

1969 Bill 43

---

---

Second Session, 16th Legislature, 18 Elizabeth II

---

---

THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 43**

**An Act to amend The Ophthalmic Dispensers Act**

---

---

THE MINISTER OF HEALTH

---

---

First Reading .....

Second Reading .....

Third Reading .....

# BILL 43

1969

An Act to amend The Ophthalmic Dispensers Act

(Assented to \_\_\_\_\_, 1969)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Ophthalmic Dispensers Act* is hereby amended.
2. Section 2 is amended by striking out clause (j) and by substituting the following:
  - (j) "ophthalmic dispensing" means the measuring or adjusting or adapting of ophthalmic appliances to the needs of the intended wearer
    - (i) in accordance with a prescription from an ophthalmologist or optometrist, or
    - (ii) without a prescription, where lenses are duplicated with no change in their refractive value, and in any case whether for hire, gain or reward or not;
3. Section 31, subsection (1) is amended
  - (a) by striking out the word "five" and by substituting the word "six",
  - (b) by adding the word "and" at the end of clause (c) and by adding the following:
    - (d) the secretary appointed under subsection (3).
4. Section 35 is amended by striking out subsections (1) and (2) and by substituting the following:
  35. (1) No person shall practise as an ophthalmic dispenser or perform any act of ophthalmic dispensing unless he is a member of the Guild.
  - (2) No person other than a member of the Guild shall use the designation "ophthalmic dispenser", "registered ophthalmic dispenser", "optical dispenser" or any other style or designation implying that he is an ophthalmic dispenser.

## Explanatory Notes

**1.** This Bill amends chapter 66 of the Statutes of Alberta, 1965.

**2.** Section 2 (j) presently reads:

- (j) "ophthalmic dispensing" means
  - (i) the manufacturing, supplying and preparing of ophthalmic appliances, and
  - (ii) the measuring, adjusting and adapting ophthalmic appliances to the needs of the intended wearer,in accordance with a prescription from an ophthalmologist or optometrist, or without a prescription where lenses are duplicated with no change in their refractive value, and whether for hire, gain or reward or not;

New definition of "ophthalmic dispensing".

**3.** Section 31 (1) presently reads:

31. (1) There is hereby established a board to be known as the Ophthalmic Dispensers Examining Board consisting of the Director of the Division of Medical Services of the Department of Public Health or an alternate appointed by the Minister and five other members appointed by the Minister

- (a) two of whom shall be members of the Guild,
- (b) one of whom shall be a legally qualified medical practitioner, and
- (c) two of whom shall be members of the public at large.

**4.** Section 35 (1) and (2) presently read:

35. (1) No person shall practise as an ophthalmic dispenser or perform any act of ophthalmic dispensing unless he is a member of the Guild who is not under suspension from practice.

(2) No person other than a member of the Guild shall use the designation "ophthalmic dispenser", "registered ophthalmic dispenser", "dispensing optician", "optical dispenser" or any other style or designation implying that he is a member of the Guild or the holder of a certificate of competency or is a person permitted by law to practise as an ophthalmic dispenser or perform ophthalmic dispensing.

Subsection (1) is amended to remove the phrase "who is not under suspension from practice" which is considered surplusage and which creates difficulties in the framing of charges.

Subsection (2) is rewritten as a result of the new definition of "ophthalmic dispensing".

5. Section 36 is amended by striking out the words “not under suspension from practice”.

6. Section 38, clause (a) is amended by striking out the words “an optician who is employed in a wholesale or retail optical laboratory or”.

7. Section 42 is struck out and the following is substituted:

42. A person who is guilty of an offence under this Act or the regulations is liable on summary conviction

- (a) for a first offence to a fine of not more than \$500 and in default of payment to imprisonment for not more than 30 days,
- (b) for a second offence to a fine of not more than \$1,000 and in default of payment to imprisonment for not more than 60 days, and
- (c) for a third or subsequent offence to imprisonment for not more than six months.

8. The following section is added after section 43:

43a. (1) Where

- (a) a prosecution in respect of an offence under this Act or the regulations has been instituted against a person, or
- (b) a person has been convicted of an offence under this Act or the regulations,

the Guild may by originating notice of motion apply to the Supreme Court of Alberta for an injunction to restrain that person from doing any act that is similar to or related to any act or matter that is the subject of the prosecution or conviction.

(2) The originating notice shall be served at least two clear days before the day named in the notice for hearing the application.

(3) The court may grant the injunction or interlocutory injunction applied for where

- (a) it appears from the evidence that the person to be restrained is or is apparently continuing to do or may in the future do the act complained of, and
- (b) it is satisfied that the granting of the injunction or interlocutory injunction is in the interest of the public generally or any class of persons in particular.

(4) An application may be made under subsection (1) *ex parte* upon the filing of the originating notice and the court may grant an interlocutory injunction for a period not exceeding 10 days.

**5. Section 36 presently reads:**

36. No person shall

- (a) supply or prepare a contact lens, or
- (b) measure, adjust or adapt a contact lens for an intended wearer, unless he is a member of the Guild not under suspension from practice and the holder of a certificate of competency in dispensing contact lenses and does so in accordance with a complete prescription of, and subject to the direction of and under the supervision of, an ophthalmologist or optometrist.

See note to clause 4 of this Bill regarding section 35 (1).

**6. Consequential of the new definition of "ophthalmic dispensing". Section 38 (a) presently reads:**

38. Nothing in this Act prohibits

- (a) an optician who is employed in a wholesale or retail optical laboratory or an apprentice ophthalmic dispenser who works under the direct supervision of a member of the Guild, from performing work or services ordinarily performed by an ophthalmic dispenser, or

**7.** This is the same as the present section 42 except for the increases in penalties, i.e., from \$50 to \$500 in clause (a), from \$100 to \$1000 in clause (b) and from three months to six months in clause (c). Experience has shown that the present penalty provisions are inadequate.

**8.** The new section 43a will permit the Guild to obtain an injunction against a person who is being prosecuted or has been convicted of an offence under the Act. The injunction would restrain that person from doing acts similar to those that are the subject of the prosecution or conviction.

(5) An interlocutory injunction made under subsection (4) remains in force for the period specified therein unless the period is extended upon application made *ex parte* but if it is in force on the day when the originating motion is determined, it shall be deemed to be dissolved on that day.

(6) An injunction or interlocutory injunction made under this section may be enforced in the same manner as any other injunction or interlocutory injunction of the Supreme Court of Alberta and may be varied or discharged upon an application made by notice.

(7) Except where otherwise provided in this section, the rules of the Supreme Court of Alberta apply to proceedings under this section.

**9.** This Act comes into force on the day upon which it is assented to.

