

STORAGE NAME: h0315a.jo.doc
DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 315
RELATING TO: Opticianry/Violations & Penalties
SPONSOR(S): Representative Kottkamp
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION YEAS 10 NAYS 0
- (2) CRIME PREVENTION CORRECTIONS & SAFETY YEAS 9 NAYS 0
- (3) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
- (4) COUNCIL FOR HEALTHY COMMUNITIES
- (5)

I. SUMMARY:

HB 315 clarifies existing language in s. 484.013, Florida Statutes, that the dispensing of cosmetic or medical contact lenses is unlawful without a prescription. The bill increases the penalty for a person that dispenses contact lenses from a misdemeanor of the second degree to a felony of the third degree. The change in degree means an offender faces a maximum sentence of five years in state prison rather than the current 60 days in the county jail.

The bill allows the Department of Health to inspect any facility that lenses, spectacles, eyeglasses, contact lenses, and any other optical devices are prepared or dispensed, regardless if the department licenses the establishment.

Practicing opticianry without a license is placed on the Offense Severity Ranking Chart at Level 7 thereby making the offender subject to paying civil, administrative, and criminal penalties that will include a sentence of at least 21 months imprisonment, barring the existence of mitigating circumstances.

The bill provides for an effective date of October 1, 2001.

See Section VI for discussion of the six amendments that are traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida law requires persons wishing to provide health care services to patients in Florida to prove that they have the requisite education, training, and knowledge to practice that profession. Florida law provides avenues for licensure by examination or by endorsement if the health care practitioner was licensed in another jurisdiction. The purpose of licensure and regulation is to protect the public health, safety, and welfare from unsafe and incompetent practitioners.

The Legislature has recognized in passing laws setting forth practice parameters that the practice of medicine and other health care professions is potentially dangerous. The primary legislative purpose in enacting the medical and health care practice acts is to ensure that every health care practitioner who wishes to practice in Florida meets minimum requirements for safe practice.

The Legislature has set forth certain acts that constitute criminal violations. Among the prohibited acts is practicing medicine without a license, a felony of the third degree. If a person is found guilty of practicing medicine in Florida without a license, criminal penalties may be imposed, including incarceration.

Part I of Chapter 484, Florida Statutes, regulates the preparing and dispensing of eyeglasses and other optical devices. Section 484.001, F.S., provides:

The Legislature finds that the practice of opticianry by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about opticians and that the consequences of a wrong choice could seriously endanger their health and safety. The only way to protect the public from the incompetent practice of opticianry is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

Section 484.002 (3) F.S., provides:

"Opticianry" means the preparation and dispensing of lenses, spectacles, eyeglasses, contact lenses, and other optical devices to the intended user or agent thereof, upon the written prescription of a medical doctor or optometrist who is duly licensed to practice or upon presentation of a duplicate prescription. The selection of frame designs, the actual

sales transaction, and the transfer of physical possession of lenses, spectacles, eyeglasses, contact lenses, and other optical devices subsequent to performance of all services of the optician shall not be considered the practice of opticianry; however, such physical possession shall not be transferred until the optician has completed the fitting of the optical device upon the customer. The practice of opticianry also includes the duplication of lenses accurately as to power, without prescription. A board-certified optician qualified and operating under rules established by the board may fill, fit, adapt, or dispense any soft contact lens prescription. Such optician may fill, fit, adapt, or dispense any extended wear or hard contact lens prescription to the extent authorized to do so by the prescribing medical doctor or optometrist.

In the Unlicensed Activity Office Statewide Annual Report for Calendar Year 2000, it is reported that the Unlicensed Activity Office received 39 opticianry complaints of unlicensed activity.

In section 484.013, Florida Statutes, the language is not clear whether the distribution of cosmetic contact lens is considered part of licensed activity. Unlicensed activity is currently a misdemeanor of the second degree. Currently, inspectors have no authority to enter an establishment not licensed by the Department of Health where lenses and other optical devices are prepared or dispensed.

C. EFFECT OF PROPOSED CHANGES:

The bill allows for inspection of any type of establishment where there is dispensing of contact lenses. It adds the activity of dispensing for medical or cosmetic purposes without being furnished with a prescription as a violation of law, punishable as a felony of the third degree. This bill increases the unlicensed activity violation and permits investigations to stop unlawful activity that is occurring outside of licensed establishments in regards to the selling of these types of lenses.

Practicing opticianry without a license is placed on the Offense Severity Ranking Chart of the Criminal Punishment Code at Level 7 thereby making the offender subject to paying civil, administrative, and criminal penalties. Practicing medicine without a license and practicing osteopathic medicine without a license are also level 7 offenses.

The bill changes the provision for violation of this section from a second degree misdemeanor to a third degree felony. This will increase the maximum possible sentence from 60 days in a county facility to 5 years in state prison. The maximum fine associated with a third degree felony is \$5000, compared to \$500 for a second degree misdemeanor.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 484.013, Florida Statutes, clarifying that it is unlawful to dispense contact lenses whether for medical or cosmetic purposes, without first being furnished a prescription as provided for in section 484.012, F.S. In addition, the penalty for such unlawful acts is increased from a misdemeanor of the second degree to a felony of the third degree.

Section 2. Amends section 484.015, Florida Statutes, authorizing the department to inspect any establishment that prepares or dispenses contact lenses.

Section 3. Amends paragraph (g) of subsection (3) of section 921.0022, Florida Statutes to include the penalty for practicing opticianry without a license as a third degree felony in the Offense Severity Ranking Chart.

Section 4. Provides for an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Health reports there is no fiscal impact of this bill to the department.

The Criminal Justice Estimating Conference has not determined the impact of this bill on the state prison system.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Pursuant to Article VII, section 18, Florida Constitution, criminal laws are exempt from the requirements of section 18.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2001, the Committee on Health Regulation passed the bill with four amendments as follows:

Amendment 1. Creates definition of contact lens.

Amendment 2. Technical amendment.

Amendment 3. Removes from the bill: "medical or cosmetic purposes"; since it is duplicative language after creating definition of contact lens.

Amendment 4. Expands definition of "Opticianry"; provides that allopathic or osteopathic physician is authorized to write prescriptions for optical devices; allows such prescribing physician the ability to prohibit prescription duplication.

On March 27, 2001, the Committee on Crime Prevention, Corrections, and Safety passed the bill with two amendments as follows:

Amendment 5. Exempts individuals transferring optical devices that are exclusively cosmetic to another individual without compensation or incidental or peripheral compensation.

Amendment 1 to Amendment 4. Technical amendment.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

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Staff Director:

Lucretia Shaw Collins

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AS REVISED BY THE COMMITTEE ON CRIME PREVENTION CORRECTIONS & SAFETY:

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David De La Paz

AS FURTHER REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

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