

1 **COMMITTEE SUBSTITUTE**

2 **for**

3 **H. B. 2662**

4
5 (By Delegates Stansbury, Ellington, Householder, R. Phillips, Byrd,
6 Faircloth, Sponaugle, Weld, Moore, B. White and Pushkin)

7
8 [Originating in the Committee on Health and Human Resources.]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all relating to the
12 practice of optometry; defining certain terms; providing that contact lenses require a
13 prescription that must be performed by a licensee; providing that spectacles require a
14 prescription that must be performed by a licensee; requiring certain actions to be taken with
15 regard to prescriptions; prohibiting the dissemination of contact lenses without a prescription
16 from a licensee; prohibiting the dissemination of spectacles without a prescription from a
17 licensee; providing the board to enforce this article; allowing the board to promulgate rules;
18 and providing criminal penalties.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
21 article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all to read as follows:

22 **ARTICLE 8A. EYE CARE CONSUMER PROTECTION LAW.**

23 **§30-8A-1. Definitions.**

24 As used in this article:

25 (a) "Contact Lens" means a lens placed directly on the surface of the eye, regardless of

1 whether it is intended to correct a visual defect. Contact lens includes, but is not limited to, a
2 cosmetic, therapeutic, or corrective lens.

3 (b) "Board" means the West Virginia Board of Optometry.

4 (c) "Diagnostic contact lens" means a contact lens used to determine a proper contact lens
5 fit.

6 (d) "Direct supervision" means supervision that occurs when a licensee is actually present
7 in the building.

8 (e) "Examination and evaluation" means an assessment of the ocular health and visual status
9 of a patient that does not consist solely of objective refractive data or information generated by an
10 automated refracting device or other automated testing device for the purpose of writing a valid
11 prescription.

12 (f) "Licensee" means a person who is authorized to engage in the practice of optometry under
13 article eight, chapter thirty of this code.

14 (g) "Special requirements" means the type of lens design, lens material, tint, or lens
15 treatments.

16 (h) "Spectacles" means an optical instrument or device worn or used by an individual that
17 has one or more lenses designed to correct or enhance vision to address the visual needs of the
18 individual wearer. This includes spectacles that may be adjusted to achieve different types or levels
19 of visual correction or enhancement.

20 (i) "Valid prescription" means one of the following, as applicable:

21 (1) For a contact lens, a written or electronic order by a licensee who has conducted an
22 examination and evaluation of a patient and has determined a satisfactory fit for the contact lens
23 based on an analysis of the physiological compatibility of the lens or the cornea and the physical fit

1 and refractive functionality of the lens on the patient's eye. To be a valid prescription under this
2 subdivision, it shall at least include the following:

3 (A) A statement that the prescription is for a contact lens;

4 (B) The contact lens type or brand name, or for a private label contact lens, the name of the
5 manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent
6 or similar brand;

7 (C) All specifications necessary to order and fabricate the contact lens, including, if
8 applicable, the power, material, base curve or appropriate designation, and diameter;

9 (D) The quantity of contact lenses to be dispensed;

10 (E) The number of refills;

11 (F) Specific wearing instructions and contact lens disposal parameters;

12 (G) The patient's name;

13 (H) The date of the examination and evaluation;

14 (I) The date the prescription is originated;

15 (J) The prescribing licensee's name, address, and telephone number;

16 (K) The prescribing licensee's written or electronic signature, or other form of authentication;

17 and

18 (L) An expiration date of not less than one year from the date of the examination and
19 evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs
20 of the patient.

21 (2) For spectacles, a written or electronic order by a licensee who has examined and
22 evaluated a patient. To be a valid prescription under this subdivision, it shall include at least the
23 following:

- 1 (A) A statement that the prescription is for spectacles;
2 (B) As applicable and as specified for each eye, the lens power including the spherical power,
3 cylindrical power including axis, prism, and power of the multifocal addition;
4 (C) Any special requirements, the omission in the opinion of the prescribing licensee, would
5 adversely affect the vision or ocular health of the patient;
6 (D) The patient's name;
7 (E) The date of the examination and evaluation;
8 (F) The date the prescription is originated;
9 (G) The prescribing licensee's name, address, and telephone number;
10 (H) The prescribing licensee's written or electronic signature, or other form of authentication;
11 and
12 (I) An expiration date of not less than one year from the date of the examination and
13 evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs
14 of the patient.

15 **§30-8A-2. Prescriptions.**

- 16 (a) Except as otherwise provided in subsection (b), spectacles and contact lenses are medical
17 devices and are subject to the requirements of this article.
18 (b) The requirements of this article do not apply to the following:
19 (1) A diagnostic contact lens that is used by a licensee during an examination and evaluation;
20 (2) An optical instrument or device that is not intended to correct or enhance vision; or
21 (3) An optical instrument or device that is sold without consideration of the visual status of
22 the individual who will use the optical instrument or device.

23 **§30-8A-3. Prohibited Actions.**

1 A person may not:

2 (1) Employ objective or subjective physical means to determine the accommodative or
3 refractive condition; the range, power of vision or muscular equilibrium of the human eye or
4 prescribe spectacles or contact lenses based on that determination unless that activity is performed
5 by a licensee or performed by a person under direct supervision.

6 (2) Dispense, give, or sell spectacles or contact lenses unless dispensed, given, or sold
7 pursuant to a valid prescription.

8 (3) Use an automated refractor or other automated testing device to generate objective
9 refractive data unless that use is under direct supervision.

10 **§30-8A-4. Enforcement.**

11 (a) The board shall enforce the provisions of this article.

12 (b) The board may promulgate a legislative rule in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code regarding the implementation of this article.

14 (c) The board is not required to wait until harm to human health has occurred to initiate an
15 investigation under this section.

16 (d) If a person is in violation of this article and is licensed by another board, the board shall
17 refer to the appropriate licensing board to enforce the provisions of their article.

18 **§30-8A-5. Criminal Penalty for violation.**

19 A person violating this article is guilty of a misdemeanor and, upon conviction thereof, shall
20 be fined not less than \$1,000 nor more than \$5,000.