

CHAPTER 9

**THE HISTORY OF THE PASSAGE OF LEGISLATION LIMITING THE
NUMBER OF TERMS ALABAMA STATE BOARD OF OPTOMETRY
MEMBERS MAY SERVE, OTHER ACTS, AND SUNSET LAWS**

INTRODUCTION

Prior to the enactment of a change in the optometry law governing the length of service of optometry board members, there was no limit to the length of time a board member could serve. The section of the optometry practice act governing the length of service of a member of the Alabama State Board of Optometry had last been acted on in 1975. It was titled Section 34-22-40 in the Code of Alabama 1975. This section of the law allowed a board member to serve as many terms as he was duly elected.

According to this section of the Code of Alabama, the board was to conduct an annual meeting at least 30 days prior to October 1 of each year, at which all optometrists licensed to practice and holding a current annual registration certificate pursuant to the provisions of this chapter shall have the right to attend, nominate, and vote.

At this time, those optometrists holding a teaching or temporary "T" license were not allowed, by board rule, to vote for a board member. Temporary, or sometimes referred to as teaching license, were those licenses granted by the board to faculty members at the UAB School of Optometry. These faculty members did not have to take a board examination to receive a "T" license. This temporary license allowed them to begin supervising patient care on arrival. The decision as to who could be eligible to vote was a matter of the board's decision. Faculty members could, however, take the licensing examination and, if they passed the examination, be granted a regular or "S" license. Some years later, the board changed this rule and allowed those with a T license to vote in the election process.

Issues Related to the Alabama State Board of Optometric Examiner's

The case of *Gibson vs. Berryhill* (chapter 5) was a case in which the Alabama State Board of Examiner's in Optometry sent letters to optometrists practicing in commercial or corporate practices informing them their licenses were being revoked. The board was doing this on the basis of legislation passed in 1971 by the Alabama Legislature and strongly supported by the Alabama Optometric Association which made such practice illegal. The optometrists so affected by this action sued the Board of Optometry on the basis of discrimination. The plaintiffs primary point was they were banned from fair representation on the Board because they had to be a member of the ALOA to be a member of the Board and their mode of practice precluded them from membership in the ALOA. The district court agreed with the plaintiffs and this decision was upheld by the U. S. Supreme court in 1973. In 1973 the Board thus allowed all optometrists meeting the criteria set forth in the law the opportunity to vote.

In addition to these issues, was the matter of the Board not being transparent in their decisions. This was most apparent in those situations when an inquiry sent to the State Board was never answered by the Board. All of this served to give the impression that the Board members were longstanding members of a "secret organization" rather than a servant of the public.

As will be discussed in this chapter there were many other aspects of actions taken by the Alabama Board of Optometry that required significant modification or clarification, especially in light of the expansion of scope for the practice of optometry during this time. In addition, the board had to be renewed every time the Sunset Laws were under consideration.

INTRODUCTION OF A BILL TO CHANGE THE TERM LIMITS OF BOARD MEMBERS – 1984

House of Representatives

Tuesday, February 7, 1984 was the first day of the State of Alabama Legislature's Regular Session. On the 18th day of the 1984 Regular Session of the Legislature under the heading of "Introduction of Bills" Representative Sonny Moore introduced H. 778. The purpose of this bill was to amend Section 34-22-40, Code of Alabama 1975, which described the duties of the Alabama Board of Optometry. This bill described the composition of the five-member board and the manner in which they were to be elected. The top five nominee's names were submitted to the Governor for his or her appointment. The primary purpose of this bill was to provide further clarification regarding the number of terms of office members of said board could serve. The bill was assigned to the House Committee on State Administration.

On the 19th day of the Regular Session under the heading "Unfinished Business" Representative Blake, Chairman of the Committee on State Administration, reported the committee had acted on several bills and ordered the same returned to the House with a favorable report, and they were severally read a second time and placed on the calendar, to wit: Among the five bills was H. 778. On the 25th day of the Regular Session the five bills as thus amended, was read a third time at length, passed and ordered engrossed, Yeas 80; Nays 0.

On this day under the heading "Motion to Suspend Rules Adopted" on motion of Representative Moore, the rules were suspended in order to take up out of order the bill, H. 778. And the bill was read a third time at length and passed, and ordered sent forthwith to the Senate without engrossment, **Yeas 77; Nays 0.**

Senate

On the 25th day of the Regular Session under the heading "Message from the House" the Senate President was notified the House had originated and passed several House Bills and ordered the same sent forthwith to the Senate without engrossment. Among these bills was H. 778 as introduced by Representative Sonny Moore.

On the 26th day of the Regular Session they were severally read a second time and placed on the calendar. On the 27th day Senator John Teague requested and received unanimous consent in order to bring up the Bill H. 778. And said Bill, H. B. 778 was read a third time at length and passed, **Yeas 21; Nays 3.** On the 28th day the Senate received a "Message from the House". The message informed the President of the Senate, the Speaker of the House, had signed several bills among them was H. 778. The Speaker was requesting the President of the Senate to sign the bill as well.

House of Representatives

On the 28th day of the Regular Session under the heading of “Message from The Senate” the Speaker was informed the Senate has passed the following House bills and returns same herewith to the House: the fourth bill was H. 778. On this same day under the heading of “Certificate of Clerk” to the House of Representatives the clerk hereby certifies that the House Bills hereinafter mentioned were delivered to the Executive Department on the date and hour named and that I hold the receipt of the Executive Department for same. Thus H. 778 was one of eight bills delivered to the Governor at 2:40 P. M. on May 9, 1984. **This bill was approved by the Governor on May 16, 1984 at 4:20 P.M. House Bill 778 became Act No. 84-310.**

This Act changed the Alabama Optometry Practices Act by amending Section 34-22-40 to read that effective October 1, 1984, no person may serve more than two consecutive terms on the board. Time served on the board prior to October 1, 1984, shall not count toward this limitation. Therefore, members of the present board had at least eight more years to serve. Perhaps even more depending on when their existing term had begun.

REAUTHORIZATION OF THE ALABAMA BOARD OF OPTOMETRY – 1989

It seems apparent given the number of Sections modified in this bill there were a number of issues that had arisen over the preceding five years regarding the actions or the duties of the board that were either not in the optometry practice act or their interpretation was not clearly understood.

House of Representatives

The State of Alabama Regular Session of the Legislature began February 7, 1989. On the first day of the session under the heading “Introduction of Bills” Representatives Knight, Buskey (JL), and Kvalheim introduced Bill H. 319. Upon a call of Districts, bills were introduced, severally read one time, and referred to appropriate standing committees.

The House Bill 319 provided for the board to continue its existence and functioning related to the Alabama Sunset Law; with certain modifications to amend Sections of the Alabama Optometry Practice Act, specifically related to Sections 34-22-8, 34-22-20, 34-22-21, 34-22-22, 34-22-23, 34-22-24, 34-22-40, 34-22-41, 34-22-43, Code of Alabama 1975, so as to authorize the board to initiate complaint hearings, to take disciplinary actions, to provide further for the procedure of such hearings, to remove appeals to the Montgomery circuit court and to authorize the board to levy administrative fines and institute legal procedures; to clarify ambiguous language; to provide reciprocity for licensees from out-of-state who pass the examination; to provide further for certification of continuing education requirements; to provide that solicitation by fraudulent or misleading advertising is a ground for disciplinary actions and to authorize private reprimands and probation actions; to require board funds exceeding \$60,000.00 be deposited in state treasury; to limit board members so no two can be from the same U.S. Congressional district; to reimburse board members’ per diem and travel

the same as is paid by the state; to raise board members compensation; and to require the board to mail a list of licensees upon request for a set fee by the board. The House Bill 319 was assigned to the Committee on Health.

On the 9th day of the Regular Session, there was, under the heading of "Motion to Suspend Rules Adopted", and the rules were suspended in order to proceed with the regular order of *business*. Under the heading "Bills on Second Reading" was H. 319 (With Substitute).

On the 10th day of the Regular Session under the heading "Budget Isolation Resolution" on motion of Representative Knight, Budget Isolation Resolution (B.I.R.) relating to H. B. 319, was adopted, Yeas 55; Nays 0. And the bill 319 was taken up. The question was then on the adoption of the substitute reported by the Standing Committee on Health, said committee substitute being as follows:

(The following is provided as one example of the type of detailed changes made in the substitute bill).

§34-22-8

This section describes who may bring charges against a licensed optometrist, board investigation of the nature of the charge, board hearing procedures, to remove appeals to the Montgomery Circuit Court, and to authorize the board to levy fines and institute legal proceedings; to clarify ambiguous language, to provide reciprocity for licensees from out-of-state who pass the examination; to provide further for certification of continuing education requirements; to provide that solicitation by fraudulent or misleading advertising is a ground for disciplinary actions, and to authorize private reprimands and probation actions; to require board funds exceeding \$60,000.00 be deposited in state treasury; to limit board members so that no two can be from the same U. S. Congressional district; to reimburse board members' per diem and travel the same as paid by the state; to raise board members' compensation; and to require the board to email a list of licensees upon request for a fee set by the board. It adds to this section that the accused shall have the right to cross-examine the witness against him, to produce witnesses in his defense *and to have the testimony taken down by a stenographer, but the expense of counsel and stenographer shall be borne by the accused licensee. A majority of the quorum of members of the Board conducting the hearings shall render a decision on the merits of the charge or charges and, if warranted by the evidence, impose appropriate sanctions.*

"In all cases of suspension or revocation of licenses or of other disciplinary sanctions imposed by the Board as herein provided for, the accused licensee may appeal only to the circuit Court of Montgomery County, Alabama, notwithstanding, any other provision of law to the contrary. Except as may otherwise be provided herein to the contrary, judicial review of the orders and decisions of the Board shall be governed by the provisions of section 41-22-20, Code of Alabama, 1975 (the Alabama Administrative Procedure Act).

“Members of the Alabama Board of Optometry and the members of any committee of optometrists impaneled by the Board, and any other optometrist and individual making any report or rendering any opinion or supplying any evidence or information or offering any testimony to the Board in connection with a disciplinary investigation or proceeding as authorized in this chapter shall be immune from suit for any conduct with respect to such investigations, actions, hearings, and proceedings.

Other sections with changes included 34-22-20, 34-22-21, 34-22-22, 34-22-23, 34-22-24, 34-22-40, 34-22-41, and 34-22-43. Many of these sections required only minor changes but §34-22-22 regarding continuing education requirements was extensively altered. In other places language was stricken and simplified by short phrases.

Section 4. The legislature concurs in the recommendation of the Sunset Committee as provided in Sections 1, 2, and 3 hereof.

Section 5. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are hereby repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

And the substitute was adopted, Yeas 67; Nays 0.

On this same day under the heading “Amendment Offered” Representative Alvin Holmes offered an amendment to the bill, H. 319 as amended. That a new section 4 be added and renumbered subsequent sections accordingly. The new Section 4 would provide, under the provisions of this act, continuing education shall not result in a passing or failing grade. And the Amendment was adopted, Yeas 68; Nays 0.

And the bill H. 319 as thus amended, was read a third time at length and passed, and ordered engrossed, **Yeas 80; Nays 0.**

Senate

On the 12th day of the Regular Session under the heading “Message from the Senate” the President of the Senate was informed the House had originated and passed H. 319. And sends same herewith to the Senate for consideration. Under the heading “House Message” the House Bill, the title of which is set out in the foregoing message from the House, was read one time and referred to appropriate Standing Committee, as follows: H. B. 319 to the Committee on Health.

On the 14th day of the Regular Session under the heading “Reports of Committees” Senator J. Smith Chairperson of the Standing Committee on Health reported that said committee, in session, had acted on the following bills and ordered same returned to the Senate with a

favorable report, and they were severally read a second time and placed on the calendar, to wit: By Representatives Knight, Buskey, and Kvalheim: H. 319.

On the 15th day of the Regular Session under the heading “Budget Isolation Resolution” Senator Corbett, B. I. R. 319 adopted, Yeas 19; Nays 0. On this same day under the heading “Bills on Third Reading Resumed” the bill H. 319 was read a third time at length and passed, **Yeas 23; Nays 0**. In a “Message from the House” the Speaker of the House having signed the following House Bills, your signature thereto is requested.

House of Representatives

On the 15th day of the Regular Session the Speaker of the House received a “Message from the Senate” informing him the Senate had passed the following House Bills and returns same herewith to the House. Among these bills was H. 319.

The bill H. 319 was delivered to the Governor this same day on March 30, 1989 at 3:05 P.M. With the Governor’s signature it became Act No. 89-233. The Governor’s approval was granted April 6, 1989 at 12:11 P.M.

REAUTHORIZATION OF THE ALABAMA STATE BOARD – 1993

Once again continuation of the board relating to the Alabama Sunset Law with certain other modifications to several sections of the Optometry Practice Act were necessary.

House of Representatives

The first day of the Regular Session of the State of Alabama was on February 2, 1993. Under the heading of “Introduction of Bills” a call of Districts, bills were introduced, severally read one time and referred to appropriate standing committees. Among these bills, was H. 213 relating to the Alabama Sunset Law.

The House Bill 213 was sponsored by Representatives Box, Kvalheim, and Hogan related to the Alabama Sunset Law. The bill was to authorize the continued existence and functioning of the Alabama Board of Optometry with certain modifications; to amend Sections 34-22-4, 34-22-20, 34-22-40, 34-22-41 and 34-22-42, Code of Alabama 1975, so as to delete references to hard contact lenses, require applicants to complete additional requirements before taking the exam, increase the exam fee, add two members to the board, increase the daily reimbursement of board members, and authorize the executive director to be a licensee of the board. The bill H. 213 was referred to the Committee on State Administration.

The specific language for each of the first three sections was set out in Sections 1 through 3. Section 1 recommended the continuance of the Alabama Board of Optometry, Section 2 preserved Sections 34-22-1 through Section 34-22-65, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved. Section 3 included the amendments made to §34-22-4, 34-22-20, 34-22-40, 34-22-41, and 34-22-42 of the Code of Alabama 1975, are amended to read as follows:

§34-22-4

- (a) does not exclude entities from determining probable need of visual services; provided they do not attempt to examine, diagnose, prescribe or recommend any practitioner and complies with section 38-1-2.
- (b) A license to practice optometry shall not be required for the sale, preparation, or dispensing of eyeglasses or spectacles in a retail optical dispensary or from a store with an optical department on prescription of a duly licensed ophthalmologist or licensed optometrist authorized to practice under the laws of the state. The same language is then included as regards contact lenses.
- (c) Nothing in this chapter shall be construed as preventing an ophthalmologist from using assistants normally used in his or her office under his or her direct personal supervision in the office in which the ophthalmologist normally actually practices his or her profession and nowhere else.

§34-22-20

- (a) Every person desiring to commence practice of optometry in this state shall be 19 years of age, or over, be a citizen of the United States and of good moral character. The person shall have a preliminary education of four years of high school or the equivalent and be a graduate thereof, have a minimum of three years of pre-optometry, or the equivalent thereof, at an accredited college or university, have completed a course of study in an accredited school or college of optometry which is approved by the board and that requires of professional study, and, after completion of the education, pass the standard examination prescribed by the board. This section describes the curricular elements that may be covered on the board examination and the standard examination shall be consistent with the established teaching and recognized textbooks of accredited schools and colleges of optometry.
- (b) The application to take the standard examination shall be the form prescribed and furnished by the board and verified by the oath of the applicant, accompanied by a fee to be determined by the board. The fee shall not be more than two hundred and fifty dollars (\$250).
- (c) The examination shall be held at least once in each year if there are any candidates for examination who have applied to the board for examination at least 30 days before the date affixed for the holding of the examination.
- (d) When the application and accompanying proof are found satisfactory, the board shall notify the applicants to appear before it for examination at a time and place affixed by the board. Those found qualified by the board shall be granted a license and a license certificate, which shall bear a serial number, the full name of the licensee, the date of issuance, and the seal of the board, and shall be signed by the president and secretary of the board. The board may grant a temporary license under the circumstances and conditions, and in the form, as may be prescribed by rules and regulations of the board.

- (e) Every license, whether permanent or temporary, issued and every annual registration certificate shall be in the possession of the optometrist to whom it was issued and posted in the office he or she practices.
- (f) Those persons who hold valid license to practice optometry in the state of Alabama on October 10, 1975, shall continue to be so licensed after October 10, 1975, subject to this chapter, regardless of whether they are otherwise qualified to secure a license under this chapter.

§34-22-40

- (a) In order to accomplish the purposes and to provide for the enforcement of this chapter, there is created the Alabama board of optometry. The board may implement and enforce this chapter. On October 10, 1975, the state board of optometry as then constituted shall be abolished, but the board members thereof shall serve as members of the Alabama board of optometry by this section and shall continue to serve until their present terms of appointment expire, as set out below. Until October 1, 1992, the Alabama board of optometry shall consist of five persons, no two of whom shall reside in the same U.S. Congressional district. On October 1, 1993, two additional members shall be appointed to the board. The board shall then be composed of seven members, one from each United States Congressional District as follows:

“The members shall be persons licensed to practice optometry in this state, each of whom shall be a resident of this state, who shall have actively engaged in the practice of optometry for at least five years next preceding the date of their appointment. The term of one member of the board shall expire October 1, 1975, and every fifth year thereafter; the term of one member shall expire October 1, 1976 and every fifth year thereafter; the term of one member shall expire October 1, 1977, and every fifth year thereafter; the term of one member shall expire October 1, 1978, and every fifth year thereafter; the term of one member shall expire October 1, 1979, and every fifth year thereafter; the term of two additional members shall begin on October 1, 1993, and expire October 1, 1998, and every fifth year thereafter. Each member of the board shall be appointed by the governor from a list of five names of qualified persons certified to him or her by the board”.

- (b) When the term of any member of the board expires, that person shall continue to serve until his or her successor is appointed and qualified.
- (c) For the purpose of preparing the list of five names, the board shall conduct an annual meeting at least 30 days prior to October 1, of each year, at which all optometrists licensed to practice and holding a current annual registration certificate pursuant to this chapter may attend, nominate, and vote. The board may regulate and prescribe the place and hour of the meeting, the method of nomination, and the manner of voting. Each optometrist in attendance may vote for those persons duly nominated, and no cumulative or proxy voting shall be permitted. Each optometrist voting shall vote for five nominees in order for his ballot to be valid, and any ballot indicating votes for more

or less than five nominees shall be null and void. The five persons receiving the greatest number of votes of those in attendance at the meeting shall be the five persons whose names shall be certified to the governor for appointment to the board, without substitution. In order for a person to withdraw from the list the person must do so in writing and present it to the secretary of the board prior to the submission of the list to the governor, after eliminating the person withdrawing from the list, and the list shall be composed solely of those names remaining. At least 30 days prior to the meeting the board shall mail notices to each optometrist licensed to practice and holding a current annual registration certificate pursuant to this chapter at the address shown on his or her current registration notifying each optometrist of the exact date, place, and hour of the meeting, the purpose of the meeting, and the right to attend and vote. In the event of a vacancy prior to the next annual meeting, the governor shall fill the vacancy from the remaining names on the list. The governor may remove any member for neglect of duty, incompetency, improper or unprofessional conduct, or having his or her license revoked or suspended.

- (d) Effective October 1, 1984, no person may serve more than two consecutive terms on the board. Time served on the board prior to October 1, 1984, shall not count toward this limitation.

§34-22-41

- (a) The board shall choose annually one of its members as president, one as vice-president, and one as secretary-treasurer, who each may administer oaths and take affidavits, certifying thereto under their hand and the common seal of the board.
- (b) The board shall meet at least once in each year in the city of Montgomery or a place designated by the president and, in addition thereto, whenever and wherever the president thereof calls a meeting. A majority of the board shall at all times constitute a quorum. The secretary of the board shall keep a full record of the proceedings of the board, which shall at all reasonable times be open to public inspection.
- (c) Each member of the board shall be reimbursed at the same per diem and travel allowance amounts paid by law to state employees for each day's attendance upon the business of the board and, in addition thereto, the sum of one hundred twenty-five dollars (\$125) per diem for each day actually spent by each member upon the business of the board. All expenses and per diem shall be paid out of the receipts of the board under this chapter. The secretary shall receive compensation as fixed by the board and shall be the custodian of all records and the official seal of the board.
- (d) All money received by the board shall be deposited to the credit of the board in a bank selected by its members for the use of the board, and the execution and enforcement of this chapter and the payments of salaries, expenses, and other authorized costs shall be paid by checks drawn by the treasurer and countersigned by the President of the board.

- (e) The president and treasurer shall give such bonds as the board from time to time directs.
- (f) The board shall make an annual report of its proceedings to the governor on the first Monday of January of each year.

§34-22-42

“The board shall exercise and perform, subject to this chapter, each of the following powers and duties:

- (1) Conduct examinations at least once each year to ascertain the qualifications and fitness of applicants for licenses to practice optometry.
- (2) Prescribe rules and regulations for conducting and administering an examination of applicants for licensing as optometrists and to effectuate this chapter.
- (3) Institute, upon a complaint or petition, but not upon its own motion, complaint, or petition, hearings of charges against licensed optometrists as provided in this chapter.
- (4) Institute legal proceedings for violations of this chapter.
- (5) Grant and deny licenses in conformity with this chapter.
- (6) Formulate rules and regulations by which the board shall determine which optometry schools or colleges in or out of the state of Alabama have been duly accredited by a recognized and properly authorized accrediting agency and which accredited schools or colleges shall be approved by the board.
- (7) Establish standards of continuing education which shall be deemed a requisite to the renewal of licenses of applicants who are otherwise qualified to practice optometry in the state of Alabama.
- (8) Keep a register of optometrists containing the names and addresses of all persons to whom license certificates, temporary licenses, and limited licenses have been issued in the state of Alabama, the date of the issuance, the place of business in which each optometrist is engaged, and all renewals, revocations, suspensions, of licenses and certification.
- (9) Administer oaths and affirmations of witnesses, issue subpoenas to compel the attendance of witnesses and all necessary papers, books, documentary evidence, and materials in any hearing, investigation or other proceeding before the board.
- (10) Employ or appoint an executive director, clerical personnel and legal advisors or counsel to assist in implementing this chapter when there is a need for those services and when funds are available for those purposes. The executive director may be a licensed optometrist in this state, but may not, while serving as the executive director, also serve as a member of the board of optometry. The executive director shall not be subject to the state merit system.
- (11) Prescribe rules and regulations establishing a program of internship as a requisite to application for license, if the board deems such a program advisable.

(12) Prescribe rules and regulations establishing circumstances and conditions upon which temporary licenses may be issued by the board and the terms and conditions of such temporary licenses.

Section 4. The Legislature concurs in the recommendations of the Sunset Committee as provided in Sections 1, 2, and 3 of this act.

Section 5 The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 6. All laws or parts of laws which conflict with this act are repealed.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

On the 7th day of the Regular Session under the heading “Bills on Second Reading” Representative Thomas, Chairperson of the Standing Committee on State Administration, reported that said Committee in session had acted on the following bills and ordered same returned to the House with a favorable report, and they were severally read a second time and placed on the Calendar, to wit: the bill 213 was among those approved.

On the 10th day of the Regular Session on motion of Representative Box, the “Budget Isolation Resolution” relating to the bill, H. 213 was adopted, Yeas 59; Nays 13. And the bill H. 213 was taken up. Under the heading “Amendment Offered” Representative John Rogers offered the following amendment to the bill, H. 213: Amend House Bill 213 on page 7, line 15, after the period “.” By adding the following: “It is further provided that at least one of the two additional members shall be an African-American”. Under the heading “Amendment Tabled” on motion of Representative Box, the amendment offered by Representative Rogers to the bill, H.213 was tabled, Yeas 36; Nays 20.

On the 11th day of the Regular Session under the heading “Bills On Third Reading” the bill, H. 213 was taken up again. And the bill, H. 213 which was carried over on the 10th legislative day was read a third time at length and passed, and ordered sent forthwith to the Senate without engrossment, **Yeas 61; Nays 0.**

Senate

On the 13th day of the Regular Session under the heading “House Message” the House Bill, the title of which is set out in the foregoing “Message from the House” was read one time and referred to appropriate Standing Committee, as follows: HB 213 – to the Committee on Economic Affairs.

On the 15th day of the Regular Session under the heading “Reports of Committees” Senator Corbett, Chairperson of the Standing Committee on Economic Affairs, reported that said committee, in session, had acted on the following bills, and ordered same returned to the

Senate with a favorable report, and they were severally read a second time and placed on the calendar, to wit: among the bills read was H. 213.

On the 17th day under the heading “Budget Isolation Resolution” Senator Corbett, B.I.R., HB 213, adopted, Yeas 20; Nays 0. And on this same day under the heading “Bills on Third Reading Resumed” the bill H. 213 was read a third time at length and passed, **Yeas 21; Nays 0.**

House of Representatives

Under the heading “Message from the Senate” the Speaker is informed the Senate has passes the following House Bill and returns same herewithin to the House: H. 213.

Senate

On the 18th day of the Regular Session under the heading “Message from the House” the Speaker of the House having signed the following House Bills, your signature thereto is requested. Among those signed was H. 213.

On the 18th day of the Regular Session the HB 213 was delivered to the Governor at 10:39 A.M. on March 25, 1993. Once approved it would be Act No. 93-153. This bill was approved by the Governor on April 6, 1993 at 4:34 P.M.

REAUTHORIZATION OF THE STATE BOARD OF OPTOMETRY – 1997

The purpose of this bill was to continue the existence and functioning of the Alabama Board of Optometry relating to the Alabama Sunset Law; with certain modifications; to amend Sections 34-22-5, 34-22-22, 34-22-40, and 34-22-41.

House of Representatives

The Regular Session of the State of Alabama of 1997 began Tuesday, February 4, 1997. On the 6th day of the session under the heading “Introduction of Bills” upon a call of Districts, bills were introduced, severally read one time and referred to appropriate standing committee as follows: By Representatives Sanderford and Box, H. 586 relating to the Alabama Sunset Law; to continue the existence and functioning of the Board of Optometry with certain modifications; to amend Sections 34-22-5, 34-22-22, 34-22-40, and 34-22-41, Code of Alabama 1975, so as require an annual limited license renewal fee; authorize the grading of continuing education courses, and waiver of registration and fees for retired licensees; to provide for board membership; and to provide further for the authority of the executive director. This bill was referred to the Committee on State Administration.

§34-22-5

The board may, under rules and regulations to be promulgated by the board, issue limited licenses, in the case of teachers, to persons who hold an optometric degree where such persons are licensed and registered to practice optometry in this state. The dean of any school of

optometry within the state of Alabama which has been approved by the Board shall be required to annually certify to the board the names and addresses of the members of the faculty of the school who are not licensed and registered to practice in the state and shall be required to promptly notify the board of any change in personnel on the faculty. The limited license shall be valid so long as the holder thereof remains a faculty member of the school and abides by the rules and regulations and under which the same is issued. The holder of a limited license shall be subject to all provisions of this chapter regulating the practice of optometry in this state and shall be entitled to perform all services those with a regular license are entitled to perform. A fee of one hundred dollars (\$100) shall be paid by the applicant to the board for the issuance of the limited license. Limited license holders who are not members of the residency program at a school of optometry shall be subject to the same annual license renewal fees and other requirements as required of holders of regular licenses.

§34-22-22

This section contained changes in subsections “a” through “g” all describing specific aspects of requirements for continuing education

- (a) This subsection specified in detail the number hours of continuing education that must be taken every year, subject areas included, that such courses be board approved, the method of certification of courses taken, and the submission of such forms to the board at the time of license renewal and fee payment.
- (b) Continuing education requirements shall be completed between October 1 and September 30 of each fiscal year prior to the time for license renewal for the next fiscal year. Upon failure to received such requirements the board will send by registered mail a notice by November 1, that certification has not been received and unless certification is received on or before January 1, his or her license will be automatically suspended. Notwithstanding the foregoing, the licensee shall be permitted to complete continuing education requirements between October 1 and December 31, that should have been completed by September 30.
- (c) The license and license certificate shall be reinstated only upon provision of satisfactory evidence to the board, in a form acceptable to the board, that the continuing education requirements for the one fiscal year next preceding the proposed reinstatement have been satisfied and upon payment of all fees required to be paid under this chapter.
- (d) Every licensed optometrist who desires to continue the practice of optometry in the state shall annually, on or before the first day of October, pay to the secretary of the board a renewal fee on one hundred sixty dollars (\$160) for which the licensee shall receive a renewal of registration. Every licensed optometrist approved by the board to use pharmaceutical agents shall pay an additional fee of one hundred dollars (\$100). The licensee shall sign and verify the accuracy of the registration and certify his or her compliance with the continuing education requirements of the board for renewal on a form prescribed by the board. Upon submission of the completed form prescribed by

the board, together with the aforementioned fee, the licensee shall receive the current annual registration certificate authorizing him or her to continue the practice of optometry in this state for a period of one year.

- (e) Any license and license certificate previously granted shall automatically be suspended if the holder fails to secure the annual registration certificate by January 1 each year. Any optometrist whose license is automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate shall be reinstated by the board upon payment of a penalty fee of two hundred dollars (\$200) plus all accrued annual registration fees accompanied with the prescribed form for annual registration of the license.
- (f) Upon failure of any licensee to file application for the annual registration certificate and pay the annual registration fee on or before the first day of November each year, the board shall notify the licensee by certified or registered mail addressed to his or her last address of record that the application and fee have not been received and, unless the application and fee are received on or before the first day of January of the following year, the license and license certificate shall be automatically suspended.
- (g) The board may waive annual registration and the payment of fees while any licensee is prevented from practicing optometry by any reason of physical disability, temporary active duty with any of the armed forces of the United States, or while any licensee is completely retired from the practice of optometry. The waiver of fees shall be effective so long as the disability, temporary active duty or complete retirement continues.

§34-22-40

- (a) This subsection is much the same as stated in the 1993 optometry practice act except the statement "The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Also the fact that on October 1, 1993, two additional members shall be appointed to the board. The board shall then be composed of seven members, one from each United States Congressional District.
- (b) When the term of any member of the board expires, that person shall continue to serve until his or her successor is appointed and qualified.
- (c) This subsection describes how the selection of the five names submitted to the Governor shall be determined (same as described in 1993 optometry practice act).
- (d) Effective October 1, 1984, no person may serve more than two consecutive terms on the board. Time served on the board prior to October 1, 1984, shall not count toward this limitation.

§34-22-41

- (a) This subsection describes how the board chooses its president, vice-president, and secretary-treasurer.

- (b) This subsection describes when and where the board shall meet, that a majority of board members present constitutes a quorum, the secretary of the board shall keep a full record of the proceedings of the board, which shall be open to public inspection at reasonable times.
- (c) This subsection describes how the board members will be reimbursed for travel and meetings same as in 1993.
- (d) All money received by the board shall be deposited as described in 1993.
- (e) The president, executive director, and treasurer shall give such bonds as the board from time to time directs.
- (f) The board shall make an annual report of its proceedings to the Governor on the first Monday of January of each year.

Section 4. The Legislature concurs in the recommendations of the Sunset Committee as provided in Sections 1, 2, and 3 of this act.

Section 5. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

On the 7th day of the session under the heading “Bills on Second Reading” Representative Hooper, Chairperson of the Standing Committee on State Administration, reported that said Committee in session had acted on the following bills and ordered same returned to the House with a favorable bill report, with substitute, and they were severally read a second time and placed on the Calendar, to wit: Among those bills read was H. 586 relating to the Alabama Sunset Law, Yeas 86; Nays 0.

On the eighth day of the Regular Session on motion of Representative Sanderford, the Budget Isolation Resolution relating to the bill 586, was adopted, Yeas 80; Nays 0. And the bill H. 586 was read a third time at length and passed, and ordered sent forthwith to the Senate without engrossment, **Yeas 81; Nays 0.**

Senate

On the ninth day of the Regular Session (March 4, 1997) under the heading “Message from the House” came the message the House has originated and passed the following House Bill and ordered same sent forthwith to the Senate without engrossment: by Representatives Sanderford and Box: HB 586. On this same day under the heading “House Message” the House Bill, the title of which is set out in the foregoing Message from the House, was read one time and referred to appropriate Senate Standing Committee as follows: HB 586 – to the Committee on Fiscal Responsibility and Accountability.

On the 12th day of the Regular Session under the heading of “Reports of Committees” Senator Bailey, Chairperson of the Standing Committee on Fiscal Responsibility and Accountability, reported that said committee, in session, had acted on the following bill and ordered the same

returned to the Senate with a favorable report, and it was read a second time and placed on the calendar, to wit: HB 586.

On the 14th day of the Regular Session under the heading "Budget Isolation Resolution", Senator Dixon, B.I.R., HB 586 adopted, Yeas 28; Nays 0. Under the heading "Bills on Third Reading Resumed" the Bill HB 586 was read a third time at length and passed, Yeas **28; Nays 0.**

House of Representatives

On the 15th day of the Regular Session under the heading "Message from the House" the Speaker of the House having signed the following House Bills, your signature thereto is requested. Among these bills was HB 586.

Senate

On the same day, under the heading "Message from the House" addressed to the Speaker was a message informing him the Senate has passed the following House Bills and returns same herewith to the House: Among these was H. 586.

This bill was delivered to the Governor at 10:50 A.M. on March 20, 1997 and approved on March 26, 1997 at 9:04 A.M. It was Act. No. 97-158.

SUMMARY

It is apparent from this chapter there was much to clarify with regard to the duties of the Alabama State Board of Optometry as well as other issues. No doubt there has been more change since 1997 and will continue to be much to amend in the future as the scope of practice expands and health care laws change. It was not the intent of this chapter to review all legislation pertaining to the Alabama Board of Optometry but those aspects necessary to bring the board into compliance with state law during the time period discussed in this chapter.

ACKNOWLEDGEMENT

I want to thank Dr. Catherine Amos for providing much of the background history for this chapter. I am also indebted to Ms. Helen Hanby, Mr. Frank Caskey, and Ms. Carma Marks of the Legislative Reference Service for their kind assistance in providing me copies of the Journals of the House and Senate for the years of 1984, 1989, 1993 and 1997 as they pertain to the Optometry Practice Acts passed by the Alabama Legislature.

REFERENCES

1. Journals of the House and Senate, State of Alabama Regular Legislative Session, 1984. Legislative Reference Service, State of Alabama Archives.
2. Journals of the House and Senate, State of Alabama Regular Legislative Session, 1989. Legislative Reference Service, State of Alabama Archives.
3. Journals of the House and Senate, State of Alabama Regular Legislative Session, 1993. Legislative Reference Service, State of Alabama Archives.
4. Journals of the House and Senate, State of Alabama Regular Legislative Session, 1997. Legislative Reference Service, State of Alabama Archives.

August 4, 2017

September 12, 2017 reviewed and revised

June 13, 2018, reviewed and revised

December 4, 2018, reviewed and revised