

SENATE BILL 936

By Bell

AN ACT to amend Tennessee Code Annotated, Section 63-8-113 and Section 63-8-125, relative to the practice of optometry.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-8-113(c), is amended by deleting subdivision (6) in its entirety and redesignating the remaining subdivision accordingly.

SECTION 2. Tennessee Code Annotated, Section 63-8-125, is amended by deleting the section and substituting the following:

(a) An optometrist may lease space from a manufacturer or retailer of ophthalmic materials, or a general retailer; provided, that the optometrist's practice is separate and independent from all retail sales, and meets the following criteria:

(1) A manufacturer or wholesaler of ophthalmic materials, or a retailer who leases space to an optometrist shall not, directly or indirectly, control or attempt to control the professional judgment or practice of an optometrist;

(2) The optometrist shall display a sign indicating the optometrist is an independent optometrist and is not connected to any retailer of ophthalmic materials;

(3) A manufacturer or wholesaler of ophthalmic materials, or a retailer who leases space to an optometrist shall not display any products or ophthalmic materials inside the space leased to the independent optometrist; and

(4) A manufacturer or wholesaler of ophthalmic materials, or a retailer who leases space to an optometrist shall not share employees with the independent optometrist or allow employees to enter the leased space unless the

lease agreement makes specific provisions for sharing employees and for protecting patient confidentiality.

(b) As used in this section, “control or attempt to control the professional judgment or practice of an optometrist” includes, but is not limited to:

(1) Setting or attempting to set the professional fees or hours of an optometrist, or the number of patients to be seen by an optometrist;

(2) Restricting or attempting to restrict an optometrist’s discretion to schedule appointments at times convenient to the optometrist’s patients;

(3) Terminating or threatening to terminate a lease with an optometrist as a means of controlling or attempting to control the professional judgment or practice of the optometrist;

(4) Sharing telephone lines or other telecommunication services with an optometrist; provided, however, that nothing in this section shall preclude an optometrist from entering into a business arrangement involving the delegation of clerical tasks and functions to persons who are not employees of the optometrist but are under the optometrist’s general supervision, so long as the business arrangement is in compliance with state and federal law and the terms of the arrangements are reflected in the lease agreement;

(5) Employing or contracting for the services of an optometrist if part of the optometrist’s duties involve the practice of optometry, except that an optometrist may legally contract to provide optometric services to the employees of the manufacturer, wholesaler, or retailer;

(6) Paying an optometrist for a service not provided;

(7) Restricting an optometrist’s access to leased office space when the optometrist needs the access to provide emergency care to a patient;

(8) Restricting or attempting to restrict the scope of practice of the optometrist in a way that prevents the optometrist from providing the full range of diagnostic and treatment services authorized by state law; provided, however,

that a manufacturer, wholesaler, or retailer of ophthalmic materials who leases space to an optometrist may restrict that optometrist from offering spectacles, lenses, or frames to the optometrist's patients or to the public in the leased space in direct competition with the lessor;

(9) Limiting or attempting to limit the optometric services and ophthalmic materials that the optometrist may prescribe to the optometrist's patients or the information that may be disseminated to the patients or the public by the optometrist; and

(10) Limiting or attempting to limit the optometrist's exercise of independent professional judgment or responsibility in any manner.

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

(1) The lease shall not contain any provision through which the manufacturer or wholesaler of ophthalmic materials or retailer controls or attempts to control the professional judgment or practice of the optometrist;

(2) The leased space shall be large enough to include a secure location for storage of confidential patient records; and

(3) The lessor and representatives of the lessor:

(A) Are only permitted on the lessee's premises after giving reasonable notice and at times that are not disruptive to the practice of the optometrist; and

(B) Shall have no access to confidential patient information except in compliance with state and federal law.

(d) The board may promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement the provisions of this section.

(e) The board may file an action in an appropriate court to enjoin any violation of this section by a manufacturer, wholesaler, or retailer of ophthalmic materials. If successful in establishing that a violation of this section has occurred, the board may recover court costs and reasonable attorneys' fees.

(f) An optometrist may file an action in an appropriate court to enjoin a manufacturer, wholesaler, or retailer of ophthalmic materials from controlling or attempting to control the professional judgment or practice of that optometrist. If successful in establishing that a violation of this section has occurred, the optometrist may also recover any actual damages sustained by the optometrist, as well as court costs and reasonable attorneys' fees.

(g) The attorney general and reporter may file suit in an appropriate court to enjoin any violation of this section by a manufacturer, wholesaler, or retailer of ophthalmic materials. If the attorney general is successful in establishing that a violation of this section has occurred, the court may order the payment of a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, in addition to court costs and reasonable attorneys' fees.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.