedies
 3 provided in this chapter, bring an action for injunctive
 4 relief in district court in the county where the violation
 5 occurs to enjoin the person from engaging in or continuing
 6 the violation. The department may employ legal counsel to
 7 prosecute these actions. In these actions and on notice and
 8 hearing, an order or judgment may be entered awarding a
 9 temporary restraining order or final injunction as
 10 considered proper by the judge of the district court in the
 11 county where the violation occurred."

12 Section 5. Section 37-10-311, MCA, is amended to read:

13 "37-10-311. Revocation -- unprofessional conduct. (1)

14 The board may revoke a certificate of registration for:

15 (a) conviction of crime physical or mental
 16 incompetence;

17 (b) habitual drunkenness gross malpractice or repeated
 18 malpractice;

19 (c) contagious or infectious disease a violation of
 20 any of the provisions of this chapter or rules or orders of
 21 the board; or

22 ~~(d) gross immorality;~~

23 ~~(e) gross ignorance or inefficiency in his profession;~~

24 or

25 ~~(f)(d) unprofessional conduct.~~

1 (2) Unprofessional conduct includes:

2 (a) obtaining a fee by fraud or misrepresentation;

3 (b) employing, directly or indirectly, a suspended or
4 unlicensed optometrist to perform work covered by this
5 chapter;

6 ~~(c) directly or indirectly accepting employment to
7 practice optometry from a person not having a valid
8 certificate of registration as an optometrist or accepting
9 employment to practice optometry for or from a company or
10 corporation;~~

11 ~~(d)(c)~~ permitting another to use his certificate of
12 registration;

13 ~~(e)(d)~~ soliciting or sending a solicitor from house to
14 house;

15 ~~(f)(e)~~ treatment or advice in which untruthful or
16 improbable statements are made;

17 ~~(g)(f)~~ professing to cure disease;

18 ~~(h)(g)~~ advertising in which ambiguous or misleading
19 statements are made; or

20 ~~(i)(h)~~ the use in advertising of the expression "eye
21 specialist" or "specialist on eyes" in connection with the
22 name of an optometrist. This chapter does not prohibit
23 legitimate or truthful advertising by a registered
24 optometrist.

25 (3) Before a certificate is revoked, the holder shall

1 be given a notice and an opportunity for a hearing.

2 (4) Any optometrist convicted a second time for
3 violation of the provisions of this chapter or whose
4 certificate of registration or examination has been revoked
5 a second time shall not be permitted to practice optometry
6 in this state."

7 Section 6. Effective date. This act is effective on
8 passage and approval.

-End-

Approved by the committee on
Public Health, Welfare & Safety

1 SENATE BILL NO. 426

2 INTRODUCED BY HIMSL, S. BROWN

3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD
8 MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING;
9 CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE
10 GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS
11 PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER
12 THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103,
13 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN
14 IMMEDIATE EFFECTIVE DATE."

15
16 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
17 MCA, terminates the Board of Optometrists and requires a
18 performance evaluation of the Board by the Legislative Audit
19 Committee; and

20 WHEREAS, as a result of the performance evaluation, the
21 Legislative Audit Committee recommends that the Board of
22 Optometrists be reestablished under existing statutory
23 authority.

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25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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2 is reestablished for 6 years pursuant to 2-8-122 with its
3 existing statutory authority and rules.

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6 agencies shall terminate on July 1, 1979:

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8 and occupational licensing, created by 2-15-1643;

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10 and occupational licensing, created by 2-15-1642;

11 (c) state board of warm air heating, ventilation, and
12 air conditioning, department of professional and
13 occupational licensing, created by 2-15-1656;

14 (d) board of institutions, department of institutions,
15 created by 2-15-2303.

16 (2) The following agencies shall terminate on July 1,
17 1981:

18 (a) commission for human rights, department of labor
19 and industry, created by 2-15-1706;

20 (b) board of athletics, department of professional and
21 occupational licensing, created by 2-15-1661;

22 (c) board of barbers, department of professional and
23 occupational licensing, created by 2-15-1625;

24 (d) board of chiropractors, department of professional
25 and occupational licensing, created by 2-15-1613;

1 (e) board of cosmetologists, department of
2 professional and occupational licensing, created by
3 2-15-1626;

4 (f) board of dentists, department of professional and
5 occupational licensing, created by 2-15-1606;

6 (g) board of hearing aid dispensers, department of
7 professional and occupational licensing, created by
8 2-15-1616;

9 (h) board of massage therapists, department of
10 professional and occupational licensing, created by
11 2-15-1627;

12 (i) Montana state board of medical examiners,
13 department of professional and occupational licensing,
14 created by 2-15-1605;

15 (j) board of morticians, department of professional
16 and occupational licensing, created by 2-15-1619;

17 (k) board of nursing, department of professional and
18 occupational licensing, created by 2-15-1610;

19 (l) board of nursing home administrators, department
20 of professional and occupational licensing, created by
21 2-15-1611;

22 ~~(m) board of optometrists, department of professional
23 and occupational licensing, created by 2-15-1612;~~

24 (n) (m) board of osteopathic physicians, department of
25 professional and occupational licensing, created by

1 2-15-1607;

2 ~~(o)~~ (n) board of pharmacists, department of
3 professional and occupational licensing, created by
4 2-15-1609;

5 ~~(p)~~ (o) board of podiatry examiners, department of
6 professional and occupational licensing, created by
7 2-15-1608;

8 ~~(q)~~ (p) board of psychologists, department of
9 professional and occupational licensing, created by
10 2-15-1617;

11 ~~(r)~~ (q) board of radiologic technologists, department
12 of professional and occupational licensing, created by
13 2-15-1614;

14 ~~(s)~~ (r) board of speech pathologists and audiologists,
15 department of professional and occupational licensing,
16 created by 2-15-1615;

17 ~~(t)~~ (s) board of veterinarians, department of
18 professional and occupational licensing, created by
19 2-15-1618;

20 ~~(u)~~ (t) board of veterans' affairs, department of
21 social and rehabilitation services, created by 2-15-2202;

22 ~~(v)~~ (u) board of sanitarians, department of
23 professional and occupational licensing, created by
24 2-15-1631.

25 (3) The following units of state government shall

1 terminate on July 1, 1983:

2 (a) board of aeronautics, department of community
3 affairs, created by 2-15-1103;

4 (b) state board of hail insurance, department of
5 agriculture, created by 2-15-3003;

6 (c) board of horse racing, department of professional
7 and occupational licensing, created by 2-15-1662;

8 (d) board of livestock, department of livestock,
9 created by 2-15-3102;

10 (e) board of milk control, department of business
11 regulation, created by 2-15-1802;

12 (f) board of oil and gas conservation, department of
13 natural resources and conservation, created by 2-15-3303;

14 (g) Montana outfitters council, department of fish,
15 wildlife, and parks, created by 2-15-3403;

16 (h) public service commission, department of public
17 service regulation, created by 69-1-102;

18 (i) board of water and wastewater operators,
19 department of health and environmental sciences, created by
20 2-15-2105;

21 (j) board of water well contractors, department of
22 professional and occupational licensing, created by
23 2-15-1632.

24 (4) The following agencies terminate on July 1, 1985:

25 (a) the board of public accountants, created by

1 2-15-1641;

2 (b) the board of architects, created by 2-15-1651;

3 (c) state banking board, department of business
4 regulation, created by 2-15-1803;

5 (d) the state electrical board, created by 2-15-1654;

6 (e) the board of professional engineers and land
7 surveyors, created by 2-15-1653;

8 (f) office of commissioner of insurance and the
9 insurance department, state auditor's office, created by
10 2-15-1902 and 2-15-1903;

11 (g) office of the securities commissioner, state
12 auditor's office, created by 2-15-1901;

13 (h) the board of landscape architects, created by
14 2-15-1652;

15 (i) the board of county printing, created by
16 2-15-1102;

17 (j) the board of plumbers, created by 2-15-1655;

18 (k) board of physical therapy examiners, created by
19 2-15-1628.

20 (5) The following agency terminates on July 1, 1987:
21 board of optometrists, department of professional and
22 occupational licensing, created by 2-15-1612."

23 Section 3. Section 2-15-1612, MCA, is amended to read:

24 "2-15-1612. Board of optometrists. (1) There is a
25 board of optometrists.

1 (2) The board consists of four members appointed by
2 the governor. Three members must be registered optometrists
3 of this state and actually engaged in the exclusive practice
4 of optometry in this state during their terms of office. One
5 member must be a representative of the public who is not
6 engaged in the practice of optometry.

7 (3) Each--member Members shall serve for--a-term-of--4
8 years staggered 4-year terms.

9 (4) The board is allocated to the department for
10 administrative purposes only as prescribed in 2-15-121.*

11 Section 4. Section 37-10-301, MCA, is amended to read:

12 *37-10-301. Certificate required for practice --
13 unlawful acts -- injunction. (1) It is unlawful for a person
14 to:

15 (a) practice optometry in this state unless he has
16 first obtained a certificate of registration and filed it or
17 a certified copy with the county clerk and recorder of the
18 county of his residence;

19 (b) sell, barter, or offer to sell or barter a
20 certificate of registration issued by the department;

21 ~~(c)~~ (e) purchase or procure by barter a certificate of
22 registration with intent to use it as evidence of the
23 holder's qualification to practice optometry;

24 (d) materially alter with fraudulent intent a
25 certificate of registration;

1 (e) use or attempt to use a certificate of
2 registration which has been purchased, fraudulently issued,
3 counterfeited, or materially altered as a valid certificate
4 of registration;

5 (f) practice optometry under a false or assumed name;

6 (g) willfully make a materially false statement in an
7 application for an examination by the department or for a
8 certificate of registration;

9 (h) advertise by displaying a sign or by otherwise
10 holding himself out to be an optometrist without having at
11 the time a valid certificate of registration;

12 (i) replace or duplicate ophthalmic lenses with or
13 without a prescription or to dispense ophthalmic lenses from
14 prescriptions without having at the time a valid certificate
15 of registration as an optometrist; however, this subsection
16 does not prevent an optical mechanic from:

17 (i) doing the merely mechanical work on an ophthalmic
18 lens which is ordered on a prescription signed by a
19 registered optometrist and is dispensed only by the
20 optometrist or a person employed by the optometrist and who
21 does so in the office of and under the direct personal
22 supervision of an optometrist; or

23 (ii) replacing or duplicating an existing lens for
24 glasses;

25 (j) take or make measurements for the purpose of

1 fitting or adapting ophthalmic lenses to the human eye
2 without having at the time a valid certificate of
3 registration. A person who takes or makes measurements or
4 uses mechanical devices for this purpose or who, in the sale
5 of spectacles, eyeglasses, or lenses, uses in the testing of
6 the eyes lenses other than the lenses actually sold is
7 practicing optometry. However, this section does not apply
8 to the prescriptions of qualified optometrists when sent to
9 a recognized optical laboratory.

10 ~~{k}--advertise-at-a-price-or-stated-terms-of-a-price-or~~
11 ~~as-being-free--the-following:~~

12 ~~{i}--the-examination-or-treatment-of-the-eyes;~~

13 ~~{ii}--furnishing-of-optometrical-services; or~~

14 ~~{iii}--furnishing--a--lens--lenses--contact--lens--contact~~
15 ~~lenses--glasses--frames--or--fitting--thereof--However--this~~
16 ~~subsection--does--not--apply--to--advertising--goggles~~
17 ~~sunglasses--colored-glasses--or--occupational--eye-protective~~
18 ~~devices--if--they--are--not--made--with--refractive-values--and--are~~
19 ~~not--advertised--in--connection--with--the--practice--of--optometry~~
20 ~~or--professional--services.~~

21 ~~{k}~~ measure, fit, place, or adapt a lens to direct,
22 contiguous contact to the human eyeball without having at
23 the time a valid certificate of registration as an
24 optometrist.

25 (2) When the board has reasonable cause to believe

1 that a person is violating this section or a rule issued
2 under this chapter, it may, in addition to other remedies
3 provided in this chapter, bring an action for injunctive
4 relief in district court in the county where the violation
5 occurs to enjoin the person from engaging in or continuing
6 the violation. The department may employ legal counsel to
7 prosecute these actions. In these actions and on notice and
8 hearing, an order or judgment may be entered awarding a
9 temporary restraining order or final injunction as
10 considered proper by the judge of the district court in the
11 county where the violation occurred."

12 Section 5. Section 37-10-311, MCA, is amended to read:

13 "37-10-311. Revocation — unprofessional conduct. (1)

14 The board may revoke a certificate of registration for:

15 (a) conviction of crime physical or mental
16 incompetence;

17 (b) habitual drunkenness gross malpractice or repeated
18 malpractice;

19 (c) contagious or infectious disease a violation of
20 any of the provisions of this chapter or rules or orders of
21 the board; or

22 ~~{d}--gross-immorality;~~

23 ~~{e}--gross-ignorance-or-inefficiency-in-his-profession;~~

24 or

25 ~~{f}--~~ (d) unprofessional conduct.

1 (2) Unprofessional conduct includes:
 2 (a) obtaining a fee by fraud or misrepresentation;
 3 (b) employing, directly or indirectly, a suspended or
 4 unlicensed optometrist to perform work covered by this
 5 chapter;

6 ~~(c) directly or indirectly accepting employment to~~
 7 ~~practice optometry from a person not having a valid~~
 8 ~~certificate of registration as an optometrist or accepting~~
 9 ~~employment to practice optometry for or from a company or~~
 10 ~~corporation;~~

11 (C) DIRECTLY OR INDIRECTLY ACCEPTING EMPLOYMENT TO
 12 PRACTICE OPTOMETRY FROM A PERSON NOT HAVING A VALID
 13 CERTIFICATE OF REGISTRATION AS AN OPTOMETRIST OR ACCEPTING
 14 EMPLOYMENT TO PRACTICE OPTOMETRY FOR OR FROM A COMPANY OR
 15 CORPORATION;

16 ~~(d)(c)(D)~~ permitting another to use his certificate of
 17 registration;

18 ~~(e)(d)(E)~~ soliciting or sending a solicitor from house
 19 to house;

20 ~~(f)(e)(F)~~ treatment or advice in which untruthful or
 21 improbable statements are made;

22 ~~(g)(f)(G)~~ professing to cure disease;

23 ~~(h)(g)(H)~~ advertising in which ambiguous or misleading
 24 statements are made; or

25 ~~(i)(h)(I)~~ the use in advertising of the expression

1 "eye specialist" or "specialist on eyes" in connection with
 2 the name of an optometrist. This chapter does not prohibit
 3 legitimate or truthful advertising by a registered
 4 optometrist.

5 (3) Before a certificate is revoked, the holder shall
 6 be given a notice and an opportunity for a hearing.

7 (4) Any optometrist convicted a second time for
 8 violation of the provisions of this chapter or whose
 9 certificate of registration or examination has been revoked
 10 a second time shall not be permitted to practice optometry
 11 in this state."

12 Section 6. Effective date. This act is effective on
 13 passage and approval.

-End-

1 SENATE BILL NO. 426

2 INTRODUCED BY HINSL, S. BROWN

3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD
8 MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING;
9 CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE
10 GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS
11 PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER
12 THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103,
13 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN
14 IMMEDIATE EFFECTIVE DATE."

15
16 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
17 MCA, terminates the Board of Optometrists and requires a
18 performance evaluation of the Board by the Legislative Audit
19 Committee; and

20 WHEREAS, as a result of the performance evaluation, the
21 Legislative Audit Committee recommends that the Board of
22 Optometrists be reestablished under existing statutory
23 authority.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 Section 1. Reestablishment. The board of optometrists
2 is reestablished for 6 years pursuant to 2-8-122 with its
3 existing statutory authority and rules.

4 Section 2. Section 2-8-103, MCA, is amended to read:
5 "2-8-103. Agencies to terminate. (1) The following
6 agencies shall terminate on July 1, 1979:

7 (a) board of abstracters, department of professional
8 and occupational licensing, created by 2-15-1643;

9 (b) board of real estate, department of professional
10 and occupational licensing, created by 2-15-1642;

11 (c) state board of warm air heating, ventilation, and
12 air conditioning, department of professional and
13 occupational licensing, created by 2-15-1656;

14 (d) board of institutions, department of institutions,
15 created by 2-15-2303.

16 (2) The following agencies shall terminate on July 1,
17 1981:

18 (a) commission for human rights, department of labor
19 and industry, created by 2-15-1706;

20 (b) board of athletics, department of professional and
21 occupational licensing, created by 2-15-1661;

22 (c) board of barbers, department of professional and
23 occupational licensing, created by 2-15-1625;

24 (d) board of chiropractors, department of professional
25 and occupational licensing, created by 2-15-1613;

1 (e) board of cosmetologists, department of
2 professional and occupational licensing, created by
3 2-15-1626;

4 (f) board of dentists, department of professional and
5 occupational licensing, created by 2-15-1606;

6 (g) board of hearing aid dispensers, department of
7 professional and occupational licensing, created by
8 2-15-1616;

9 (h) board of massage therapists, department of
10 professional and occupational licensing, created by
11 2-15-1627;

12 (i) Montana state board of medical examiners,
13 department of professional and occupational licensing,
14 created by 2-15-1605;

15 (j) board of morticians, department of professional
16 and occupational licensing, created by 2-15-1619;

17 (k) board of nursing, department of professional and
18 occupational licensing, created by 2-15-1610;

19 (l) board of nursing home administrators, department
20 of professional and occupational licensing, created by
21 2-15-1611;

22 ~~(m) board of optometrists, department of professional~~
23 ~~and occupational licensing, created by 2-15-1612~~

24 (n) board of osteopathic physicians, department of
25 professional and occupational licensing, created by

1 2-15-1607;

2 ~~(o)~~ (n) board of pharmacists, department of
3 professional and occupational licensing, created by
4 2-15-1609;

5 ~~(p)~~ (o) board of podiatry examiners, department of
6 professional and occupational licensing, created by
7 2-15-1608;

8 ~~(q)~~ (p) board of psychologists, department of
9 professional and occupational licensing, created by
10 2-15-1617;

11 ~~(r)~~ (q) board of radiologic technologists, department
12 of professional and occupational licensing, created by
13 2-15-1614;

14 ~~(s)~~ (r) board of speech pathologists and audiologists,
15 department of professional and occupational licensing,
16 created by 2-15-1615;

17 ~~(t)~~ (s) board of veterinarians, department of
18 professional and occupational licensing, created by
19 2-15-1618;

20 ~~(u)~~ (t) board of veterans' affairs, department of
21 social and rehabilitation services, created by 2-15-2202;

22 ~~(v)~~ (u) board of sanitarians, department of
23 professional and occupational licensing, created by
24 2-15-1631.

25 (3) The following units of state government shall

1 terminate on July 1, 1983:

2 (a) board of aeronautics, department of community
3 affairs, created by 2-15-1103;

4 (b) state board of hail insurance, department of
5 agriculture, created by 2-15-3003;

6 (c) board of horse racing, department of professional
7 and occupational licensing, created by 2-15-1662;

8 (d) board of livestock, department of livestock,
9 created by 2-15-3102;

10 (e) board of milk control, department of business
11 regulation, created by 2-15-1802;

12 (f) board of oil and gas conservation, department of
13 natural resources and conservation, created by 2-15-3303;

14 (g) Montana outfitters council, department of fish,
15 wildlife, and parks, created by 2-15-3403;

16 (h) public service commission, department of public
17 service regulation, created by 69-1-102;

18 (i) board of water and wastewater operators,
19 department of health and environmental sciences, created by
20 2-15-2105;

21 (j) board of water well contractors, department of
22 professional and occupational licensing, created by
23 2-15-1632.

24 (4) The following agencies terminate on July 1, 1985:

25 (a) the board of public accountants, created by

1 2-15-1641;

2 (b) the board of architects, created by 2-15-1651;

3 (c) state banking board, department of business
4 regulation, created by 2-15-1803;

5 (d) the state electrical board, created by 2-15-1654;

6 (e) the board of professional engineers and land
7 surveyors, created by 2-15-1653;

8 (f) office of commissioner of insurance and the
9 insurance department, state auditor's office, created by
10 2-15-1902 and 2-15-1903;

11 (g) office of the securities commissioner, state
12 auditor's office, created by 2-15-1901;

13 (h) the board of landscape architects, created by
14 2-15-1652;

15 (i) the board of county printing, created by
16 2-15-1102;

17 (j) the board of plumbers, created by 2-15-1655;

18 (k) board of physical therapy examiners, created by
19 2-15-1628.

20 (5) The following agency terminates on July 1, 1987:
21 board of optometrists, department of professional and
22 occupational licensing, created by 2-15-1612."

23 Section 3. Section 2-15-1612, MCA, is amended to read:

24 "2-15-1612. Board of optometrists. (1) There is a
25 board of optometrists.

1 (2) The board consists of four members appointed by
 2 the governor. Three members must be registered optometrists
 3 of this state and actually engaged in the exclusive practice
 4 of optometry in this state during their terms of office. One
 5 member must be a representative of the public who is not
 6 engaged in the practice of optometry.

7 (3) ~~Each member~~ Members shall serve ~~for a term of 4~~
 8 ~~years staggered 4-year terms.~~

9 (4) The board is allocated to the department for
 10 administrative purposes only as prescribed in 2-15-121."

11 Section 4. Section 37-10-301, MCA, is amended to read:

12 "37-10-301. Certificate required for practice --
 13 unlawful acts -- injunction. (1) It is unlawful for a person
 14 to:

15 (a) practice optometry in this state unless he has
 16 first obtained a certificate of registration and filed it or
 17 a certified copy with the county clerk and recorder of the
 18 county of his residence;

19 (b) sell, barter, or offer to sell or barter a
 20 certificate of registration issued by the department;

21 (c) purchase or procure by barter a certificate of
 22 registration with intent to use it as evidence of the
 23 holder's qualification to practice optometry;

24 (d) materially alter with fraudulent intent a
 25 certificate of registration;

1 (e) use or attempt to use a certificate of
 2 registration which has been purchased, fraudulently issued,
 3 counterfeited, or materially altered as a valid certificate
 4 of registration;

5 (f) practice optometry under a false or assumed name;

6 (g) willfully make a materially false statement in an
 7 application for an examination by the department or for a
 8 certificate of registration;

9 (h) advertise by displaying a sign or by otherwise
 10 holding himself out to be an optometrist without having at
 11 the time a valid certificate of registration;

12 (i) replace or duplicate ophthalmic lenses with or
 13 without a prescription or to dispense ophthalmic lenses from
 14 prescriptions without having at the time a valid certificate
 15 of registration as an optometrist; however, this subsection
 16 does not prevent an optical mechanic from:

17 (i) doing the merely mechanical work on an ophthalmic
 18 lens which is ordered on a prescription signed by a
 19 registered optometrist and is dispensed only by the
 20 optometrist or a person employed by the optometrist and who
 21 does so in the office of and under the direct personal
 22 supervision of an optometrist; or

23 (ii) replacing or duplicating an existing lens for
 24 glasses;

25 (j) take or make measurements for the purpose of

1 fitting or adapting ophthalmic lenses to the human eye
 2 without having at the time a valid certificate of
 3 registration. A person who takes or makes measurements or
 4 uses mechanical devices for this purpose or who, in the sale
 5 of spectacles, eyeglasses, or lenses, uses in the testing of
 6 the eyes lenses other than the lenses actually sold is
 7 practicing optometry. However, this section does not apply
 8 to the prescriptions of qualified optometrists when sent to
 9 a recognized optical laboratory.

10 ~~{k}--advertise-at-a-price-or-stated-terms-of-a-price-or~~
 11 ~~as-being-free--the-following:~~

12 ~~{i}--the-examination-or-treatment-of-the-eyes;~~

13 ~~{ii}--furnishing-of-optometrical-services--or~~

14 ~~{iii}--furnishing--a-lens--lenses--contact-lens--contact~~
 15 ~~lenses--glasses--frames--or-fitting-thereof.--However--this~~
 16 ~~subsection---does---not---apply---to---advertising--goggles--~~
 17 ~~sunglasses--colored-glasses--or-occupational--eye-protective~~
 18 ~~devices--if-they-are-not-made-with-refractive-values-and-are~~
 19 ~~not-advertised-in-connection-with-the-practice-of--optometry~~
 20 ~~or-professional-services~~

21 ~~{k}~~ measure, fit, place, or adapt a lens to direct,
 22 contiguous contact to the human eyeball without having at
 23 the time a valid certificate of registration as an
 24 optometrist.

25 (2) When the board has reasonable cause to believe

1 that a person is violating this section or a rule issued
 2 under this chapter, it may, in addition to other remedies
 3 provided in this chapter, bring an action for injunctive
 4 relief in district court in the county where the violation
 5 occurs to enjoin the person from engaging in or continuing
 6 the violation. The department may employ legal counsel to
 7 prosecute these actions. In these actions and on notice and
 8 hearing, an order or judgment may be entered awarding a
 9 temporary restraining order or final injunction as
 10 considered proper by the judge of the district court in the
 11 county where the violation occurred."

12 Section 5. Section 37-10-311, MCA, is amended to read:

13 "37-10-311. Revocation -- unprofessional conduct. (1)

14 The board may revoke a certificate of registration for:

15 (a) ~~conviction---of---crime~~ physical or mental
 16 incompetence;

17 (b) ~~habitual--drunkenness~~ gross malpractice or repeated
 18 malpractice;

19 (c) ~~contagious-or-infectious-disease~~ a violation of
 20 any of the provisions of this chapter or rules or orders of
 21 the board; or

22 ~~{d}--gross-immorality;~~

23 ~~{e}--gross-ignorance-or-inefficiency-in-his-profession;~~

24 or

25 ~~{d}~~ unprofessional conduct.

1 (2) Unprofessional conduct includes:

2 (a) obtaining a fee by fraud or misrepresentation;

3 (b) employing, directly or indirectly, a suspended or
4 unlicensed optometrist to perform work covered by this
5 chapter;

6 ~~(c) directly or indirectly accepting employment to
7 practice optometry from a person not having a valid
8 certificate of registration as an optometrist or accepting
9 employment to practice optometry for or from a company or
10 corporation;~~

11 (C) DIRECTLY OR INDIRECTLY ACCEPTING EMPLOYMENT TO
12 PRACTICE OPTOMETRY FROM A PERSON NOT HAVING A VALID
13 CERTIFICATE OF REGISTRATION AS AN OPTOMETRIST OR ACCEPTING
14 EMPLOYMENT TO PRACTICE OPTOMETRY FOR OR FROM A COMPANY OR
15 CORPORATION;

16 ~~(d)(1)~~ (D) permitting another to use his certificate of
17 registration;

18 ~~(e)(1)~~ (E) soliciting or sending a solicitor from house
19 to house;

20 ~~(f)(1)~~ (F) treatment or advice in which untruthful or
21 improbable statements are made;

22 ~~(g)(1)~~ (G) professing to cure disease;

23 ~~(h)(1)~~ (H) advertising in which ambiguous or misleading
24 statements are made; or

25 ~~(i)(1)~~ (I) the use in advertising of the expression

1 "eye specialist" or "specialist on eyes" in connection with
2 the name of an optometrist. This chapter does not prohibit
3 legitimate or truthful advertising by a registered
4 optometrist.

5 (3) Before a certificate is revoked, the holder shall
6 be given a notice and an opportunity for a hearing.

7 (4) Any optometrist convicted a second time for
8 violation of the provisions of this chapter or whose
9 certificate of registration or examination has been revoked
10 a second time shall not be permitted to practice optometry
11 in this state."

12 Section 6. Effective date. This act is effective on
13 passage and approval.

-End-

1 SENATE BILL NO. 426

2 INTRODUCED BY HIMSL, S. BROWN

3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD
8 MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING;
9 CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE
10 GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS
11 PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER
12 THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103,
13 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN
14 IMMEDIATE EFFECTIVE DATE."

15
16 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
17 MCA, terminates the Board of Optometrists and requires a
18 performance evaluation of the Board by the Legislative Audit
19 Committee; and

20 WHEREAS, as a result of the performance evaluation, the
21 Legislative Audit Committee recommends that the Board of
22 Optometrists be reestablished under existing statutory
23 authority.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 Section 1. Reestablishment. The board of optometrists
2 is reestablished for 6 years pursuant to 2-8-122 with its
3 existing statutory authority and rules.

4 Section 2. Section 2-8-103, MCA, is amended to read:
5 "2-8-103. Agencies to terminate. (1) The following
6 agencies shall terminate on July 1, 1979:

7 (a) board of abstracters, department of professional
8 and occupational licensing, created by 2-15-1643;

9 (b) board of real estate, department of professional
10 and occupational licensing, created by 2-15-1642;

11 (c) state board of warm air heating, ventilation, and
12 air conditioning, department of professional and
13 occupational licensing, created by 2-15-1656;

14 (d) board of institutions, department of institutions,
15 created by 2-15-2303.

16 (2) The following agencies shall terminate on July 1,
17 1981:

18 (a) commission for human rights, department of labor
19 and industry, created by 2-15-1706;

20 (b) board of athletics, department of professional and
21 occupational licensing, created by 2-15-1661;

22 (c) board of barbers, department of professional and
23 occupational licensing, created by 2-15-1625;

24 (d) board of chiropractors, department of professional
25 and occupational licensing, created by 2-15-1613;

1 (e) board of cosmetologists, department of
2 professional and occupational licensing, created by
3 2-15-1626;

4 (f) board of dentists, department of professional and
5 occupational licensing, created by 2-15-1606;

6 (g) board of hearing aid dispensers, department of
7 professional and occupational licensing, created by
8 2-15-1616;

9 (h) board of massage therapists, department of
10 professional and occupational licensing, created by
11 2-15-1627;

12 (i) Montana state board of medical examiners,
13 department of professional and occupational licensing,
14 created by 2-15-1605;

15 (j) board of morticians, department of professional
16 and occupational licensing, created by 2-15-1619;

17 (k) board of nursing, department of professional and
18 occupational licensing, created by 2-15-1610;

19 (l) board of nursing home administrators, department
20 of professional and occupational licensing, created by
21 2-15-1611;

22 ~~(m) board of optometrists, department of professional~~
23 ~~and occupational licensing, created by 2-15-1612~~

24 (n) (m) board of osteopathic physicians, department of
25 professional and occupational licensing, created by

1 2-15-1607;

2 (o) (n) board of pharmacists, department of
3 professional and occupational licensing, created by
4 2-15-1609;

5 (p) (o) board of podiatry examiners, department of
6 professional and occupational licensing, created by
7 2-15-1608;

8 (q) (p) board of psychologists, department of
9 professional and occupational licensing, created by
10 2-15-1617;

11 (r) (q) board of radiologic technologists, department
12 of professional and occupational licensing, created by
13 2-15-1614;

14 (s) (r) board of speech pathologists and audiologists,
15 department of professional and occupational licensing,
16 created by 2-15-1615;

17 (t) (s) board of veterinarians, department of
18 professional and occupational licensing, created by
19 2-15-1618;

20 (u) (t) board of veterans' affairs, department of
21 social and rehabilitation services, created by 2-15-2202;

22 (v) (u) board of sanitarians, department of
23 professional and occupational licensing, created by
24 2-15-1631.

25 (3) The following units of state government shall

1 terminate on July 1, 1983:

2 (a) board of aeronautics, department of community
3 affairs, created by 2-15-1103;

4 (b) state board of hail insurance, department of
5 agriculture, created by 2-15-3003;

6 (c) board of horse racing, department of professional
7 and occupational licensing, created by 2-15-1662;

8 (d) board of livestock, department of livestock,
9 created by 2-15-3102;

10 (e) board of milk control, department of business
11 regulation, created by 2-15-1802;

12 (f) board of oil and gas conservation, department of
13 natural resources and conservation, created by 2-15-3303;

14 (g) Montana outfitters council, department of fish,
15 wildlife, and parks, created by 2-15-3403;

16 (h) public service commission, department of public
17 service regulation, created by 69-1-102;

18 (i) board of water and wastewater operators,
19 department of health and environmental sciences, created by
20 2-15-2105;

21 (j) board of water well contractors, department of
22 professional and occupational licensing, created by
23 2-15-1632.

24 (4) The following agencies terminate on July 1, 1985:

25 (a) the board of public accountants, created by

1 2-15-1641;

2 (b) the board of architects, created by 2-15-1651;

3 (c) state banking board, department of business
4 regulation, created by 2-15-1803;

5 (d) the state electrical board, created by 2-15-1654;

6 (e) the board of professional engineers and land
7 surveyors, created by 2-15-1653;

8 (f) office of commissioner of insurance and the
9 insurance department, state auditor's office, created by
10 2-15-1902 and 2-15-1903;

11 (g) office of the securities commissioner, state
12 auditor's office, created by 2-15-1901;

13 (h) the board of landscape architects, created by
14 2-15-1652;

15 (i) the board of county printing, created by
16 2-15-1102;

17 (j) the board of plumbers, created by 2-15-1655;

18 (k) board of physical therapy examiners, created by
19 2-15-1628.

20 (5) The following agency terminates on July 1, 1987:
21 board of optometrists, department of professional and
22 occupational licensing, created by 2-15-1612."

23 Section 3. Section 2-15-1612, MCA, is amended to read:

24 "2-15-1612. Board of optometrists. (1) There is a
25 board of optometrists.

1 (2) The board consists of four members appointed by
2 the governor. Three members must be registered optometrists
3 of this state and actually engaged in the exclusive practice
4 of optometry in this state during their terms of office. One
5 member must be a representative of the public who is not
6 engaged in the practice of optometry.

7 ~~Each member~~ Members shall serve ~~for a term of 4~~
8 ~~years staggered 4-year terms.~~

9 (4) The board is allocated to the department for
10 administrative purposes only as prescribed in 2-15-121."

11 Section 4. Section 37-10-301, MCA, is amended to read:

12 "37-10-301. Certificate required for practice --
13 unlawful acts -- injunction. (1) It is unlawful for a person
14 to:

15 (a) practice optometry in this state unless he has
16 first obtained a certificate of registration and filed it or
17 a certified copy with the county clerk and recorder of the
18 county of his residence;

19 (b) sell, barter, or offer to sell or barter a
20 certificate of registration issued by the department;

21 (c) purchase or procure by barter a certificate of
22 registration with intent to use it as evidence of the
23 holder's qualification to practice optometry;

24 (d) materially alter with fraudulent intent a
25 certificate of registration;

1 (e) use or attempt to use a certificate of
2 registration which has been purchased, fraudulently issued,
3 counterfeited, or materially altered as a valid certificate
4 of registration;

5 (f) practice optometry under a false or assumed name;

6 (g) willfully make a materially false statement in an
7 application for an examination by the department or for a
8 certificate of registration;

9 (h) advertise by displaying a sign or by otherwise
10 holding himself out to be an optometrist without having at
11 the time a valid certificate of registration;

12 (i) replace or duplicate ophthalmic lenses with or
13 without a prescription or to dispense ophthalmic lenses from
14 prescriptions without having at the time a valid certificate
15 of registration as an optometrist; however, this subsection
16 does not prevent an optical mechanic from:

17 (i) doing the merely mechanical work on an ophthalmic
18 lens which is ordered on a prescription signed by a
19 registered optometrist and is dispensed only by the
20 optometrist or a person employed by the optometrist and who
21 does so in the office of and under the direct personal
22 supervision of an optometrist; or

23 (ii) replacing or duplicating an existing lens for
24 glasses;

25 (j) take or make measurements for the purpose of

1 fitting or adapting ophthalmic lenses to the human eye
 2 without having at the time a valid certificate of
 3 registration. A person who takes or makes measurements or
 4 uses mechanical devices for this purpose or who, in the sale
 5 of spectacles, eyeglasses, or lenses, uses in the testing of
 6 the eyes lenses other than the lenses actually sold is
 7 practicing optometry. However, this section does not apply
 8 to the prescriptions of qualified optometrists when sent to
 9 a recognized optical laboratory.

10 ~~{k}--advertise-at-a-price-or-stated-terms-of-a-price-or
 11 as-being-free--the-following*~~

12 ~~{i}--the-examination-or-treatment-of-the-eyes;~~

13 ~~{iii}--furnishing-of-optometrical-services; or~~

14 ~~{iiii}--furnishing--a-lens--lenses--contact-lens--contact
 15 lenses--glasses--frames--or-fitting-thereof--However--this
 16 subsection--does--not--apply--to--advertising--goggles,
 17 sunglasses--colored-glasses--or-occupational--eye-protective
 18 devices--if-they-are-not-made-with-refractive-values-and-are
 19 not-advertised-in-connection-with-the-practice-of--optometry
 20 or-professional-services~~

21 ~~{j}{k} measure, fit, place, or MEASURE, FIT, PLACE, OR~~

22 adapt a lens to direct, contiguous contact to the human
 23 eyeball without having at the time a valid certificate of
 24 registration as an optometrist.

25 (2) When the board has reasonable cause to believe

1 that a person is violating this section or a rule issued
 2 under this chapter, it may, in addition to other remedies
 3 provided in this chapter, bring an action for injunctive
 4 relief in district court in the county where the violation
 5 occurs to enjoin the person from engaging in or continuing
 6 the violation. The department may employ legal counsel to
 7 prosecute these actions. In these actions and on notice and
 8 hearing, an order or judgment may be entered awarding a
 9 temporary restraining order or final injunction as
 10 considered proper by the judge of the district court in the
 11 county where the violation occurred."

12 Section 5. Section 37-10-311, MCA, is amended to read:
 13 "37-10-311. Revocation -- unprofessional conduct. (1)

14 The board may revoke a certificate of registration for:

15 (a) ~~conviction---of---crime~~ physical or mental
 16 incompetence;

17 (b) ~~habitual--drunkenness~~ gross malpractice or repeated
 18 malpractice;

19 (c) ~~contagious-or-infectious-disease~~ a violation of
 20 any of the provisions of this chapter or rules or orders of
 21 the board; or

22 ~~{d}--gross-immorality;~~

23 ~~{e}--gross-ignorance-or-inefficiency-in-his-profession;~~

24 or

25 ~~{f}{d}~~ unprofessional conduct.

1 (2) Unprofessional conduct includes:
 2 (a) obtaining a fee by fraud or misrepresentation;
 3 (b) employing, directly or indirectly, a suspended or
 4 unlicensed optometrist to perform work covered by this
 5 chapter;
 6 ~~(c) directly or indirectly accepting employment to~~
 7 ~~practice optometry from a person not having a valid~~
 8 ~~certificate of registration as an optometrist or accepting~~
 9 ~~employment to practice optometry for or from a company or~~
 10 ~~corporation;~~
 11 (C) DIRECTLY OR INDIRECTLY ACCEPTING EMPLOYMENT TO
 12 PRACTICE OPTOMETRY FROM A PERSON NOT HAVING A VALID
 13 CERTIFICATE OF REGISTRATION AS AN OPTOMETRIST OR ACCEPTING
 14 EMPLOYMENT TO PRACTICE OPTOMETRY FOR OR FROM A COMPANY OR
 15 CORPORATION;
 16 ~~(d)(d)(D)~~ permitting another to use his certificate of
 17 registration;
 18 ~~(e)(e)(E)~~ soliciting or sending a solicitor from house
 19 to house;
 20 ~~(f)(f)(F)~~ treatment or advice in which untruthful or
 21 improbable statements are made;
 22 ~~(g)(g)(G)~~ professing to cure disease;
 23 ~~(h)(h)(H)~~ advertising in which ambiguous or misleading
 24 statements are made; or
 25 ~~(i)(i)(I)~~ the use in advertising of the expression

1 "eye specialist" or "specialist on eyes" in connection with
 2 the name of an optometrist. This chapter does not prohibit
 3 legitimate or truthful advertising by a registered
 4 optometrist.

5 (3) Before a certificate is revoked, the holder shall
 6 be given a notice and an opportunity for a hearing.

7 (4) Any optometrist convicted a second time for
 8 violation of the provisions of this chapter or whose
 9 certificate of registration or examination has been revoked
 10 a second time shall not be permitted to practice optometry
 11 in this state."

12 Section 6. Effective date. This act is effective on
 13 passage and approval.

-End-

House amendments to Senate Bill 426:

1. Page 9, line 21.

Following: "(k)"

Insert: "measure, fit, place, or"

HUMAN SERVICES COMMITTEE OF THE HOUSE
Amendments to SB 426, third reading copy
March 25, 1981

1. Page 9, line 21.
Following: (k)
Strike: "measure, fit, place, or"

April 15, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO SENATE BILL NO. 426;
REFERENCE COPY; AS FOLLOWS:

1. Page 1, Lines 10 - 12
Following: "LICENSE;" Line 10
Strike: "REMOVING RESTRICTIONS PROHIBITING OPTOMETRISTS
FROM BEING EMPLOYED BY ANYONE OTHER THAN A LICENSED
OPTOMETRIST;"

2. Page 9, Line 21
Following: "FIT"
Strike: "PLACE,"

SENATE BILL NO. 426

INTRODUCED BY HIMSL, S. BROWN

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING; CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103, 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Optometrists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Optometrists be reestablished under existing statutory authority.

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

Section 1. Reestablishment. The board of optometrists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read: "2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

1 (e) board of cosmetologists, department of
2 professional and occupational licensing, created by
3 2-15-1626;

4 (f) board of dentists, department of professional and
5 occupational licensing, created by 2-15-1606;

6 (g) board of hearing aid dispensers, department of
7 professional and occupational licensing, created by
8 2-15-1616;

9 (h) board of massage therapists, department of
10 professional and occupational licensing, created by
11 2-15-1627;

12 (i) Montana state board of medical examiners,
13 department of professional and occupational licensing,
14 created by 2-15-1605;

15 (j) board of morticians, department of professional
16 and occupational licensing, created by 2-15-1619;

17 (k) board of nursing, department of professional and
18 occupational licensing, created by 2-15-1610;

19 (l) board of nursing home administrators, department
20 of professional and occupational licensing, created by
21 2-15-1611;

22 ~~(m) board of optometrists, department of professional~~
23 ~~and occupational licensing, created by 2-15-1612;~~

24 (n) board of osteopathic physicians, department of
25 professional and occupational licensing, created by

1 2-15-1607;

2 ~~(o) board of pharmacists, department of~~
3 ~~professional and occupational licensing, created by~~
4 ~~2-15-1609;~~

5 ~~(p) board of podiatry examiners, department of~~
6 ~~professional and occupational licensing, created by~~
7 ~~2-15-1608;~~

8 ~~(q) board of psychologists, department of~~
9 ~~professional and occupational licensing, created by~~
10 ~~2-15-1617;~~

11 ~~(r) board of radiologic technologists, department~~
12 ~~of professional and occupational licensing, created by~~
13 ~~2-15-1614;~~

14 ~~(s) board of speech pathologists and audiologists,~~
15 ~~department of professional and occupational licensing,~~
16 ~~created by 2-15-1615;~~

17 ~~(t) board of veterinarians, department of~~
18 ~~professional and occupational licensing, created by~~
19 ~~2-15-1618;~~

20 ~~(u) board of veterans' affairs, department of~~
21 ~~social and rehabilitation services, created by 2-15-2202;~~

22 ~~(v) board of sanitarians, department of~~
23 ~~professional and occupational licensing, created by~~
24 ~~2-15-1631.~~

25 (3) The following units of state government shall

1 terminate on July 1, 1983:

2 (a) board of aeronautics, department of community
3 affairs, created by 2-15-1103;

4 (b) state board of hail insurance, department of
5 agriculture, created by 2-15-3003;

6 (c) board of horse racing, department of professional
7 and occupational licensing, created by 2-15-1662;

8 (d) board of livestock, department of livestock,
9 created by 2-15-3102;

10 (e) board of milk control, department of business
11 regulation, created by 2-15-1802;

12 (f) board of oil and gas conservation, department of
13 natural resources and conservation, created by 2-15-3303;

14 (g) Montana outfitters council, department of fish,
15 wildlife, and parks, created by 2-15-3403;

16 (h) public service commission, department of public
17 service regulation, created by 69-1-102;

18 (i) board of water and wastewater operators,
19 department of health and environmental sciences, created by
20 2-15-2105;

21 (j) board of water well contractors, department of
22 professional and occupational licensing, created by
23 2-15-1632.

24 (4) The following agencies terminate on July 1, 1985:

25 (a) the board of public accountants, created by

1 2-15-1641;

2 (b) the board of architects, created by 2-15-1651;

3 (c) state banking board, department of business
4 regulation, created by 2-15-1803;

5 (d) the state electrical board, created by 2-15-1654;

6 (e) the board of professional engineers and land
7 surveyors, created by 2-15-1653;

8 (f) office of commissioner of insurance and the
9 insurance department, state auditor's office, created by
10 2-15-1902 and 2-15-1903;

11 (g) office of the securities commissioner, state
12 auditor's office, created by 2-15-1901;

13 (h) the board of landscape architects, created by
14 2-15-1652;

15 (i) the board of county printing, created by
16 2-15-1102;

17 (j) the board of plumbers, created by 2-15-1655;

18 (k) board of physical therapy examiners, created by
19 2-15-1628.

20 ~~(5) The following agency terminates on July 1, 1987:~~
21 ~~board of optometrists, department of professional and~~
22 ~~occupational licensing, created by 2-15-1612."~~

23 Section 3. Section 2-15-1612, MCA, is amended to read:

24 "2-15-1612. Board of optometrists. (1) There is a
25 board of optometrists.

1 (2) The board consists of four members appointed by
2 the governor. Three members must be registered optometrists
3 of this state and actually engaged in the exclusive practice
4 of optometry in this state during their terms of office. One
5 member must be a representative of the public who is not
6 engaged in the practice of optometry.

7 (3) ~~Each member~~ Members shall serve ~~for a term of 4~~
8 ~~years staggered 4-year terms.~~

9 (4) The board is allocated to the department for
10 administrative purposes only as prescribed in 2-15-121.*

11 Section 4. Section 37-10-301, MCA, is amended to read:

12 "37-10-301. Certificate required for practice --
13 unlawful acts -- injunction. (1) It is unlawful for a person
14 to:

15 (a) practice optometry in this state unless he has
16 first obtained a certificate of registration and filed it or
17 a certified copy with the county clerk and recorder of the
18 county of his residence;

19 (b) sell, barter, or offer to sell or barter a
20 certificate of registration issued by the department;

21 (c) purchase or procure by barter a certificate of
22 registration with intent to use it as evidence of the
23 holder's qualification to practice optometry;

24 (d) materially alter with fraudulent intent a
25 certificate of registration;

1 (e) use or attempt to use a certificate of
2 registration which has been purchased, fraudulently issued,
3 counterfeited, or materially altered as a valid certificate
4 of registration;

5 (f) practice optometry under a false or assumed name;

6 (g) willfully make a materially false statement in an
7 application for an examination by the department or for a
8 certificate of registration;

9 (h) advertise by displaying a sign or by otherwise
10 holding himself out to be an optometrist without having at
11 the time a valid certificate of registration;

12 (i) replace or duplicate ophthalmic lenses with or
13 without a prescription or to dispense ophthalmic lenses from
14 prescriptions without having at the time a valid certificate
15 of registration as an optometrist; however, this subsection
16 does not prevent an optical mechanic from:

17 (i) doing the merely mechanical work on an ophthalmic
18 lens which is ordered on a prescription signed by a
19 registered optometrist and is dispensed only by the
20 optometrist or a person employed by the optometrist and who
21 does so in the office of and under the direct personal
22 supervision of an optometrist; or

23 ~~(iii) replacing or duplicating an existing lens for~~
24 ~~glasses;~~

25 (j) take or make measurements for the purpose of

1 fitting or adapting ophthalmic lenses to the human eye
 2 without having at the time a valid certificate of
 3 registration. A person who takes or makes measurements or
 4 uses mechanical devices for this purpose or who, in the sale
 5 of spectacles, eyeglasses, or lenses, uses in the testing of
 6 the eyes lenses other than the lenses actually sold is
 7 practicing optometry. However, this section does not apply
 8 to the prescriptions of qualified optometrists when sent to
 9 a recognized optical laboratory.

10 ~~{k}--advertise-at-a-price-or-stated-terms-of-a-price-or~~
 11 ~~as-being-free; the following:~~

12 ~~{i)--the-examination-or-treatment-of-the-eyes;~~

13 ~~{ii)--furnishing-of-optometrical-services; or~~

14 ~~{iii)--furnishing--a-lens; lenses; contact-lens; contact~~
 15 ~~lenses; glasses; frames; or-fitting-thereof;--However;--this~~
 16 ~~subsection---does---not---apply---to---advertising--goggles;~~
 17 ~~sunglasses; colored-glasses; or-occupational--eye-protective~~
 18 ~~devices--if-they-are-not-made-with-refractive-values-and-are~~
 19 ~~not-advertised-in-connection-with-the-practice-of--optometry~~
 20 ~~or-professional-services;~~

21 ~~{+}{k} measure-fity-glasses or MEASURE, FIT, PLACE, OR~~
 22 adapt a lens to direct, contiguous contact to the human
 23 eyeball without having at the time a valid certificate of
 24 registration as an optometrist.

25 (2) When the board has reasonable cause to believe

1 that a person is violating this section or a rule issued
 2 under this chapter, it may, in addition to other remedies
 3 provided in this chapter, bring an action for injunctive
 4 relief in district court in the county where the violation
 5 occurs to enjoin the person from engaging in or continuing
 6 the violation. The department may employ legal counsel to
 7 prosecute these actions. In these actions and on notice and
 8 hearing, an order or judgment may be entered awarding a
 9 temporary restraining order or final injunction as
 10 considered proper by the judge of the district court in the
 11 county where the violation occurred.*

12 Section 5. Section 37-10-311, MCA, is amended to read:
 13 *37-10-311. Revocation -- unprofessional conduct. (1)

14 The board may revoke a certificate of registration for:

15 (a) conviction---of---crime physical or mental
 16 incompetence;

17 (b) ~~habitual-drunkenness~~ gross malpractice or repeated
 18 malpractice;

19 (c) contagious-or-infectious-disease a violation of
 20 any of the provisions of this chapter or rules or orders of
 21 the board; or

22 ~~{d)--gross-immorality;~~

23 ~~{e)--gross-ignorance-or-inefficiency-in-his-profession;~~

24 or

25 ~~{+}{d} unprofessional conduct.~~

1 (2) Unprofessional conduct includes:
 2 (a) obtaining a fee by fraud or misrepresentation;
 3 (b) employing, directly or indirectly, a suspended or
 4 unlicensed optometrist to perform work covered by this
 5 chapter;

6 ~~(c) directly or indirectly accepting employment to~~
 7 ~~practice optometry from a person not having a valid~~
 8 ~~certificate of registration as an optometrist or accepting~~
 9 ~~employment to practice optometry for or from a company or~~
 10 ~~corporation;~~

11 (C) DIRECTLY OR INDIRECTLY ACCEPTING EMPLOYMENT TO
 12 PRACTICE OPTOMETRY FROM A PERSON NOT HAVING A VALID
 13 CERTIFICATE OF REGISTRATION AS AN OPTOMETRIST OR ACCEPTING
 14 EMPLOYMENT TO PRACTICE OPTOMETRY FOR OR FROM A COMPANY OR
 15 CORPORATION;

16 ~~(d)(D)~~ permitting another to use his certificate of
 17 registration;

18 ~~(e)(E)~~ soliciting or sending a solicitor from house
 19 to houses;

20 ~~(f)(F)~~ treatment or advice in which untruthful or
 21 improbable statements are made;

22 ~~(g)(G)~~ professing to cure diseases;

23 ~~(h)(H)~~ advertising in which ambiguous or misleading
 24 statements are made; or

25 ~~(i)(I)~~ the use in advertising of the expression

1 "eye specialist" or "specialist on eyes" in connection with
 2 the name of an optometrist. This chapter does not prohibit
 3 legitimate or truthful advertising by a registered
 4 optometrist.

5 (3) Before a certificate is revoked, the holder shall
 6 be given a notice and an opportunity for a hearing.

7 (4) Any optometrist convicted a second time for
 8 violation of the provisions of this chapter or whose
 9 certificate of registration or examination has been revoked
 10 a second time shall not be permitted to practice optometry
 11 in this state."

12 Section 6. Effective date. This act is effective on
 13 passage and approval.

-End-



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

April 15, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill No. 426, "AN ACT TO REESTABLISH THE BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING; CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103, 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE," without my signature and recommend the attached amendments.

As introduced, the bill would have removed restrictions prohibiting optometrists from being employed by anyone other than a licensed optometrist, but this restriction was put back into the bill during the legislative process. Therefore, the title of the bill must be amended to strike the clause stating that this restriction is removed by the bill.

Also, section 4 of the bill amends Section 37-10-301 (1)(k) so as to make it unlawful for a person to place a lens to direct, contiguous contact with the human eyeball unless licensed as an optometrist. The way the subsection

Senator Turnage and Representative Marks
April 15, 1981
Page Two

reads after amendment, it is unlawful for anyone to place a lens in their own eye unless licensed as an optometrist. This problem is corrected by striking the work "place" from the subsection.

I urge your concurrence with these amendments.

Sincerely,



TED SCHWINDEN
Governor