

1 HB334
2 156106-1
3 By Representative McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 22-JAN-14

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8 SYNOPSIS: Under existing law, the Alabama Board of
9 Optometry is responsible for licensing and
10 regulating the practice of optometry in the state.

11 This bill would delete language relating to
12 a license to practice optometry across state lines
13 and would authorize the board to regulate the
14 practice of optometry through telemedicine.

15 Amendment 621 of the Constitution of Alabama
16 of 1901, now appearing as Section 111.05 of the
17 Official Recompilation of the Constitution of
18 Alabama of 1901, as amended, prohibits a general
19 law whose purpose or effect would be to require a
20 new or increased expenditure of local funds from
21 becoming effective with regard to a local
22 governmental entity without enactment by a 2/3 vote
23 unless: it comes within one of a number of
24 specified exceptions; it is approved by the
25 affected entity; or the Legislature appropriates
26 funds, or provides a local source of revenue, to
27 the entity for the purpose.

1 The purpose or effect of this bill would be
2 to require a new or increased expenditure of local
3 funds within the meaning of the amendment. However,
4 the bill does not require approval of a local
5 governmental entity or enactment by a 2/3 vote to
6 become effective because it comes within one of the
7 specified exceptions contained in the amendment.

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9 A BILL
10 TO BE ENTITLED
11 AN ACT

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13 To amend Sections 34-22-80, 34-22-81, 34-22-82,
14 34-22-83, 34-22-84, 34-22-85, 34-22-86, and 34-22-87, Code of
15 Alabama 1975, relating to the practice of optometry; to
16 authorize the board to regulate the practice of optometry
17 through telemedicine; to repeal Section 34-22-88, Code of
18 Alabama 1975, as duplicative; and in connection therewith
19 would have as its purpose or effect the requirement of a new
20 or increased expenditure of local funds within the meaning of
21 Amendment 621 of the Constitution of Alabama of 1901, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 34-22-80 to 34-22-87, inclusive,
26 Code of Alabama 1975, are amended to read as follows:

27 "§34-22-80.

1 "The Legislature hereby finds and declares that,
2 ~~because of technological advances and changing practice~~
3 ~~patterns, are occurring in the practice of optometry is~~
4 ~~occurring with increasing frequency across state lines and~~
5 ~~certain, thereby changing the practice of optometry, and that~~
6 ~~those technological advances in the practice of optometry are~~
7 in the public interest. The Legislature further finds and
8 declares that the practice of optometry is a privilege and
9 that the ~~licensure by this state of practitioners located~~
10 ~~outside this state engaging in such optometric practice within~~
11 ~~this state and the ability to discipline such practitioners~~
12 ~~state's ability to regulate and monitor such technological~~
13 ~~advances~~ is necessary for the protection of the citizens of
14 this state and for the public interest, health, welfare, and
15 safety.

16 "§34-22-81.

17 "~~(a) The practice of optometry across state lines~~
18 ~~means the practice of optometry as defined in Section~~
19 ~~34-22-1(4), as it applies to:~~

20 "~~(1) The rendering of a written or otherwise~~
21 ~~documented professional opinion concerning the diagnosis or~~
22 ~~treatment of a patient located within this state by an~~
23 ~~optometrist located outside this state as a result of~~
24 ~~transmission of individual patient data by electronic or other~~
25 ~~means from within this state to such optometrist or his or her~~
26 ~~agent.~~

1 ~~"(2) The rendering of treatment to a patient located~~
2 ~~within this state by an optometrist located outside this state~~
3 ~~as a result of transmission of individual patient data by~~
4 ~~electronic or other means from this state to such optometrist~~
5 ~~or his or her agent.~~

6 ~~"(3) This definition is not intended to include an~~
7 ~~informal consultation between a licensed optometrist located~~
8 ~~in this state and an optometrist located outside this state~~
9 ~~provided that the consultation is conducted without~~
10 ~~compensation or the expectation of compensation to either~~
11 ~~optometrist and does not result in the formal rendering of a~~
12 ~~written or otherwise documented professional opinion~~
13 ~~concerning the diagnosis or treatment of a patient by the~~
14 ~~optometrist located outside the state.~~

15 "For the purposes of this article, the following
16 terms shall have the following meanings:

17 ~~"(b) Board means the~~(1) BOARD. The Alabama Board of
18 Optometry created pursuant to Section 34-22-40.

19 "(2) DISTANT SITE PROVIDER. The provider providing
20 the telemedicine service from a site other than the patient's
21 current location. A distant site provider shall hold an active
22 Alabama license pursuant to Section 34-22-20 or Section
23 34-22-21.

24 "(3) ESTABLISHED TREATMENT SITE. A location where a
25 patient shall present to seek optometric care where there is
26 an optometrist present and sufficient technology and equipment
27 to allow for an adequate physical evaluation as appropriate

1 for the patient's presenting complaint. The term requires an
2 optometrist-patient relationship. A patient's private home is
3 not considered an established treatment site.

4 "(4) FACE-TO-FACE VISIT. An evaluation performed on
5 a patient where both the provider and patient are at the same
6 physical location or where the patient is at an established
7 treatment site.

8 "(5) IN-PERSON EVALUATION. A patient evaluation
9 conducted by a provider who is at the same physical location
10 as the location of the patient.

11 "(6) PROVIDER. An optometrist holding an active
12 Alabama license pursuant to Section 34-22-20 or Section
13 34-22-21.

14 "(7) TELEMEDICINE. A health service that is
15 delivered by a licensed optometrist acting within the scope of
16 his or her license and that requires the use of advanced
17 telecommunications technology, other than telephone or
18 facsimile technology, including all of the following:

19 "a. Compressed digital interactive video, audio, or
20 data transmission.

21 "b. Clinical data transmission using computer
22 imaging by way of still image capture and store and forward.

23 "c. Other technology that facilitates access to
24 health care services or optometric specialty expertise.

25 "§34-22-82.

26 "(a) No person shall engage in the practice of
27 optometry across state lines in this state, hold himself or

1 ~~herself out as qualified to practice optometry, or use any~~
2 ~~title, word, or abbreviation to indicate or induce others to~~
3 ~~believe that he or she is licensed in this state to practice~~
4 ~~optometry across state lines unless he or she has been issued~~
5 ~~a special purpose license to practice optometry across state~~
6 ~~lines in accordance with the provisions of this article;~~
7 ~~provided however, that no person who holds a full,~~
8 ~~unrestricted, and current license issued pursuant to Sections~~
9 ~~34-22-1 to 34-22-43, inclusive, shall be required to obtain a~~
10 ~~special purpose license to practice optometry across state~~
11 ~~lines.~~

12 ~~"(b) An individual shall submit an application for a~~
13 ~~certificate of qualification for a special purpose license to~~
14 ~~practice optometry across state lines on a form provided by~~
15 ~~the board and shall remit an application fee in an amount~~
16 ~~established by the board. The Alabama Board of Optometry shall~~
17 ~~issue a special purpose license to practice optometry across~~
18 ~~state lines upon presentation by an applicant of a certificate~~
19 ~~of qualification issued by the Alabama Board of Optometry in~~
20 ~~accordance with this section. The authority of the board to~~
21 ~~issue, revoke, or suspend the special purpose license to~~
22 ~~practice optometry across state lines shall be the same as the~~
23 ~~general authority granted to the board under Sections 34-22-5~~
24 ~~to 34-22-43, inclusive. The Alabama Board of Optometry shall~~
25 ~~issue a certificate of qualification certifying an applicant~~
26 ~~for a special purpose license to practice optometry across~~
27 ~~state lines who has met the following requirements:~~

1 ~~"(1) The applicant holds a full and unrestricted~~
2 ~~license to practice optometry in any and all states of the~~
3 ~~United States or in territories in which the individual is~~
4 ~~licensed.~~

5 ~~"(2) The applicant has not had any disciplinary~~
6 ~~action or other action taken against the applicant by any~~
7 ~~state or licensing jurisdiction.~~

8 ~~"(3) In the event of previous disciplinary or other~~
9 ~~action against the applicant, the board may issue a~~
10 ~~certificate of qualification if it finds that the previous~~
11 ~~disciplinary or other action does not indicate that the~~
12 ~~optometrist is a potential threat to the public.~~

13 ~~"(c) A special purpose license issued by the board~~
14 ~~to practice optometry across state lines limits the licensee~~
15 ~~solely to the practice of optometry across state lines as~~
16 ~~defined herein. The special purpose license is valid for a~~
17 ~~period of three years, shall expire on a renewal date~~
18 ~~established by the board in the third calendar year after its~~
19 ~~issuance, and may be renewed upon receipt of a renewal fee as~~
20 ~~established by the board. Failure to renew a license according~~
21 ~~to the renewal schedule established by the board shall result~~
22 ~~in the automatic revocation of the special purpose license to~~
23 ~~practice optometry across state lines. An applicant may~~
24 ~~reapply following automatic revocation for failure to renew.~~

25 ~~"(a) A provider who uses telemedicine in his or her~~
26 ~~practice shall adopt protocols to prevent fraud and abuse~~
27 ~~through the use of telemedicine.~~

1 "(b) (1) Privacy practices.

2 "a. A provider that communicates with patients by
3 electronic communications other than telephone or facsimile
4 shall provide patients with written notification of the
5 provider's privacy practices before evaluation or treatment.

6 "b. The notice of privacy practices shall include
7 language that is consistent with federal standards under 45
8 CFR Parts 160 and 164 relating to privacy of individually
9 identifiable health information.

10 "c. A provider shall make a good faith effort to
11 obtain the patient's written acknowledgment of the notice.

12 "(2) Limitations of telemedicine. A provider who
13 uses telemedicine services, before providing services, shall
14 give each patient notice regarding telemedicine services,
15 including the risks and benefits of being treated via
16 telemedicine, and how to receive follow-up care or assistance
17 in the event of an adverse reaction to the treatment or in the
18 event of an inability to communicate as a result of a
19 technological or equipment failure. A signed and dated notice,
20 including an electronic acknowledgement by the patient,
21 establishes a presumption of notice.

22 "(3) Necessity of in-person evaluation. When, for
23 whatever reason, the telemedicine modality in use for a
24 particular patient encounter is unable to provide all
25 pertinent clinical information that a healthcare provider
26 exercising ordinary skill and care would deem reasonably
27 necessary for the practice of optometry at an acceptable level

1 of safety and quality in the context of that particular
2 encounter, then the distant site provider shall make this
3 known to the patient and advise and counsel the patient
4 regarding the need for the patient to obtain an additional
5 in-person evaluation reasonably able to meet the patient's
6 needs.

7 "§34-22-83.

8 ~~"(a) The issuance by the board of a special purpose~~
9 ~~license to practice optometry across state lines subjects the~~
10 ~~licensee to the jurisdiction of the board in all matters set~~
11 ~~forth in Sections 34-22-1 to 34-22-43, inclusive, and~~
12 ~~implementing rules and regulations of the board, including all~~
13 ~~matters related to discipline. It shall be the affirmative~~
14 ~~duty of every licensee to report to the Alabama Board of~~
15 ~~Optometry in writing within 15 days of the initiation of any~~
16 ~~disciplinary action against the licensee to practice optometry~~
17 ~~by any state or territory in which the licensee is licensed.~~
18 ~~In addition, the licensee agrees, by acceptance of the~~
19 ~~license, to produce patient records or materials as requested~~
20 ~~by the board or to appear before the board or any of its~~
21 ~~committees following receipt of a written notice issued by the~~
22 ~~board. Such notice may be issued by the board pursuant to~~
23 ~~Sections 34-22-1 to 34-22-43, inclusive.~~

24 ~~"(b) The Alabama Board of Optometry is hereby~~
25 ~~authorized to temporarily suspend a special purpose license to~~
26 ~~practice optometry across state lines without a hearing on~~
27 ~~either of the following grounds:—~~

1 ~~"(1) The failure of the licensee to appear or~~
2 ~~produce records or materials as requested by the board.~~

3 ~~"(2) The initiation of a disciplinary action against~~
4 ~~the licensee by any state or territorial licensing~~
5 ~~jurisdiction in which the licensee holds a license to practice~~
6 ~~optometry.~~

7 ~~"(c) Notwithstanding any other provision of law,~~
8 ~~including the Alabama Administrative Procedure Act, the~~
9 ~~temporary suspension provided herein shall remain in effect~~
10 ~~until either the licensee has complied with the request of the~~
11 ~~board or the disciplinary action pending against the licensee~~
12 ~~has been terminated in favor of the licensee and the temporary~~
13 ~~suspension is terminated by a written order of the Alabama~~
14 ~~Board of Optometry. A special purpose license to practice~~
15 ~~optometry across state lines is subject to each of the grounds~~
16 ~~for disciplinary action provided in Section 34-22-6, in~~
17 ~~accordance with the procedures of Section 34-22-8, and the~~
18 ~~Alabama Administrative Procedure Act.~~

19 "(a) Telemedicine services provided at an
20 established treatment site may be used for all patient visits,
21 including initial evaluations to establish a proper
22 doctor-patient relationship between a provider and a patient.

23 "(1) A provider shall be reasonably available onsite
24 at the established medical site to assist with the provision
25 of care.

1 "(2) A provider may delegate tasks and activities at
2 an established treatment site to an assistant who is properly
3 trained and supervised or directed.

4 "(b) A distant site provider who provides
5 telemedicine services to a patient that is not present at an
6 established treatment site shall ensure that a proper
7 provider-patient relationship is established, which at a
8 minimum includes all of the following:

9 "(1) Having had at least one face-to-face meeting at
10 an established treatment site before engaging in telemedicine
11 services. A face-to-face meeting is not required for new
12 conditions relating to an existing patient, unless the
13 provider deems that such a meeting is necessary to provide
14 adequate care.

15 "(2) Establishing that the person requesting the
16 treatment is in fact whom he or she claims to be.

17 "(c) Evaluation, treatment, and consultation
18 recommendations made in a telemedicine setting, including
19 issuing a prescription via electronic means, shall be held to
20 the same standards of appropriate practice as those in
21 traditional in-person clinical settings.

22 "(d) (1) Adequate security measures shall be
23 implemented to ensure that all patient communications,
24 recordings, and records remain confidential.

25 "(2)a. Written policies and procedures shall be
26 maintained when using electronic mail for provider-patient
27 communications. Policies shall be evaluated periodically to

1 make sure they are up to date. Policies and procedures shall
2 address all of the following:

3 "1. Privacy to assure confidentiality and integrity
4 of patient-identifiable information.

5 "2. Health care personnel, in addition to the
6 provider, who will process messages.

7 "3. Hours of operation and availability.

8 "4. Types of transactions that shall be permitted
9 electronically.

10 "5. Required patient information to be included in
11 the communication, such as the patient name, identification
12 number, and type of transaction.

13 "6. Archival and retrieval.

14 "7. Quality oversight mechanisms.

15 "b. All relevant provider-patient email, and other
16 patient-related electronic communications, shall be stored and
17 filed in the patient record.

18 "c. Patients shall be informed of alternative forms
19 of communication for urgent matters.

20 "§34-22-84.

21 ~~"Any licensee licensed pursuant to this article~~
22 ~~shall comply with all laws, rules, and regulations governing~~
23 ~~the maintenance of patient records, including patient~~
24 ~~confidentially requirements, regardless of the state where the~~
25 ~~records of any patient within this state are maintained.~~

26 "(a) Patient records shall be maintained for all
27 telemedicine services. The provider or distant site provider

1 shall maintain the records created at any site where treatment
2 or evaluation is provided.

3 "(b) Distant site providers shall obtain an adequate
4 and complete medical history for the patient before providing
5 treatment and shall document the medical history in the
6 patient record.

7 "(c) Patient records shall include copies of all
8 relevant patient-related electronic communications, including
9 relevant provider-patient email, prescriptions, laboratory and
10 test results, evaluations and consultations, records of past
11 care, and instructions. If possible, telemedicine encounters
12 that are recorded electronically shall also be included in the
13 patient record.

14 "§34-22-85.

15 ~~"(a) An optometrist who engages in the practice of~~
16 ~~optometry across state lines in an emergency, as defined by~~
17 ~~the board, is not subject to this article.~~

18 ~~"(b) An optometrist who engages in the practice of~~
19 ~~optometry across state lines on an irregular or infrequent~~
20 ~~basis is not subject to this article. The "irregular or~~
21 ~~infrequent" practice of optometry across state lines is~~
22 ~~considered to occur if the practice occurs less than 10 times~~
23 ~~in a calendar year or involves fewer than 10 patients in a~~
24 ~~calendar year, or comprises less than one percent of the~~
25 ~~optometrist's diagnostic or therapeutic practice.~~

26 "(a) A licensed optometrist, who is not licensed in
27 Alabama pursuant to Section 34-22-20 or Section 34-22-21, who

1 utilizes telemedicine across state lines in an emergency, as
2 defined by the board, is not subject to the requirements of
3 this article.

4 "(b) A provider that is contacted in an emergency is
5 not subject to the notice and security provisions of this
6 article, but is subject to those provisions should any
7 nonemergency care continue with the patient.

8 "§34-22-86.

9 ~~"(a) Any person who violates this article is subject~~
10 ~~to criminal prosecution for the unlicensed practice of~~
11 ~~optometry under Section 34-22-6, or other action authorized in~~
12 ~~this state to prohibit or penalize continued practice without~~
13 ~~a license under Section 34-22-8.~~

14 ~~"(b) Nothing in this article shall be interpreted to~~
15 ~~limit or restrict the board's authority to discipline any~~
16 ~~optometrist licensed to practice in this state who violates~~
17 ~~Sections 34-22-6 to 34-22-8, inclusive, while engaging in the~~
18 ~~practice of optometry within this or any other state.~~

19 "§34-22-87.

20 ~~"Notwithstanding any provision of this article, the~~
21 ~~board shall only issue a special purpose license to practice~~
22 ~~optometry across state lines to an applicant whose principal~~
23 ~~practice location and license to practice is located in a~~
24 ~~state or territory of the United States whose laws permit or~~
25 ~~allow for the issuance of a special purpose license to~~
26 ~~practice optometry across state lines or similar license to an~~
27 ~~optometrist whose principal practice location and license is~~

1 ~~located in another state. It is the stated intent of this~~
2 ~~article that optometrists who hold a full and current license~~
3 ~~in the State of Alabama be afforded the opportunity to obtain,~~
4 ~~on a reciprocal basis, a license to practice optometry across~~
5 ~~state lines in any state or territory of the United States as~~
6 ~~a precondition to the issuance of a special purpose license as~~
7 ~~authorized by this article to an optometrist licensed in such~~
8 ~~state or territory. The Alabama Board of Optometry shall~~
9 ~~determine which states or territories have reciprocal~~
10 ~~licensure requirements meeting the qualifications of this~~
11 ~~section.~~

12 "The Alabama Board of Optometry is vested with
13 authority to adopt and promulgate rules and regulations to
14 effect the purposes of this article."

15 Section 2. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended, because the
21 bill defines a new crime or amends the definition of an
22 existing crime.

23 Section 3. All laws or parts of laws which conflict
24 with this act are repealed, and specifically, Section
25 34-22-88, Code of Alabama 1975, relating to the authority of
26 the Board of Optometry to make rules, is repealed as
27 duplicative.

1 Section 4. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.