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SENATE BILL NO. 272

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health)

(Patron Prior to Substitute—Senator Quayle)

Senate Amendments in [] - January 14, 2005

A *BILL to amend and reenact § 54.1-3205 of the Code of Virginia, relating to the practice of optometry in commercial or mercantile establishments.*

Be it enacted by the General Assembly of Virginia:**1. That § 54.1-3205 of the Code of Virginia is amended and reenacted as follows:**

§ 54.1-3205. Practicing in a commercial or mercantile establishment.

A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as a lessee of or in the commercial or mercantile establishment.

B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.

C. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities.

D. *For the purposes of this section, an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices, whether directly or indirectly, as an officer, employee, [lessee] or agent of any person or entity in any location that provides direct access to or from a commercial or mercantile establishment. Direct access includes any entrance or exit, except an entrance or exit closed to the public and used solely for emergency egress pursuant to applicable state and local building and fire safety codes, that prohibits a person from exiting the building or structure occupied by such practice or establishment (i) onto an exterior sidewalk or public way or (ii) into a common area that is not under the control of either the optometry practice or the commercial or mercantile establishment, such as into the common areas of an enclosed shopping mall. [For the purposes of this section, neither an optometric practice nor an ophthalmologic practice which sells eyeglasses or contact lenses ancillary to its practice shall be deemed a commercial or mercantile establishment. Further, any entity that is engaged in the sale of eyeglasses or contact lenses, the majority of the beneficial ownership of which is owned by an ophthalmologic practice and/or one or more ophthalmologists, shall not be deemed a commercial or mercantile establishment.]*

DE. This section shall not be construed to prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.

[2. That the provisions of this act shall become effective on December 31, 2005.]

ENGROSSED

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