

1 SB322
2 147782-2
3 By Senator Reed
4 RFD: Health
5 First Read: 12-MAR-13

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8 SYNOPSIS: Under existing law, an optometrist is
9 required to be free from any influences that would
10 interfere with the exercise of professional
11 judgment.

12 This bill would prohibit manufacturers,
13 wholesalers, or retailers of ophthalmic materials
14 who lease space to an optometrist from directly, or
15 indirectly, controlling or attempting to control
16 the professional judgment or practice of the
17 optometrist.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

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23 Relating to optometrists; to prohibit manufacturers,
24 wholesalers, or retailers of ophthalmic materials who lease
25 space to an optometrist from directly, or indirectly,
26 controlling or attempting to control the professional judgment
27 or practice of the optometrist; to authorize the Alabama Board

1 of Optometry to promulgate necessary rules; and to limit a
2 cause of action under the bill to an optometrist, the board,
3 and the Attorney General.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. (a) A manufacturer, wholesaler, or
6 retailer of ophthalmic materials who leases space to an
7 optometrist may not, directly or indirectly, control or
8 attempt to control the professional judgment or practice of
9 the optometrist.

10 (b) As used in this section, the phrase "control or
11 attempt to control the professional judgment or practice of an
12 optometrist" includes, but is not limited to, all of the
13 following:

14 (1) Setting or attempting to set the professional
15 fees or hours of the optometrist or the number of patients to
16 be seen by the optometrist.

17 (2) Restricting or attempting to restrict the
18 discretion of the optometrist to schedule appointments at
19 times convenient to his or her patients.

20 (3) Terminating or threatening to terminate a lease
21 with an optometrist as a means of controlling or attempting to
22 control the professional judgment or practice of the
23 optometrist.

24 (4) Sharing telephone lines or other
25 telecommunication services with an optometrist. Nothing in
26 this subdivision shall preclude an optometrist from entering
27 into a business arrangement involving the delegation of

1 clerical tasks and functions to persons who are not employees
2 of the optometrist but are under the general supervision of
3 the optometrist, so long as the business arrangement is
4 otherwise in compliance with state and federal law.

5 (5) Employing or contracting for the services of an
6 optometrist if part of his or her duties involve the practice
7 of optometry. Nothing in this subdivision shall preclude an
8 optometrist from legally contracting to provide optometric
9 services to the employees of the manufacturer, wholesaler, or
10 retailer.

11 (6) Paying an optometrist for a service not
12 provided.

13 (7) Restricting access by an optometrist to leased
14 office space when he or she needs access to provide emergency
15 care to a patient.

16 (8) Restricting or attempting to restrict the scope
17 of practice of the optometrist in a way that prevents the
18 optometrist from providing the full range of diagnostic and
19 treatment services authorized by state law. A manufacturer,
20 wholesaler, or retailer of ophthalmic materials who leases
21 space to an optometrist may restrict the optometrist from
22 offering spectacles, lenses, or frames to his or her patients
23 or to the public in the leased space in direct competition
24 with the lessor.

25 (9) Limiting or attempting to limit the optometric
26 services and ophthalmic materials that the optometrist may
27 prescribe to his or her patients or the information which may

1 be disseminated to his or her patients or the public by the
2 optometrist.

3 (10) In any way limiting or attempting to limit the
4 exercise of independent professional judgment or
5 responsibility by the optometrist.

6 (c) A lease between an optometrist and a
7 manufacturer, wholesaler, or retailer of ophthalmic materials
8 shall comply with all of the following:

9 (1) The lease may not contain any provision through
10 which the manufacturer, wholesaler, or retailer of ophthalmic
11 materials controls or attempts to control the professional
12 judgment or practice of the optometrist.

13 (2) The leased space shall be large enough to
14 include a secure location for storage of confidential patient
15 records. A representative of the lessor shall only be
16 permitted on the premises of the lessee on reasonable notice
17 and at times not disruptive to the practice of the
18 optometrist. The lessor shall have no access to confidential
19 patient information. Patient records and business records of
20 the optometric practice are the sole property of the
21 optometrist.

22 (d) The Alabama Board of Optometry may promulgate
23 rules to implement this section.

24 (e) The Alabama Board of Optometry may file an
25 action in an appropriate court to enjoin any violation of this
26 section by any manufacturer, wholesaler, or retailer of
27 ophthalmic materials. If successful in establishing a

1 violation of this section, the board may recover court costs
2 and reasonable attorney's fees.

3 (f) An optometrist may file an action in an
4 appropriate court to enjoin a manufacturer, wholesaler, or
5 retailer of ophthalmic materials from controlling or
6 attempting to control his or her professional judgment or
7 practice. If successful in establishing a violation of this
8 section, the optometrist may also recover any actual damages
9 sustained by him or her, as well as court costs and reasonable
10 attorney's fees.

11 (g) The Attorney General may file suit in an
12 appropriate court to enjoin any violation of this section by a
13 manufacturer, wholesaler, or retailer of ophthalmic materials.
14 If successful in establishing a violation of this section, the
15 Attorney General may also recover a civil penalty not to
16 exceed one thousand dollars (\$1,000) per day, for each
17 violation of this section, plus court costs and reasonable
18 attorney's fees.

19 (h) Nothing in this section shall be construed as
20 creating a cause of action against an optometrist, and no
21 person other than an optometrist, pursuant to subsection (f),
22 the Alabama Board of Optometry, and the Attorney General shall
23 have a cause of action under this section.

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.