S T A T E O F N E W Y O R K

3196--B

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. MORELLE, CLARK, CYMBROWITZ, HOOPER -- Multi-Sponsored by -- M. of A. MILLMAN, ORTIZ, PERRY, WEISENBERG -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to registering and operating optical stores

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The education law is amended by adding a new article 144-A to read as follows:

ARTICLE 144-A
OPTICAL STORES

SECTION 7130. OPTICAL STORES.

S 7130. OPTICAL STORES. 1. NO PERSON, FIRM, CORPORATION OR ASSOCIATION SHALL ENGAGE IN THE SALE OF PRESCRIPTION EYE GLASSES OR CONTACT LENSES, UNLESS THE ESTABLISHMENT AT WHICH OR THROUGH WHICH SUCH SALE IS EXECUTED IS: A. REGISTERED BY THE DEPARTMENT AS AN OPTICAL STORE, OR B. A PROFESSIONAL SERVICE CORPORATION, A LIMITED LIABILITY COMPANY, A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY, OR A REGISTERED LIMITED LIABILITY PARTNERSHIP.

2. A. OBTAINING A REGISTRATION. AN OPTICAL STORE SHALL BE REGISTERED AS FOLLOWS:

(1) THE APPLICATION SHALL BE MADE ON A FORM PRESCRIBED BY THE DEPARTMENT.

(2) THE APPLICATION SHALL BE ACCOMPANIED BY A FEE OF ONE HUNDRED EIGHTY DOLLARS; PROVIDED HOWEVER THAT PROFESSIONAL SERVICE CORPORATIONS, LIMITED LIABILITY COMPANIES, PROFESSIONAL SERVICE LIMITED LIABILITY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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COMPANIES AND REGISTERED LIMITED LIABILITY PARTNERSHIPS ARE NOT SUBJECT TO SUCH FEE.

(3) A SEPARATE REGISTRATION SHALL BE REQUIRED FOR EACH SEPARATE LOCATION AT WHICH EYE GLASSES OR CONTACT LENSES ARE SOLD.

B. RENEWAL OF REGISTRATION. ALL REGISTERED OPTICAL STORE'S REGISTRATIONS SHALL BE RENEWED TRIENNIALLY. THE REGISTRATION RENEWAL APPLICATION SHALL BE ACCOMPANIED BY A FEE OF ONE HUNDRED DOLLARS. SUCH RENEWAL SHALL INCLUDE THE SUBMISSION OF SUCH INFORMATION AS MAY BE REQUIRED BY THE DEPARTMENT, PURSUANT TO REGULATIONS OF THE COMMISSIONER, ATTESTING TO THE ADEQUACY OF THE FACILITY AND SUCH OTHER STANDARDS DEEMED APPROPRIATE BY THE DEPARTMENT.

C. DISPLAY OF REGISTRATION. THE REGISTRATION SHALL BE CONSPICUOUSLY DISPLAYED AT ALL TIMES IN THE REGISTERED OPTICAL STORE. THE NAME AND ADDRESS OF THE OWNER OF A REGISTERED OPTICAL STORE SHALL BE CONSPICUOUSLY DISPLAYED UPON THE EXTERIOR OF SUCH ESTABLISHMENT. THE NAME SO DISPLAYED SHALL BE PRESUMPTIVE EVIDENCE OF OWNERSHIP OF SUCH REGISTERED OPTICAL STORE BY SUCH PERSON. THE OPTICAL STORE REGISTRATION SHALL ALSO BEAR THE NAME OF THE LICENSED OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN HAVING DIRECT SUPERVISION OF THE REGISTERED OPTICAL STORE. IN THE EVENT THAT SUCH LICENSED OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN SHALL NO LONGER HAVE DIRECT SUPERVISION OF THE REGISTERED OPTICAL STORE, THE OWNER SHALL NOTIFY THE DEPARTMENT OF SUCH FACT AND THE NAME OF THE LICENSED OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN REPLACING THE OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN NAMED ON THE LICENSE AND SHALL APPLY FOR AN AMENDED REGISTRATION SHOWING THE CHANGE. THE AMENDED REGISTRATION SHALL BE ATTACHED TO THE ORIGINAL REGISTRATION AND DISPLAYED IN THE SAME MANNER.

D. CHANGE OF LOCATION. IN THE EVENT THAT THE LOCATION OF A REGISTERED OPTICAL STORE SHALL BE CHANGED, THE OWNER SHALL APPLY TO THE DEPARTMENT FOR ENDORSEMENT OF THE REGISTRATION FOR THE NEW LOCATION. THE FEE FOR SUCH ENDORSEMENT SHALL BE AS IS DETERMINED BY THE DEPARTMENT, UNLESS IT APPEARS TO THE SATISFACTION OF THE DEPARTMENT THAT THE CHANGE IN LOCATION IS OF A TEMPORARY NATURE DUE TO FIRE, FLOOD OR OTHER DISASTER.

E. CONDUCT OF A REGISTERED OPTICAL STORE. EVERY OWNER OF A REGISTERED OPTICAL STORE OR EVERY OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN IN CHARGE OF A REGISTERED OPTICAL STORE SHALL BE RESPONSIBLE FOR THE PROPER CONDUCT OF THE REGISTERED OPTICAL STORE AND CARRYING OUT THE PROVISIONS OF THIS ARTICLE. EVERY REGISTERED OPTICAL STORE SHALL BE UNDER THE DIRECT SUPERVISION OF A LICENSED OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN AT ALL HOURS WHEN OPEN. NO OPHTHALMIC DISPENSER, OPTOMETRIST OR PHYSICIAN SHALL HAVE DIRECT SUPERVISION OF MORE THAN ONE REGISTERED OPTICAL STORE AT THE SAME TIME.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO FACILITIES DEFINED PURSUANT TO ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW AND HEALTH MAINTENANCE ORGANIZATIONS WHICH OPERATE AN OPTICAL DISPENSING ESTABLISHMENT PROVIDED THE DISPENSING SERVICES OR PRODUCTS AT THE FACILITIES ARE AVAILABLE ONLY TO INDIVIDUALS WHO ARE IN-PATIENTS OR OUT-PATIENTS AT SUCH FACILITIES. SUCH FACILITIES SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION, IF THEY RENDER RETAIL OR WHOLESALE DISPENSING SERVICES OR PRODUCTS TO THE GENERAL PUBLIC.

4. INSPECTION. THE DEPARTMENT, AND ITS EMPLOYEES DESIGNATED BY THE COMMISSIONER, SHALL HAVE THE RIGHT TO ENTER A REGISTERED OPTICAL STORE AND INSPECT, AT REASONABLE TIMES, SUCH ESTABLISHMENT AND ALL RECORDS REQUIRED BY THIS ARTICLE, PERTINENT EQUIPMENT, AND RELATED FACILITIES, MATERIALS, AND OTHER ITEMS RELEVANT TO THE OPERATION OF SUCH STORE.

5. REVOCATION OR SUSPENSION. AN OPTICAL STORE REGISTRATION MAY BE REVOKED, SUSPENDED OR SUBJECT TO SUCH OTHER DISCIPLINARY SANCTIONS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE ONE HUNDRED THIRTY OF THIS TITLE. THE OWNER OF SUCH OPTICAL STORE SHALL BE LIABLE FOR ANY FINES OR FINANCIAL PENALTIES LEVIED AS THE RESULT OF SUCH DISCIPLINARY PROCEEDINGS. A SUPERVISING PROFESSIONAL SHALL ALSO BE SUBJECT TO DISCIPLINARY PROCEEDINGS FOR FAILURE TO EXERCISE THE SUPERVISION REQUIRED BY THIS SECTION. SUCH DISCIPLINARY PROCEEDINGS SHALL BE CONDUCTED BY OFFICES OF PROFESSIONAL DISCIPLINE OR PROFESSIONAL MEDICAL CONDUCT, AS APPROPRIATE.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized to be made on or before such date.