

Stricken language has been deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S1/28/97 S1/29/97 H2/5/97

A Bill

ACT 176 OF 1997
SENATE BILL 130

4 By: Senators Bearden, Everett, Hill, Hopkins, Roebuck, Smith, Walters, Boozman, and Brown

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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 17-90-101,
10 17-90-401, AND 17-90-403 TO AMPLIFY THE SCOPE OF PRACTICE
11 OF OPTOMETRISTS; TO ADD A NEW SUBCHAPTER PERTAINING TO AN
12 IMPAIRED OPTOMETRIST PROGRAM; AND FOR OTHER PURPOSES."

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Subtitle

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 SECTION 1. Arkansas Code Annotated § 17-90-101 is amended to read as
23 follows:

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"17-90-101. Definition - Applicability.

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(a) The practice of optometry means the examination, diagnosis, ~~and~~
treatment, and management of conditions of the human eye, lid, adnexa, and
visual system, including the removal of ~~superficial~~ foreign bodies from the
cornea, conjunctiva, lid, or adnexa, but shall exclude other surgery of the
lid, adnexa, or visual system which requires anything other than a topical
anesthetic. Optometry shall include utilizing any method or means which the
licensed optometrist is educationally qualified to provide, as established and
determined by the Arkansas State Board of Optometry. In administering this
chapter, the Arkansas State Board of Optometry shall by rule or regulation
prescribe those acts, services, procedures, and practices which constitute
both primary optometric eye care and the practice of optometry. The practice
of optometry ~~does not include laser surgery or the administration of any drug~~

1 ~~by injection, the use of prescription oral drugs, the use of controlled drugs,~~
2 ~~and the sale of prescription drugs, with the exception of contact lenses shall~~
3 include but not be limited to: the prescribing and sale of eyeglasses and
4 contact lenses; the prescribing and administering of all oral and topical
5 drugs for the diagnosis or treatment only of conditions of the eye, lids, and
6 adnexa, except those listed in Schedules I and II of the Uniform Controlled
7 Substances Act; and the prescribing and administering of epinephrine,
8 benadryl, or other comparable medication for the emergency treatment of
9 anaphylaxis or anaphylactic reactions. All licensed optometrists are
10 prohibited from using ophthalmic lasers for surgical procedures, from
11 performing cataract surgery, from performing radial keratotomy surgery, and
12 from selling prescription drugs.

13 (b) Any person who ~~analyzes or determines~~ utilizes any objective or
14 subjective method, including, but not limited to, self testing devices and
15 computerized or automated refracting devices for the purpose of preparing an
16 optical prescription, to analyze or determine any optical defect, deficiency,
17 or deformity, or visual or muscular anomaly of the visual system, or who
18 measures the curvature of the human cornea, or who prescribes, tints, coats,
19 dispenses, adapts, or duplicates lenses, prisms, ~~or~~ ocular exercises, visual
20 therapy, or orthoptics for the correction, relief, or aid of the visual
21 functions, or who prescribes, adapts, fits, duplicates, dispenses, modifies,
22 sells, or supplies contact lenses, or holds himself out as being able to do
23 so, shall be deemed to be engaged in the practice of optometry.

24 (c) Those licensed optometrists who meet the qualifications and
25 standards established by the Arkansas State Board of Optometry shall be
26 designated Optometric Physicians.

27 ~~—(e)(d)~~ Nothing in this chapter, ~~except as specifically provided~~
28 ~~otherwise herein,~~ shall apply to physicians and surgeons as defined in the
29 Medical Practices Act, A.C.A. §§ 17-80-101, et seq.

30 (e) Nothing in this chapter shall prevent the performance of those
31 acts, practices, and procedures, including the ordering, application and sale
32 of tints or coats for spectacle lenses, by legally qualified persons who are
33 specifically authorized and approved by the Arkansas Ophthalmic Dispensers
34 Act, A.C.A. 17-89-101, et seq.

35 (f) Every licensed optometrist shall, within ten (10) days of receipt
36 of written notification of the filing of a claim or lawsuit alleging

1 malpractice against him or her, notify the Arkansas State Board of Optometry
2 by registered letter of the lawsuit and provide information or reports as
3 required by the board. All such information and reports shall be exempt from
4 the Freedom of Information Act, §§ 25-19-101, et seq., and shall be released
5 only upon the order of a court of competent jurisdiction."

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7 SECTION 2. Arkansas Code Annotated § 17-90-401 is amended to read as
8 follows:

9 "17-90-401. Arkansas State Board of Optometry - Powers and duties.

10 The Arkansas State Board of Optometry shall have the following rights
11 and responsibilities:

12 (1) To enforce, amend, or repeal the rules and regulations promulgated
13 by the ~~Optometric Therapeutic Committee pursuant to § 17-90-404 [repealed]~~
14 board;

15 (2)(A) To approve those optometrists who shall be authorized to
16 possess, administer, and prescribe those drugs approved by this subchapter.

17 (B)(i) No optometrist shall be so approved until he or she has:

18 (a) Exhibited his or her qualifications by passing an
19 examination prepared or approved by the board; and

20 (b) Served an internship program established by the
21 board, supervised and certified by a board-certified ophthalmologist, which
22 internship includes at least one hundred (100) hours of supervised clinical
23 training in the examination, diagnosis, and treatment of conditions of the
24 human eye and adnexa.

25 (ii)(a) The examination shall include, but not be limited
26 to, written questions designed to test knowledge of the proper use and
27 characteristics of the drugs approved by the board.

28 (b) The examination shall be offered not less often
29 than annually;

30 (3) To promulgate educational standards, which shall be used as
31 prerequisites to authorization to use those drugs approved in this subchapter.
32 Educational standards shall cover only the area of the proper use and
33 characteristics of the drugs approved by the board and emergency first aid
34 techniques;

35 (4) To approve, consistent with the rules and regulations promulgated
36 by the ~~Optometric Therapeutic Committee pursuant to the authority under~~

1 ~~§ 17-90-404 [repealed]~~ board, those acts, services, procedures, and practices
2 which may be performed by a licensed optometrist and, prior to authorization,
3 by appropriate examination, establish the competence of every optometrist to
4 perform the approved acts, services, procedures, and practices;

5 (5)(A) To prohibit any optometrist who is a graduate of a school or
6 college of optometry as of July 20, 1987, who has not already successfully
7 completed a postgraduate course of study of transcript quality in ocular
8 therapy and pharmacology from an accredited school or college of optometry,
9 which complies with all the prerequisites and requirements of the board and
10 this subchapter, from being approved to perform any of the additional acts,
11 services, procedures, and practices which are specifically authorized in
12 ~~§§ 17-90-101(a) and 17-90-403~~ until he or she has successfully complied with
13 all the prerequisites and requirements of the board and this subchapter.

14 (B) The express purpose of this subdivision is to prohibit the
15 grandfathering of currently licensed optometrists unless and until they have
16 completed the prerequisites and requirements of the board and this subchapter
17 established by this subdivision. Nothing in this subdivision shall be
18 construed to prohibit any optometrist currently licensed from continuing to
19 practice optometry and be relicensed, but until he has met the requirements of
20 this subchapter and the rules and regulations of the board, he shall not be
21 allowed to utilize the additional treatments provided for in this subchapter;

22 ~~(6) To require that a board-certified optometrist who is approved to~~
23 ~~possess, administer, and prescribe drugs, prior to initiating treatment of~~
24 ~~glaucoma, shall consult with an ophthalmologist and develop a course of~~
25 ~~treatment approved by the ophthalmologist for each patient, pursuant to rules~~
26 ~~and regulations promulgated by the Optometric Therapeutic Committee. To~~
27 promulgate rules and regulations governing the prescribing, administering, and
28 use of all drugs authorized in this chapter by all licensed and
29 board-certified primary care optometrists in the diagnosis, treatment, or
30 management *only* of conditions of the human eye, lid, adnexa, or visual system.

31 (7) To promulgate rules and regulations which authorize board-certified
32 primary care optometrists to order any procedure or laboratory test necessary
33 in the examination, diagnosis, treatment, or management of diseases or
34 conditions of the human eye, lid, adnexa, or visual system."

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36 SECTION 3. Arkansas Code Annotated § 17-90-403 is amended to read as

1 follows:

2 "17-90-403. Authority to possess, administer, and prescribe.

3 One who is engaged in the practice of optometry as a profession, as
 4 defined in ~~§ 17-90-101(a)~~, and who has the education and professional
 5 competence, as determined by the Arkansas State Board of Optometry, and who
 6 has satisfied the educational requirements established by the Arkansas State
 7 Board of Optometry ~~in general and ocular pharmacology, with particular~~
 8 ~~emphasis on pharmaceutical agents applied topically to the eye,~~ from a college
 9 or university accredited by a regional or professional accreditation
 10 organization which is recognized or approved by the Council on Post-Secondary
 11 Accreditation, the United States Department of Education, or the ~~State~~
 12 Arkansas Board of Higher Education, and has met the requirements of
 13 ~~§ 17-90-401 is authorized to possess, administer, and prescribe topically~~
 14 ~~applied~~ pharmaceutical agents ~~limited to the general categories of~~
 15 ~~antimicrobial, antihistaminic, decongestants, anti-inflammatory, antifungal,~~
 16 ~~cycloplegics, mydriatics, miotics, dyes, analgesics, and anesthetics~~ for the
 17 diagnosis or treatment only of conditions of the eye, lids, or adnexa, except
 18 those listed in Schedules I and II of the Uniform Controlled Substances Act."

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20 SECTION 4. Chapter 90 of Title 17 of the Arkansas Code Annotated is
21 amended by adding the following new subchapter:

22 "Impaired Optometrist Treatment Program

23 17-90-501. Title.

24 This subchapter shall be known as the Impaired Optometrist Treatment
25 Program.

26 17-90-502. Purpose.

27 The purpose of this subchapter is to provide for the identification and
28 treatment of optometrists licensed under the Arkansas Optometry Law, who
29 suffer from impairment, in order to promote the public health and safety and
30 to ensure the continued availability of the skills of highly trained
31 optometric professionals for the benefit of the public.

32 17-90-503. Definitions. For purposes of this subchapter:

33 (1) Board shall mean the Arkansas State Board of Optometry with
34 reference to optometrists;

35 (2) Impaired or impairment shall mean the presence of the diseases of
36 alcoholism, drug abuse, or mental illness;

1 (3) Impaired Optometrist Treatment Program shall mean the Arkansas
2 State Board of Optometry approved or sponsored program for the detection,
3 intervention, and monitoring of impaired providers;

4 (4)(A) Professional incompetence shall mean the inability or failure of
5 an optometrist to practice his or her profession with reasonable skill and
6 safety;

7 (B) Impairment in and of itself shall not give rise to a
8 presumption of professional incompetence; and

9 (5) Treatment program shall mean a plan of care and rehabilitation
10 services provided by those organizations and persons authorized to provide
11 such services for impaired providers taking part in the programs provided
12 under this subchapter.

13 17-90-504. Authority.

14 The Arkansas State Board of Optometry may undertake the functions and
15 responsibilities to carry out the purposes of this subchapter, which may
16 include any of the following:

17 (1) Contracting with providers of treatment programs;

18 (2) Receiving and evaluating reports of suspected impairment from any
19 source;

20 (3) Intervening in cases of verified impairment;

21 (4) Referring impaired optometrists to treatment programs;

22 (5) Monitoring the treatment and rehabilitation of impaired
23 optometrists;

24 (6) Providing post-treatment monitoring and support of rehabilitated
25 impaired optometrists;

26 (7) Suspending, limiting, or restricting the optometrist's license for
27 the duration of the impairment; and

28 (8) Performing such other activities as the Board deems necessary to
29 accomplish the purposes of this subchapter.

30 17-90-505. Procedures.

31 The State Board shall develop procedures for:

32 (1) Informing each participant in the Impaired Optometric Treatment
33 Program of the program procedures, responsibilities of program participants,
34 and the possible consequences of noncompliance with the program.

35 (2) Voluntary self reporting and treatment program participation by an
36 optometrist.

1 17-90-506. Evaluation.

2 (a) If the Board has reason to believe that an optometrist is impaired,
3 the Board may cause an evaluation of such optometrist to be conducted for the
4 purpose of determining if there is an impairment.

5 (b) If the Board finds, after examination and hearing, that a licensee
6 is impaired, it may take one or more of the actions specified in this
7 subchapter.

8 17-90-507. Request for restricted license.

9 (a) An impaired optometrist may request in writing to the Board for a
10 restriction of his license to practice.

11 (b) The Board may grant such request for restriction and shall have the
12 authority to attach conditions to the licensure of the optometrist to practice
13 optometry within specified limitations.

14 17-90-508. Confidentiality of records.

15 (a)(1) Notwithstanding any provision of state law, records of the Board
16 pertaining to an impaired optometrist shall be exempt from the Freedom of
17 Information Act, §§ 25-19-101, et seq., shall be kept confidential, and shall
18 not be subject to discovery or subpoena.

19 (2) No person in attendance at any meeting of the Board meeting
20 concerning an impaired optometrist shall be required to testify as to any
21 discussions or proceedings.

22 (b) However, information, documents, or records otherwise available
23 from original sources are not to be construed as immune from discovery or use
24 in any such action merely because they were presented during the proceedings
25 of the Board meeting on an optometrist, nor shall any person who testifies
26 before the Board meeting on an optometrist, or who is a member of the Board,
27 be prevented from testifying as to matters within his knowledge, but the
28 witness shall not be asked about his testimony before the Board or about
29 opinions formed by him as a result of the Board hearings.

30 17-90-509. Participation in treatment program.

31 An impaired optometrist who is participating in or has successfully
32 completed a treatment program pursuant to this subchapter shall not be limited
33 or restricted in his or her professional practice or excluded from any
34 hospital staff solely because of such participation.

35 17-90-510. Limitation on liability.

36 (a) Notwithstanding any other provisions of law, the Arkansas State

1 Board of Optometry, Committees and members thereof, shall not be held liable
2 in damages to any person within the scope of their responsibilities pursuant
3 to this subchapter.

4 (b) No person who in good faith and without malice makes a report
5 pursuant to this subchapter to the Arkansas State Board of Optometry shall be
6 liable for damages to any person."

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8 SECTION 5. All provisions of this act of a general and permanent nature
9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
10 Revision Commission shall incorporate the same in the Code.

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12 SECTION 6. If any provision of this act or the application thereof to
13 any person or circumstance is held invalid, such invalidity shall not affect
14 other provisions or applications of the act which can be given effect without
15 the invalid provision or application, and to this end the provisions of this
16 act are declared to be severable.

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18 SECTION 7. All laws and parts of laws in conflict with this act are
19 hereby repealed.

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21 SECTION 8. EMERGENCY. It is hereby found and determined by the General
22 Assembly of the State of Arkansas that the public health and welfare of the
23 citizens of the state of Arkansas will be benefited by allowing Doctors of
24 Optometry to provide all practices, procedures, and services which the
25 Arkansas State Board of Optometry determines they are qualified to provide;
26 that the current law does not allow Doctors of Optometry to provide such
27 practices, procedures, and services; and that this act so permits. Therefore
28 an emergency is declared to exist and this act being immediately necessary for
29 the preservation of the public peace, health and safety shall become effective
30 on the date of its approval by the Governor. If the bill is neither approved
31 nor vetoed by the Governor, it shall become effective on the expiration of the
32 period of time during which the Governor may veto the bill. If the bill is
33 vetoed by the Governor and the veto is overridden, it shall become effective
34 on the date the last house overrides the veto.

35 /s/Bearden et al
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APPROVED: 2-17-97