# 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. Trans- mitted 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

March 31, 1981

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Second reading, concurred in as amended.

adopted.

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

- April 7, 1981
- April 9, 1981
- April 10, 1981
- April 16, 1981
- April 17, 1981

Returned from House with amendments.

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

Correctly enrolled.

Signed by President.

Delivered to Governor.

Returned from Governor with recommended amendments.

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, 1981Received from Senate.April 22, 1981Second reading, Governor's<br/>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

April 23, 1981

Returned from House. Sent to enrolling. Reported correctly enrolled. LC 1308/01

INTRODUCED BY TEUE 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."

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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:

Section 1. Reestablishment. The board of optometrists 1 is reestablished for 6 years pursuant to 2+8-122 with its Z existing statutory authority and rules. 3 Section 2. Section 2-8-103, MCA, is amended to read: 4 #2-8-103. Agencies to terminate. (1) The following 5 6 agencies shall terminate on July 1, 1979: 7 (a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643; 8 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 conditioning, department of professional air and occupational licensing, created by 2-15-1656; 13 14 (d) board of institutions, department of institutions. 15 created by 2-15-2303. 16 (2) The following agencies shall terminate on July 1. 1981: 17 18 (a) commission for human rights, department of labor and industry, created by 2-15-1706; 19 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;

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INTRODUCED BILL SB 426 (e) board of cosmetologists, department of
 professional and occupational licensing, created by
 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
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;

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

22 tmt--board-of-aptometristsy-department-of--professional
 23 and-occupational-licensingy-created-by-2-15-16124

24 (n)(m) board of osteopathic physicians, department of 25 professional and occupational licensing, created by 1 2-15-1607;

2 toting board of pharmacists, department of
 3 professional and occupational licensing, created by
 4 2-15-1609;

testional and occupational licensing, created by
 2-15-1608;

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

trt(u) board of radiologic technologists, department
 of professional and occupational licensing, created by
 2-15-1614;

14 (st[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 tuttl 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

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1	terminate on July 1, 1983:	1	2-15-1641;
2	(a) board of aeronautics, department of community	2	(b) the board of architects, created by 2-15-1651;
3	affairs, created by 2-15-1103;	3	(c) state banking board, department of business
4	(b) state board of hail insurance, department of	4	regulation, created by 2-15-1803;
5	agriculture, created by 2-15-3003;	5	(d) the state electrical board, created by 2-15-1654;
6	(c) board of horse racing, department of professional	6	(e) the board of professional engineers and land
7	and occupational licensing, created by 2-15-1662;	7	surveyors, created by 2-15-1653;
8	(d) board of livestock, department of livestock,	8	(f) office of commissioner of insurance and the
9	created by 2-15-3102;	9	insurance department, state auditor's office, created by
10	(e) board of milk control, department of business	10	2-15-1902 and 2-15-1903;
11	regulation, created by 2-15-1802;	11	(g) office of the securities commissioner, state
12	(f) board of oil and gas conservation, department of	12	auditor's office, created by 2-15-1901;
13	natural resources and conservation, created by 2-15-3303;	13	(h) the board of landscape architects, created by
14	(g) Montana outfitters council, department of fish,	14	2-15-1652;
15	wildlife, and parks, created by 2-15-3403;	15	(i) the board of county printing, created by
16	(h) public service commission, department of public	16	2~15-1102;
17	service regulation, created by 69-1-102;	17	(j) the board of plumbers, created by 2-15-1655;
13	(i) board of water and wastewater operators,	18	(k) board of physical therapy examiners, created by
19	department of health and environmental sciences, created by	19	2-15-1628.
20	2-15-2105;	20	(5) The following agency terminates on July 1987:
21	(j) board of water well contractors, department of	21	<u>boardof_optometristsdepartment_of_professional_and</u>
22	professional and occupational licensing, created by	22	occupational_licensing.created_by_2-15=1612.*
23	2-15-1632.	23	Section 3. Section 2-15-1612, MCA, is amended to read:
24	(4) The following agencies terminate on July 1, 1985:	24	"2-15-1612. Board of optometrists. (1) There is a
25	(a) the board of public accountants, created by	25	board of optometrists.

LC 1308/01

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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 staugered 4-year\_terms.

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

Section 4. Section 37+10-301, MCA, is amended to read: #37-10+301. Certificate required for practice -unlawful acts -- injunction. (1) It is unlawful for a person to:

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

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

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

24 (d) materially alter with fraudulent intent a25 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 <u>(i)</u> 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; <u>or</u>

23 (ii)\_ceplacing\_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 without having at the time a valid certificate of 2 registration. A person who takes or wakes measurements or з uses mechanical devices for this purpose or who, in the sale 4 of spectacles, evenlasses, or lenses, uses in the testing of 5 the eyes lenses other than the lenses actually sold is 6 practicing optometry. However, this section does not apply 7 8 to the prescriptions of qualified optometrists when sent to 9 a recognized optical laboratory.

10 tkj--sdvertise-st-s-price-or-stated-terms-of-s-price-or
11 ss-being-frees-the-following\*

12 fit--the-examination-or-treatment-of-the-eyest

13 titt-furnishing-of-optometrical-servicest-or

14 (iii)-furnishing-a-tensy-lensesy-contact-lensy-contact 15 tensesy-glassesy-framesy-or-fitting-thereofy--Howevery-this 16 subsection---does---not---advertising--gogglesy 17 sunglassesy-colored-glassesy-ar-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-servicey

21 (†)(k) measures fits places 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.

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that a person is violating this section or a rule issued 1 under this chapter, it may, in addition to other remedies 2 provided in this chapter, bring an action for injunctive 3 relief in district court in the county where the violation 4 5 occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to 6 prosecute these actions. In these actions and on notice and 7 hearing, an order or judgment may be entered awarding a 8 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: (a) conviction----of----crime obvsical or mental 15 16 incompetence: 17 (b) hebitual-drunkenness gross maloractice or repeated 18 maloractice; 19 (c) contegious-or-infectious-disease a\_\_yiolation\_of 20 any of the provisions of this chapter or rules or orders of 21 the board; or 22 td)--gross-immoralityt 23 te)--gross-ignorance-or-inefficiency-in-his-profession; 24 OF. 25 ffldl unprofessional conduct.

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(2) When the board has reasonable cause to believe

1 (2) Unprofessional conduct includes: 2 (a) obtaining a fee by fraud or misrepresentation; (b) employing, directly or indirectly, a suspended or 3 unlicensed optometrist to perform work covered by this 4 5 chapter; fet--directly-or--indirectly--accepting--employment--to 6 7 practice---optometry--from--a--person--not--having--a--valid 8 certificate-of-registration-as-an-optometrist--or--accepting employment--to--proctice--optometry-for-or-from-d-company-or 9 10 corporations fdl(c) permitting another to use his certificate of 11 12 registration;

13 feildl 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 fg)(f) professing to cure disease;

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

20 (i)(b) the use in advertising of the expression meye 21 specialistm or mspecialist on eyesm in connection with the 22 name of an optometrist. This chapter does not prohibit 23 legitimate or truthful advertising by a registered 24 optometrist.

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(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-

### 47th Legislature

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#### SB 0426/02

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#### .. Approved by the committee on Public Health, Welfare & Safety

i	SENATE BILL NO. 426	1	Section 1. Reestablishment. The board of optometrists
2	INTRODUCED BY HIMSL. S. BROWN	2	is reestablished for 6 years pursuant to 2-8-122 with its
3	BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE	3	existing statutory authority and rules.
4		4	Section 2. Section 2-8-103. MCA. is amended to read:
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE	5	#2-8-103. Agencies to terminate. (1) The following
6	BUARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND	6	agencies shall terminate on July 1. 1979:
7	RULES; PROVIDING FOR STAGGERED 4-YEAR TERNS FOR BOARD	7	(a) board of abstracters, department of professional
8	MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING;	8	and occupational licensing, created by 2-15-1643;
9	CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE	ģ	(b) board of real estate, department of professional
10	GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS	10	and occupational licensing, created by 2-15-1642;
11	PRUHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER	11	(c) state board of warm air heating, ventilation, and
12	THAN & LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103.	12	air conditioning, department of professional and
13	2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN	13	occupational licensing, created by 2-15-1656;
14	IMMEDIATE EFFECTIVE DATE."	14	(d) poard of institutions, department of institutions,
15		15	created by 2-15-2303.
16	WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,	16	(2) The following agencies shall terminate on July 1.
17	MCA, terminates the Board of Optometrists and requires a	17	1981:
18	performance evaluation of the Board by the Legislative Audit	18	(a) commission for human rights, department of labor
19	Committee; and	19	and industry, created by 2-15-1706;
20	WHEREAS, as a result of the performance evaluation, the	20	(b) board of athletics, department of professional and
21	Legislative Audit Committee recommends that the Board of	21	occupational licensing, created by 2-15-1661;
22	Optometrists be reestablished under existing statutory	22	(c) board of barbers, department of professional and
23	authority.	23	occupational licensing, created by 2-15-1625;
24		24	(d) board of chiropractors, department of professional
25	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	25	and occupational licensing, created by 2-15-1613;

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READING SECOND

(e) board of cosmetologists, department of
 professional and occupational licensing, created by
 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 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;

(1) board of nursing home administrators, department
 of professional and occupational Ticensing, created by
 2-15-1611;

22 (m)--board-of-optometristsy-department-of--professional 23 and-occupational-licensingy-created-by-2-15-1612;

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

2 for(n) board of oharmacists department of 3 professional and occupational licensing, created by 4 2-15-1609; (p)(o) board of podiatry examiners, department of 5 6 professional and occupational licensing, created by 7 2-15-1608: 8 tat(p) board of psychologists, department of 9 professional and occupational licensing, created bγ 10 2-15-1617: frf(q) board of radiologic technologists, department 11 of professional and occupational licensing, created by 12 13 2-15-1614: 14 tst(r) board of speech pathologists and audiologists, 15 department of professional and occupational licensing. 16 created by 2-15-1615; 17 ft) board of veterinarians, department of professional and occupational licensing, created 18 by

19 2-15-1618;

2-15-1607;

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20 fw?(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

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### 58 0426/02

1	terminate on July 1, 1983:	1 2-15-1641;
2	{a} board of aeronautics→ department of community	2 (b) the board of architects, created by 2-15-1651;
3	affairs, created by 2-15-1103;	3 (c) state banking board, department of business
4	(b) state board of hail insurance, department of	4 regulation, created by 2-15-1803;
5	agriculture, created by 2-15-3003;	5 (d) the state electrical board, created by 2-15-1654;
6	(c) board of horse racing, department of professional	6 (e) the board of professional engineers and land
7	and occupational licensing, created by 2-15-1662;	7 surveyors, created by 2-15-1653;
8	(d) board of livestock, department of livestock,	8 (f) office of commissioner of insurance and the
9	created by 2-15-3102;	9 insurance department, state auditor's office, created by
10	(e) board of milk control, department of business	10 2-15-1902 and 2-15-1903;
11	regulation, created by 2-15-1802;	11 (g) office of the securities commissioner. state
12	(f) board of oil and gas conservation, department of	12 auditor's office, created by 2-15-1901;
13	natural resources and conservation, created by 2-15-3303;	13 (h) the board of landscape architects, created by
14	(g) Montana outfitters council, department of fish,	14 2-15-1652;
15	wildlife. and parks. created by 2-15-3403;	15 (i) the board of county printing, created by
16	(h) public service commission+ department of public	16 2-15-1102;
17	service regulations created by 69-1-102;	17 (j) the board of plumbers, created by 2-15-1655;
18	(i) board of water and wastewater operators,	18 (k) board of physical therapy examiners, created by
19	department of health and environmental sciences, created by	19 2-15-1628.
20	2-15-2105;	20 (5) The following agency terminates on July 1, 1987:
21	(j) board of water well' contractors, department of	21 board of optometrists, department of professional and
22	professional and occupational licensing, created by	<pre>22 occupational licensing, created by 2-15-1612."</pre>
23	2-15-1632•	23 Section 3. Section 2~15-1612, MCA, is amended to read:
24	(4) The following agencies terminate on July 1+ 1985:	24 "2-15-1612. Board of optometrists. (1) There is a
25	(a) the board of public accountants, created by	25 board of optometrists.
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L (2) The board consists of four members appointed by 2 the governor. Three members must be registered optometrists of this state and actually engaged in the exclusive practice 3 of optometry in this state during their terms of office. One 4 5 member must be a representative of the public who is not engaged in the practice of optometry. 6

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

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 first obtained a certificate of registration and filed it or 16 17 a certified copy with the county clerk and recorder of the county of his residence: 18

19 (b) sell, barter, or offer to sell or barter a \* .29. cortificate of registration issued by the department; . 24 wet(s) 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;

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

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

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 R 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

(i) take or make measurements for the purpose of

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1 fitting or adapting ophthalmic lenses to the human eve 2 without having at the time a valid certificate of 3 registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale 4 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 tkl--advertise-at-e-price-or-stated-terms-of-e-price-or 11 as-being-freev-the-followings 12 fil--the-exomination-or-treatment-of-the-evest 13 titt-furnishing-of-optometrical-servicest-or 14 tiii-furnishing-a-tensy-tensesy-contact-tensy-contact 15 tensest-glassest-framesy-or-fitting-thereoft--Howevert-this 16 subsection---- does---- not---- apply----to---- advectising--- against 17 sunglassesy-colored-glassesy-or-occupational--eye-protective 18 devices--if-they-are-not-made-with-refractive-volues-ond-are not-advertised-in-connection-with-the-practice-of--optometry 19 20 or-professional-service. 21 f+}(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

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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 infunctive relief in district court in the county where the violation 4 5 occurs to enjoin the person from engaging in or continuing 6 the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and 7 A 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) The board way revoke a certificate of registration for: 14 15 (a) conviction----of----crime physical or mental 16 incompetence; 17 (b) habitual-drunkenness gross malpractice or repeated 18 malpractice: 19 (c) contegious-or-infectious-disease a violation of 20 any of the provisions of this chapter or rules or orders of 21 the board; or

22 <del>(d)--gross-immorality</del>

23 tel--gross-ignorance-or-inefficiency-in-his-professions

24 or

25 (f)(d) unprofessional conduct.

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L	(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	tc <del>;diractly-orindirectlyaccepting</del> emp <del>loymentto</del>
7	procticeoptometry-fromopersonnothovingovalid
5	certificate-of-registration-as-an-optometristoraccepting
9	employmenttopracticeoptometry-for-or-fram-d-company-or
10	c <del>orporations</del>
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	CORPORTION;
16	<del>{d}<u>{c</u>}(D)</del> permitting another to use his certificate of
17	registration;
18	<pre>fettd:E) soliciting or sending a solicitor from house</pre>
19	to house;
20 ,	<pre>pt dfire(F) treatment or advice in which untruthful or</pre>
210	improbable stateanints are made;
22	<pre>(g)(f)(G) professing to cure disease;</pre>
23	<pre>th)ist(H) advertising in which ambiguous or misleading</pre>
24	statements are made; or
25	<del>{i}<u>(h)</u>[])</del> the use in advertising of the expression

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1	"eye specialist" or "specia	ilist on eyes" in conn	ection with
2	the name of an optometris	t. 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
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-

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1	SENATE BILL NO. 426	1	
2	INTRODUCED BY HIMSL. S. BROWN	2	ís r
3	BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE	3	exist
4		4	
5	A SILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE	5	
6	BUARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND	6	agenc
7	RULES; PROVICING FOR STAGGERED 4-YEAR TERMS FOR BOARD	7	
8	MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING;	8	and o
9	CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE	9	
10	GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS	10	and o
11	PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER	11	
12	THAN A LICENSED OPTOMETRIST; AMENDING SECTIONS 2-8-103+	12	əir
13	2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN	13	οςςυρ
14	IMMEDIATE EFFECTIVE DATE."	14	
15		. 15	creat
16	WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,	16	
17	MCA, terminates the Board of Optometrists and requires a	17	1981:
18	performance evaluation of the Board by the Legislative Audit	18	
19	Committee; and	19	and i
20	WHEREAS, as a result of the performance evaluation, the	20	
21	Legislative Audit Committee recommends that the Board of	21	оссир
22	Optometrists be reestablished under existing statutory	22	
23	authority.	23	occup
24		24	
25	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	25	and o

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;

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THIRD READING

of

1 (e) board cosmetologists. department of oF Z 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;

(g) board of hearing aid dispensers, department of 6 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 2-15-1627; 11

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

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

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

19 (1) board of nursing home administrators, department 20 of professional and occupational Ticensing, created by 21 2-15-1611:

22 (#)--board-of-optometristsv-department-of--professional 23 and-occupational-licensingy-created-by-2-15-1612+

24 fnf(m) board of osteopathic physicians, department of 25 professional and occupational licensing, created by 2 of pharmacists. for(n) board department. 3 professional and occupational licensing, created DY 2~15-1609: 5 tot(o) board of podiatry examiners, department of professional and 6 occupational licensing, created by 7 2-15-1608: 8 tet(p) board of psychologists. department of

2-15-1607:

1

9 professional and occupational licensing, created b٧ 10 2-15-1617:

11 trian board of radiologic technologists, department 12 of professional and occupational licensing, created by 13 2-15-1614:

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

17 tt (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 tyt(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

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1	terminate on July 1, 1983:	1 2-15-1641;
2	(a) board of aeronautics, department of community	2 (b) the board of architects, created by 2+15-1651;
3	affairs, created by 2-15-1103;	3 (c) state banking board, department of business
4	(b) state board of hail insurance, department of	4 regulation, created by 2-15-1803;
5	agriculture, created by 2-15-3003;	5 (d) the state electrical board, created by 2-15-1654;
6	(t) board of horse racing, department of professional	6 (e) the board of professional engineers and land
7	and occupational licensing, created by 2-15-1662;	7 surveyors, created by 2-15-1653;
8	(d) board of livestock, department of livestock,	8 (f) office of commissioner of insurance and the
9	created by 2-15-3102;	9 insurance department, state auditor's office, created by
10	(e) board of milk control, department of business	10 2-15-1902 and 2-15-1903;
11	regulation, created by 2-15-1802;	11 (g) office of the securities commissionery state
12	(f) board of oil and gas conservation, department of	<pre>12 auditor's office, created by 2-15-1901;</pre>
13	natural resources and conservation, created by 2-15-3303;	13 (h) the board of landscape architects, created by
14	(g) Montana outfitters council, department of fish,	14 2-15-1652;
15	wildlife+ and parks+ created by 2-15+3403;	15 (i) the board of county printing, created by
16	(h) public service commission, department of public	16 2-15-1102;
17	service regulation, created by 69-1-102;	17 (j) the board of plumbers, created by 2-15-1655;
18	(i) board of water and wastewater operators,	18 (k) board of physical therapy examiners, created by
19	department of health and environmental sciences, created by	19 2-15-1628.
20	2-15-2105;	20 (5) The following agency terminates on July 1, 1987:
21	(j) board of water well contractors, department of	21 board of optometrists, department of professional and
22	professional and occupational licensing, created by	<pre>22 occupational licensing: created by 2-15-1612."</pre>
23	2-15-1632.	23 Section 3. Section 2-15-1612, MCA, is amended to read:
24	(4) The following agencies terminate on July 1+ 1985:	24 "2+15-1612. Board of optometrists. (1) There is a
25	(a) the board of public accountants. created by	25 board of optometrists.
	-5- \$8 426	-6- SB 426

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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 <u>Hembers</u> 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:

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

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

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

24 (d) materially alter with fraudulent intent a 25 certificate of registration; (e) use or attempt to use a certificate of
 registration which has been purchased, fraudulently issued,
 counterfeited, or materially altered as a valid certificate
 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 <u>(i)</u> 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; <u>or</u>

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

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

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that a person is violating this section or a rule issued
under this chapter, it may, in addition to other remedies
provided in this chapter, bring an action for injunctive
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) convictionofcrime physical or mental
16	incompetence;
17	(b) habitual-drunkenness gross malpractice or repeated
18	<u>malpractice</u> :
19	(c) <del>contagious or infectious</del> disease <u>a violation of</u>
20	any of the provisions of this chapter or rules or orders of
21	the board; or
22	<del>td)gross-immorality;</del>
23	<del>(e)gross-ignorance-or-inefficiency-in-his-profession;</del>
24	<del>or</del>
25	<pre>ff(d) unprofessional conduct.</pre>

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3	registration. A person who takes or makes measurements or
4	uses mechanical devices for this purpose or who $_{1}$ 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	os-being-freey-the-followings
12	titthe-examination-or-treatment-of-the-eyest
13	titt-furnishing-of-optometrical-servicest-or
14	{iii}-furnishinga-lensv-lensesv-contoct-lensv-contoct
15	<del>lensesy-glassesy-framesy-or-fitting-thereofyHoweverythis</del>
16	subsectiondoesnotapplytoadvertisinggogglesv
17	sunglasses <del>,-colored-glasses,-or-occupationaleye-protective</del>
18	devicesif-they-are-not-mode-with-refractive-volues-and-are
19	not-advertised-in-connection-with-the-practice-ofoptametry
20	<del>or-professional-servicev</del>
21	<pre>t+&gt;[k] measure, fit, place, or adapt a lens to direct,</pre>
22	contiguous contact to the human eyeball without having at
23	the time a valid certificate of registration as an

fitting or adapting ophthalmic lenses to the human eye

without having at the time a valid certificate of

24 optometrist.

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

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L	(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-orindirectlyacceptingemploymentto
7	practiceoptometryfromopersonnothovingavalid
8	certificate-of-registration-as-an-optometristoraccepting
9	emp <del>loymentto-</del> -practiceaptometry-for-or-from-a-company-ar
10	corporations
11	(C) DIRECTLY OR INDIRECTLY ACCEPTING EMPLOYMENT TO
12	PRACTICE UPTOMETRY 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	CORPORTION:
16	<del>fd)<u>ie)(</u>D)</del> permitting another to use his certificate of
17	registration;
18	<pre>tettet(E) soliciting or sending a solicitor from house</pre>
19	to house;
20	<del>ff<u>]tet</u>(F)</del> treatment or advice in which untruthful or
21	improbable statements are made;
22	<pre>(g)tf)(6) professing to cure disease;</pre>
23	<pre>thtts://documents/figures</pre>
24	statements are made; or
25	<pre>tit(I) the use in advertising of the expression</pre>

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"eye specialist" or "specialist on eyes" in connection with
 the name of an optometrist. This chapter does not prohibit
 legitimate or truthful advertising by a registered
 optometrist.
 (3) Before a certificate is revoked, the holder shall

be given a notice and an opportunity for a hearing.
(4) Any optometrist convicted a second time for
violation of the provisions of this chapter or whose
certificate of registration or examination has been ravoked
a second time shall not be permitted to practice optometry
in this state."

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

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-End-

1

z INTRODUCED BY HIMSL, S. BROWN 2 3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE. 3 4 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE 5 5 BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND - 6 6 7 RULES; PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD 7 8 MEMBERS; REMOVING RESTRICTIONS AGAINST ADVERTISING: 8 CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE 9 9 10 GROUNDS FOR REVOCATION OF A LICENSE; REMOVING RESTRICTIONS 10 11 PROHIBITING OPTOMETRISTS FROM BEING EMPLOYED BY ANYONE OTHER 11 THAN & LICENSED OPTOMETRIST: AMENDING SECTIONS 2-8-103. 12 12 air 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN 13 13 14 IMMEDIATE EFFECTIVE DATE." 14 15 15 16 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, 16 17 MCA, terminates the Board of Optometrists and requires a 17 1981: 18 performance evaluation of the Board by the Legislative Audit 18

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.

SENATE BILL NO. 426

24

19

Committee; and

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

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

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REFERENCE BILL

{e) board of cosmetologists, department of
 professional and occupational licensing, created by
 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;

(i) Montana state board of medical examiners,
 department of professional and occupational licensing,
 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;

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

22 (m)--board-af-optometristsy-department-of--professional
 23 and-accupational-licensingy-created-by-2-15-16124

24 (n)(m) board of osteopathic physicians, department of 25 professional and occupational licensing, created by 1 2-15-1607;

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

5 <u>tpt(0)</u> board of podiatry examiners, department of 6 professional and occupational licensing, created by 7 2-15-1608;

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

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

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

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

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t terminate on July 1, 1983: 2-15-1641; 1 Z (a) board of aeronautics, department of community 2 affairs, created by 2-15-1103; 3 3 4 (b) state board of hail insurance, department of 4 5 agriculture, created by 2-15-3003; 5 6 (c) board of horse racing, department of professional 6 7 and occupational licensing, created by 2-15-1662; 7 8 (d) board of livestock, department of livestock, 8 9 created by 2-15-3102; 9 10 (e) board of milk control, department of business 10 regulation, created by 2-15-1802; 11 11 (f) board of oil and gas conservation, department of 12 12 natural resources and conservation, created by 2-15-3303; 13 13 (g) Montana outfitters council, department of fish, 14 14 15 wildlife, and parks, created by 2-15-3403; 15 16 (h) public service commission, department of public 16 17 service regulation, created by 69-1-102; 17 18 (i) board of water and wastewater operators, 18 19 department of health and environmental sciences, created by 19 20 2-15-2105: 20 (i) board of water well contractors, department of 21 21 22 professional and occupational licensing, created by 22 23 2-15-1632. 23 24 (4) The following agencies terminate on July 1, 1985: 24 25 25 (a) the board of public accountants, created by

(b) the board of architects, created by 2-15-1651; (c) state banking board, department of business regulation, created by 2-15-1803; (d) the state electrical board, created by 2-15-1654; (e) the board of professional engineers and land surveyors, created by 2-15-1653; (f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903: (q) office of the securities commissioner, state auditor's office, created by 2-15-1901; (h) the board of landscape architects, created by 2-15-1652; (i) the board of county printing, created by 2-15-1102; (j) the board of plumbers, created by 2-15-1655; (k) board of physical therapy examiners, created by 2-15-1628.

10 1k) board of physical therapy and index of clotted by
2-15-1628.
20 <u>151 The following agency terminates on July 1, 1987:</u>
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.

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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."

Section 4. Section 37-10-301+ MCA, is amended to read: "37-10-301. Certificate required for practice -unlawful acts -- injunction. (1) It is unlawful for a person to:

(a) practice optiometry in this state unless he has
First obtained a certificate of registration and filed it or
a certified copy with the county clerk and recorder of the
county of his residence;

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

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

24 (d) materially alter with fraudulent intent a 25 certificate of registration; (e) use or attempt to use a certificate of
 registration which has been purchased, fraudulently issued,
 counterfeited, or materially altered as a valid certificate
 of registration;

(f) practice optometry under a false or assumed name;
(g) willfully make a materially false statement in an
application for an examination by the department or for a
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;

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

17 <u>(i)</u> 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;

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

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1 fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of Z 3 registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale 4 5 of spectacles, evenlasses, 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 to the prescriptions of qualified optometrists when sent to 8 9 a recognized optical laboratory. 10 fk}--advertise-at-a-price-or-stated-terms-of-a-price-or as-being-freey-the-following+ 11 12 fil--the-examination-or-treatment-of-the-evest 13 tijt-furnishing-of-optometrical-servicest-or 14 fittl-furntshing--a-lense-lensesp-contact-lensp-contact 15 tensesy-qlassesy-framesy-or-fitting-thereofy--Howevery--this 16 subsection---does---not---apply---to---advertising--gogglesy 17 sunatassesy-cotored-glassesy-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-service\* 21 (+)(k) measurey-fity-placey-or MEASURE, FIT, PLACE, OR 22 adapt a lens to direct, contiguous contact to the human evehall without having at the time a valid certificate of 23 24 registration as an optometrist. 25 (2) When the board has reasonable cause to believe

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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) hebituel-drunkenness gross malpractice or repeated 18 malpractice; 19 20

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10 molplactice;
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.

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that a person is violating this section or a rule issued

under this chapter, it may, in addition to other remedies

the violation. The department may employ legal counsel to

prosecute these actions. In these actions and on notice and

hearing, an order or judgment may be entered awarding a

provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing

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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 aptometrist to perform work covered by this
5	chapter;
6	<del>te}direct}y-orindirect}yacceptingemploymentto</del>
7	practiceoptometryfromapersonnothavingavalid
8	certificate-of-registration-as-an-optometristoraccepting
9	employmenttopracticeoptometry-for-or-from-o-company-or
10	corporation;
11	(C) DIRECTLY DR INDIRECTLY ACCEPTING EMPLOYMENT TO
12	<u>PRACTICE OPTOMETRY FROM A PERSON NOT HAVING A VALID</u>
13	CERTIFICATE OF REGISTRATION AS AN OPTOMETRIST OR ACCEPTING
14	EMPLOYMENT TO PRACTICE OPTOMETRY FOR OR FROM A COMPANY OR
15	<u>CORPORTION;</u>
16	<del>(d)<u>tc</u>)(</del> ) permitting another to use his certificate of
17	registration;
18	<del>fe<u>}td</u>}(E) soliciting or sending a solicitor from house</del>
19	to house;
20	<del>{f}<u>te}(F)</u> treatment or advice in which untruthful or</del>
21	improbable statements are made;
22	<del>fg)<u>tf</u>1[6]</del> professing to cure disease;
23	<del>(h)<u>te)(H)</u> advertising in which ambiguous or misleading</del>
24	statements are made; or
25	<del>[i]<u>{h}[</u>]] the</del> use in advertising of the expression

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

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13 passage and approval.

-End-

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SB 0426703

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,"

1 Section 1. Reestablishment. The board of optometrists SENATE BILL NO. 426 is reestablished for 6 years pursuant to 2-8-122 with its 2 INTRODUCED BY HINSL, S. BROWN BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE 3 existing statutory authority and rules. 4 Section 2. Section 2-8-103, MCA, is amended to read: A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE 5 #2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979: BOARD OF OPTOMETRISTS UNDER EXISTING STATUTORY AUTHORITY AND 6 7 RULES: PROVIDING FOR STAGGERED 4-YEAR TERMS FOR BOARD (a) board of abstracters, department of professional я MEMBERS: REMOVING RESTRICTIONS AGAINST ADVERTISING: and occupational licensing, created by 2-15-1643; 9 CLARIFYING THE AUTHORITY TO FIT CONTACT LENSES; UPDATING THE (b) board of real estate, department of professional GROUNDS FOR REVOCATION OF A LICENSE; REMOVING-RESTRIGIIONS 10 and occupational licensing, created by 2-15-1642; PROHIBITING-OPTOMETRISTS-FROM-BEING-EMPLOYED-BY-ANYONE-OTHER 11 (c) state board of warm air heating, ventilation, THAN-A--LICENSED--OPTOMETRIST: AMENDING SECTIONS 2-8-103, 12 air conditioning. department of professional 2-15-1612, 37-10-301, AND 37-10-311, MCA; AND PROVIDING AN 13 occupational licensing, created by 2-15-1656; INNEDIATE EFFECTIVE DATE." 14 (d) board of institutions. department of institutions. 15 created by 2-15-2303. WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, 16 (2) The following agencies shall terminate on July 1, MCA, terminates the Board of Optometrists and requires a 17 1981: performance evaluation of the Board by the Legislative Audit 18 (a) commission for human rights, department of labor Committee: and 19 and industry, created by 2-15-1706; 20 (b) board of athletics, department of professional and WHEREAS, as a result of the performance evaluation, the 21 Legislative Audit Committee recommends that the Board of occupational licensing, created by 2-15-1661; Optometrists be reestablished under existing statutory 22 (c) board of barbers, department of professional and authority. 23 occupational licensing, created by 2-15-1625; 24 (d) board of chiropractors, department of professional

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

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and occupational licensing, created by 2-15-1613;

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REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 4-15-81

and

and

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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;

(j) board of morticians, department of professional
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 (1) board of nursing home administrators, department 20. of professional and occupational licensing, created by 21. 2-15-1611;

22 (m)--board-of-optometristsy-department-of--professional
 23 and-occupational-licensingy-created-by-2-15-16121

24 (n†(m) board of osteopathic physicians, department of 25 professional and occupational licensing, created by 1 2-15-1607;

2 totical board of pharmacists, department of 3 professional and occupational licensing, created by 4 2-15-1609;

5 (p)(0) board of podiatry examiners, department of 6 professional and occupational licensing, created by 7 2-15-1608;

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

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

14 tst[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 twift 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.

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(3) The following units of state government shall

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1	terminate on July 1, 1983:	1 2-15-1641;
2	(a) board of aeronautics, department of community	2 (b) the board of architects, created by 2-15-1651;
3	affairs, created by 2-15-1103;	3 (c) state banking board, department of business
4	<pre>(b) state board of hail insurance, department of</pre>	4 regulation, created by 2-15-1803;
5	agriculture, created by 2-15-3003;	5 (d) the state electrical board, created by 2-15-1654;
6	(c) board of horse racing, department of professional	6 (e) the board of professional engineers and land
7	and occupational licensing, created by 2-15-1662;	<pre>7 surveyors, created by 2-15-1653;</pre>
8	(d) board of livestock, department of livestock,	8 (f) office of commissioner of insurance and the
9	created by 2-15-3102;	9 insurance department, state auditor's office, created by
10	(e) board of milk control, department of business	10 2-15-1902 and 2-15-1903;
11	regulation, created by 2-15-1802;	11 (g) office of the securities commissioner, state
12	(f) board of oil and gas conservation, department of	<pre>12 auditor's office, created by 2-15-1901;</pre>
13	natural resources and conservation, created by 2-15-3303;	13 (h) the board of landscape architects, created by
14	(g) Montana outfitters council, department of fish;	14 2-15-1652;
15	wildlife, and parks, created by 2-15-3403;	15 (i) the board of county printing, created by
16	(h) public service commission, department of public	16 2-15-1102;
17	service regulation, created by 69-1-102;	17 (j) the board of plumbers, created by 2-15-1655;
18	(i) board of water and wastewater operators,	18 (k) board of physical therapy examiners, created by
19	department of health and environmental sciences, created by	19 2-15-1628.
<b>2</b> 0	2-15-2105;	20 <u>f51_The following agency_terminates_on_tuly_1+_1987;</u>
21	(j) board of water well contractors, department of	21 boardof_optometristsdepartment_of_professional_and
22	professional and occupational licensing, created by	<pre>22 occupational_licensings_created_by_2-15-1612.*</pre>
23	2-15-1632.	23 Section 3. Section 2-15-1612, MCA, is amended to read:
24	(4) The following agencies terminate on July 1, 1985:	24 "2-15-1612. Board of optometrists. (1) There is a
25	(a) the board of public accountants, created by	25 board of optometrists.
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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. Une 5 member must be a representative of the public who is not 6 engaged in the practice of optometry.

7 (3) Each--member <u>Members</u> shall serve for-a-term-of-4
 8 vears staggered <u>4:vear\_terms</u>.

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;

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

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

24 (d) materially alter with fraudulent intent a25 certificate of registration;

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

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

6 (q) 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; <u>or</u>

23 <u>fiil\_replacing\_or\_duplicating\_an\_existing\_lens\_for</u>
24 glassesi

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

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fitting or adapting ophthalmic lenses to the human eye 1 2 without having at the time a valid certificate of registration. A person who takes or makes measurements or 3 uses mechanical devices for this purpose or who, in the sale 4 of spectacles, evenlasses, or lenses, uses in the testing of 5 the eyes lenses other than the lenses actually sold is 3 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 tk}--advertise-at-a-price-or-stated-terms-of-a-price-or 11 es-being-freev-the-following: 12 fi)--the-examination-or-treatment-of-the-eyest tiil-furnishing-of-optometrical-servicest-or 13 14 fiii)-furnishing--g-lensy-lensesy-contact-lensy-contact lenseav-glassesv-framesv-or-fitting-thereofv--Howeverv--this 15 16 subsection---does---not---apply---to---advertising--goggtesy 17 sunglassesy-colored-glassesy-or-accupational--eye-protective devices--if-they-are-not-made-with-refractive-values-and-are 18 net-advertisea-in-connection-with-the-practice-of--optometry 19 20 ar-professional-services (+++(k) measures-fitz-places-or MEASURE, FIT, PLACES OR 21 22 adapt a lens to direct, contiguous contact to the human 23 evenall without having at the time a valid certificate of 24 registration as an optometrist. (2) When the board has reasonable cause to believe 25

that a person is violating this section or a rule issued 1 2 under this chapter, it may, in addition to other remedies 3 provided in this chapter, bring an action for injunctive relief in district court in the county where the violation 4 5 occurs to enjoin the person from engaging in or continuing 6 the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and 7 hearing, an order or judgment may be entered awarding a я temporary restraining order or final injunction as 9 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: \*37-10-311. Revocation -- unprofessional conduct. (1) 13 The board may revoke a certificate of registration for: 14 15 (a) conviction----of----erime physical or mental 16 incompetence; 17 (b) hebituel-drunkenness gross galpractice or repeated 18 maloractice; 19 (c) contectious-or-infectious-disease a violation of 20 any of the provisions of this chapter or rules or orders of 21 the hoard; or 22 {d}--gross-immorelity; 23 tet--aross-tanorance-or-treffictency-tn-hts-professtant 24 OF. 25 fft(d) unprofessional conduct.

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1	(2) Unprofessional conduct includes:	
2	<ul><li>(a) obtaining a fee by fraud or misrepresentation;</li></ul>	
3	(b) employing, directly or indirectly, a suspended or	
4	unlicensed optometrist to perform work covered by this	
5	chapter;	
6	{c}directly-orindirectlyacceptingemploymentto	
ד	practiceoptometryfromapersonnothavingavalid	
8	certificate-of-registration-as-an-optometristoraccepting	
9	employmenttopracticeeptometry-for-or-from-a-company-or	
10	corporation;	
11	(C)_DIRECTLY_OR_INDIRECTLY_ACCEPTING_EMPLOYMENT_TO	
12	PRACIICEOPIOMETRYEROMAPERSON_NOT_HAVINGAVALIO	
13	CERTIFICATE_DE_REGISTRATION_AS_AN_OPTOMETRIST_OR_ACCEPTING	
14	EMPLOYMENTIOPRACTICEOPIOMETRY_EOR_OR_EROM_A_COMPANY_OR	
15	CORPORTION:	
16	<pre>fdffcf(D) permitting another to use his certificate of</pre>	
17	registration;	
18	<pre>tetiting or sending a solicitor from house</pre>	
19	to house;	
_ 20,	<pre>     tfitei(E) treatment or advice in which untruthful or </pre>	
> <b>21</b>	improbable statements are made;	
22	<del>fat<u>f</u>t[6]</del> professing to cure disease;	
23	<del>{h}fg][H]</del> advertising in which ambiguous or misleading	
24	statements are made; or	
25	<pre>fifthill the use in advertising of the expression</pre>	

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

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State of Montana Office of the Governor Helena 39620

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; CLAR-IFYING 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 PROVID-ING 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