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2001 MAY -2 P 11: 26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2752

(By Delegates Angotti, Kominar, Warner,
J. Smith, Keener, Stemple and Perdue)

Passed April 14, 2001

In Effect Ninety Days from Passage

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FOR

H. B. 2752

(BY DELEGATES ANGOTTI, KOMINAR, WARNER,
J. SMITH, KEENER, STEMPLER AND PERDUE)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, three-a, three-b, four, five, six, seven, eight, nine and ten, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven, all relating to the board of optometry; removing certain fees and providing they be established by legislative rule; increasing criminal fines; providing for licensure by endorsement; legislative rules; eliminating phrases no longer applicable; updating archaic language; and providing for continuation of the board.

Be it enacted by the Legislature of West Virginia:

That sections two, three, three-a, three-b, four, five, six, seven, eight, nine and ten, article eight, chapter thirty of the code of West

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Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section eleven, all to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-2. Practice of optometry defined.

1 Any one or any combination of the following practices shall
2 constitute the practice of optometry:

3 (a) The examination of the human eye, with or without the
4 use of drugs, prescribable for the human eye which drugs may
5 be used for diagnostic or therapeutic purposes, for topical
6 application to the anterior segment of the human eye and, by
7 any method other than surgery, to diagnose, treat or refer for
8 consultation or treatment any abnormal condition of the human
9 eye or its appendages;

10 (b) The employment without the use of surgery of any
11 instrument, device, method or diagnostic or therapeutic drug
12 intended for the purpose of investigating, examining, treating,
13 diagnosing, improving or correcting any visual defect or
14 abnormal condition of the human eye or its appendages;

15 (c) The prescribing, fitting, application, replacement,
16 duplication or alteration of lenses, prisms, contact lenses,
17 orthoptics, vision training, vision rehabilitation, diagnostic or
18 therapeutic drugs, or the furnishing or providing of any pros-
19 thetic device, or any other method other than surgery necessary
20 to correct or relieve any defects or abnormal conditions of the
21 human eye or its appendages.

22 (d) Nothing in this section shall be construed to permit an
23 optometrist to perform surgery, use drugs by injection or to use
24 or prescribe any drug for other than the specific purposes
25 authorized by this article.

§30-8-3. Board of optometry; duties; disposition of moneys collected; compensation and expenses.

1 There shall be a state board of examiners in optometry,
2 known as the “West Virginia board of optometry,” which shall
3 consist of five optometrists and two lay members, who shall be
4 appointed by the governor, by and with the advice and consent
5 of the Senate. Each optometric member of the board, at the time
6 of his or her appointment, shall have been a resident and a
7 registered practicing optometrist of this state for a period of not
8 less than three years immediately preceding his or her appoint-
9 ment.

10 The optometric members of the board in office on the first
11 day of July, two thousand one, shall, unless sooner removed,
12 continue to serve until their successors have been appointed and
13 have qualified. On or before the first day of July, two thousand
14 one, and annually thereafter, as their respective terms expire,
15 the governor shall appoint their successors so that one year he
16 or she shall appoint one member and in each of the two
17 succeeding years he or she shall appoint two members, each for
18 a term of three years commencing on the first day of July. Any
19 member shall be eligible for reappointment.

20 All fees and other moneys collected by the board pursuant
21 to the provisions of this article shall be kept in a separate fund
22 and expended solely for the purpose of this article. The
23 compensation for the members of the board and all expenses
24 incurred under this article shall be paid from this special fund.
25 No compensation or expense incurred under this article shall be
26 a charge against the general funds of this state.

27 The board shall propose rules for legislative approval in
28 accordance with article three, chapter twenty-nine-a of this
29 code, which are not inconsistent with any other provision or
30 section of this article:

31 (a) For the proper performance of its duties;

32 (b) To govern the ethical practice of optometry for the
33 safety, protection and welfare of the public; and

34 (c) To provide for examinations, licensure requirements,
35 continuing education requirements, fees, and to further effectuate
36 the provisions of this article, article one of this chapter, and
37 any other provisions set forth in state or federal law.

§30-8-3a. Registration of optometric corporations.

1 When one or more optometrists duly registered to practice
2 optometry in the state of West Virginia wish to form an
3 optometric corporation, such optometrist or optometrists shall
4 file a written application with the board of optometry, on a form
5 prescribed by the board, and shall furnish proof satisfactory to
6 the board that the signer is a duly registered optometrist, or if
7 there be more than one that all the signers of such application
8 are such duly registered optometrists. A fee as determined by
9 legislative rule shall accompany each such application, no part
10 of which may be refundable.

11 The board shall notify the secretary of state that a certifi-
12 cate of authorization has been issued to the individual or
13 individuals signing such application, to form an optometric
14 corporation.

15 When the secretary of state receives notification from the
16 board of optometry that an individual or individuals, duly
17 registered to practice optometry in the state of West Virginia
18 have been issued a certificate of authorization, he or she shall
19 attach such authorization to the agreement of incorporation and
20 upon compliance by the corporation with the applicable
21 provisions of chapter thirty-one of this code, shall notify the
22 incorporators that such corporation, through a duly registered
23 optometrist or optometrists, may engage in the practice of
24 optometry.

§30-8-3b. Practice of optometry by optometric corporations; limitations; optometrist-patient relationship not affected; biennial registration; penalty; severability.

1 (a) An optometric corporation may practice optometry only
2 through an individual optometrist or optometrists duly regis-
3 tered to practice optometry in the state of West Virginia, but
4 such optometrist or optometrists may be employees rather than
5 shareholders of such corporation, and nothing herein contained
6 shall be construed to require a license or other legal authoriza-
7 tion of any individual employed by such corporation to perform
8 services for which no license or other legal authorization is
9 otherwise required. Nothing contained in sections three-a and
10 ten and this section of this article is meant or intended to
11 change in any way the rights, duties, privileges, responsibilities
12 and liabilities incident to the optometrist-patient relationship
13 nor is it meant or intended to change in any way the personal
14 character of the optometrist-patient relationship. A corporation
15 holding such certificate of authorization shall register bienni-
16 ally, on or before the thirtieth day of June, on a form prescribed
17 by the board of optometry and shall pay a biennial registration
18 fee as determined by legislative rule.

19 (b) An optometric corporation holding a certificate of
20 authorization shall cease to engage in the practice of optometry
21 upon being notified by the board of optometry that any of its
22 shareholders is no longer a duly registered optometrist in this
23 state, or when any shares of such corporation have been sold or
24 disposed of to a person who is not a duly registered optometrist:
25 *Provided*, That the personal representative of a deceased
26 shareholder shall have a period, not to exceed twelve months
27 from the date of such shareholder's death, to dispose of such
28 shares; but nothing contained herein shall be construed as
29 affecting the existence of such corporation or its right to
30 continue to operate for all lawful purposes other than the
31 practice of optometry.

32 (c) No corporation shall practice optometry, or any of its
33 branches, or hold itself out as being capable of doing so,
34 without a certificate from the board, or after its certificate has
35 been revoked, or if suspended, during the term of such suspen-
36 sion. A certificate signed by the secretary of the board of
37 optometry to which is affixed the official seal of the board to
38 the effect that it appears from the records of the board that no
39 such certificate to practice optometry or any of its branches in
40 the state has been issued to any such corporation specified
41 therein or that such certificate has been revoked or suspended
42 shall be admissible in evidence in all courts of this state and
43 shall be prima facie evidence of the facts stated therein.

44 (d) Any officer, shareholder or employee of such corpora-
45 tion who participates in a violation of any provision of this
46 section shall be guilty of a misdemeanor and, upon conviction
47 thereof, shall be fined not less than one thousand dollars nor
48 more than five thousand dollars.

**§30-8-4. Registration prerequisite to practice of optometry;
exceptions.**

1 No person shall practice or offer to practice optometry in
2 this state without first applying for and obtaining a certificate
3 of registration for such purpose from the West Virginia board
4 of optometry; but the following persons, firms and corporations
5 are exempt from the operation of this article, except as hereinaf-
6 ter provided:

7 (a) Persons authorized under the laws of this state to
8 practice medicine and surgery or osteopathy;

9 (b) Persons, firms and corporations who sell eyeglasses or
10 spectacles in a store, shop or other permanently established
11 place of business on prescriptions from persons authorized
12 under the laws of this state to practice either optometry or
13 medicine and surgery;

14 (c) Persons, firms and corporations who manufacture or
15 deal in eyeglasses or spectacles in a store, shop or other
16 permanently established place of business, and who neither
17 practice nor attempt to practice optometry.

**§30-8-5. Qualifications of applicant for registration; examina-
tion; duties of board as to examinations and certifica-
tions; education necessary for use of pharmaceutical
agents.**

1 (a) An applicant for registration shall present satisfactory
2 evidence that he or she is at least twenty-one years of age, of
3 good moral character and has graduated from a school or
4 college of optometry accepted by said board. No school or
5 college of optometry shall be accepted by the West Virginia
6 board of optometry unless at first it has been accredited by a
7 regional or professional accreditation organization which is
8 recognized by the national commission on accreditation or the
9 United States commission of education. Each applicant shall
10 submit to and be examined in all phases of optometry as is
11 provided by a school or college of optometry.

12 (b) The West Virginia board of optometry shall be responsi-
13 ble to determine the educational training received by the
14 applicant from the schools and colleges of optometry, the
15 educational qualifications of each applicant and the administer-
16 ing of the examination and certification of each applicant
17 commensurate with his or her education. No optometrist shall
18 be registered or certified to practice optometry in the state of
19 West Virginia in any area that is beyond the scope of his or her
20 educational training as determined by the West Virginia board
21 of optometry. *Provided,* That any optometrist presently
22 registered in the state of West Virginia and who desires to
23 employ the use of pharmaceutical agents must submit to the
24 West Virginia board of optometry evidence of satisfactory
25 completion of all necessary educational requirements as made

26 mandatory by the West Virginia board of optometry: *Provided*
27 *further*, That the West Virginia board of optometry shall
28 provide for continuing educational requirements to be com-
29 pleted from time to time by all optometrists desiring to employ
30 the use of pharmaceutical agents.

31 (c) The board may propose rules for legislative approval in
32 accordance with article three, chapter twenty-nine-a of this
33 code, to provide for licensure by endorsement for applicants
34 licensed by other states whose licensure requirements are
35 equivalent to those of this state, and who meet the requirements
36 as set forth in this article and in the legislative rules of the
37 board.

§30-8-6. Certificate of registration or exemption shall be displayed.

1 Every person practicing optometry shall display his or her
2 certificate of registration in a conspicuous place in the principal
3 office wherein he or she practices optometry and, whenever
4 required, shall exhibit such certificate to the board of examiners
5 or its authorized representatives.

§30-8-7. Biennial renewal of registration; restoration of expired certificate.

1 Every registered optometrist who desires to continue in
2 active practice or service shall, biennially, on or before the first
3 day of August, of that year, renew his or her certificate of
4 registration and pay a biennial renewal fee as determined by
5 legislative rule. Every certificate of registration which has not
6 been renewed shall expire on the first day of August of that
7 year. A registered optometrist whose certificate of registration
8 has expired for three years or less may have the same restored
9 only upon payment of all required renewal and late fees for
10 each lapsed year, and submit proof of accumulated continuing
11 education hours for each year that has lapsed.

§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.

1 The board may either refuse to issue, or may refuse to
2 renew, or may suspend or revoke any certificate of registration
3 for any one, or any combination, of the following causes:
4 Violation of a rule or regulation governing the ethical practice
5 of optometry promulgated by the board under the authority
6 granted by this article; conviction of a felony, as shown by a
7 certified copy of the record of the court wherein such convic-
8 tion was had; the obtaining of, or the attempt to obtain, a
9 certificate of registration, or practice in the profession of
10 optometry, or money, or any other thing of value, by fraudulent
11 misrepresentation; gross malpractice; continued practice by a
12 person knowingly having an infectious disease; alcohol or
13 substance abuse; advertising, practicing, or attempting to
14 practice under a name other than one's own; advertising by
15 means of knowingly false or deceptive statements. All advertis-
16 ing, whether by means of newspapers, or in any manner,
17 whatsoever, of the following statements, or statements of
18 similar import, that are "false and deceptive" within the
19 meaning of this law, shall be prohibited. False and deceptive
20 advertising shall include, but not be limited to the following: (a)
21 Advertising "free examination of eyes," or words of similar
22 import and meaning; (b) advertising frames or mountings for
23 glasses, contact lenses, or other optical devices which does not
24 accurately describe the same in all its component parts.

§30-8-9. Offenses; penalties; jurisdiction of magistrates.

1 Each of the following shall constitute a misdemeanor
2 punishable, upon conviction, for the first offense, by a fine of
3 not less than one thousand nor more than five thousand dollars
4 and, upon conviction for a second or subsequent offense, by a
5 fine of not less than five thousand nor more than ten thousand
6 dollars, or by imprisonment for not less than thirty nor more

7 than ninety days, or by both such fine and imprisonment, at the
8 discretion of the court: The practice of, or an attempt to
9 practice, optometry, without a certificate of registration as a
10 registered optometrist, except as hereinbefore provided;
11 permitting any person in one's employ, supervision or control,
12 to practice optometry, unless such person has a certificate of
13 registration as a registered optometrist in the state of West
14 Virginia when such certificate is required by this article; the
15 obtaining of, or an attempt to obtain, a certificate of registra-
16 tion, or practice in the profession, or money, or anything of
17 value, by fraudulent misrepresentation; the making of any
18 willfully false oath or affirmation, whenever an oath or affirma-
19 tion is required by this article; the violation of the provisions of
20 section six of this article.

**§30-8-10. Unlawful practice of optometry by or for a corporation,
etc.; practice in connection with commercial or
mercantile establishment; penalties; injunctions.**

1 Except as provided in sections three-a and three-b of this
2 article, no corporation or voluntary association shall practice,
3 or assume to practice, or in any manner hold itself out to the
4 public as being entitled to practice the profession of optometry,
5 or advertise the title of optometrist in such manner as to convey
6 the impression to the public that it is entitled to practice
7 optometry, or furnish optometric advice and services, or
8 advertise that, either alone or together with or by or through any
9 person, whether a duly registered and licensed optometrist or
10 not, it has, owns, conducts or maintains an office or place for
11 practice of optometry. Except as provided in sections three-a
12 and three-b of this article, no duly registered and licensed
13 optometrist shall associate himself or herself with any corpora-
14 tion or voluntary association for the practice of optometry, or in
15 any manner practice such profession, on a salary or commission
16 basis, for any such corporation or voluntary association. Any
17 corporation or voluntary association violating any of the

18 provisions of this section, or any officer, trustee, director, agent,
19 or employee of such corporation or voluntary association who,
20 either directly or indirectly, engages in any of the acts herein
21 prohibited, or assists such corporation or voluntary association
22 to do such prohibited acts, shall be guilty of a misdemeanor
23 and, upon conviction thereof, shall be fined not less than one
24 thousand nor more than five thousand dollars. The fact that any
25 such officer, trustee, director, agent or employee shall be a duly
26 registered and licensed optometrist shall not be held to permit
27 or allow any such corporation or voluntary association to do the
28 acts prohibited herein, nor shall such fact be a defense upon the
29 trial of any of the persons hereinbefore mentioned for a
30 violation of this section. Any duly registered and licensed
31 optometrist who shall violate the provisions of this section shall
32 be guilty of a misdemeanor and, upon conviction thereof, shall
33 be fined not less than one thousand dollars nor more than five
34 thousand dollars, and each and every day such violation
35 continues shall constitute a separate offense; and in addition to
36 the foregoing penalties, such offending optometrist shall have
37 his or her license suspended for a period of one year by the
38 court in which such conviction is had: *Provided*, That this
39 section shall not apply to a partnership of two or more duly
40 registered and licensed optometrists who practice under their
41 own names.

42 It shall be unlawful for any registered optometrist to
43 practice his or her profession as an employee, lessee, or
44 sublessee of any commercial or mercantile establishment or to
45 practice his or her profession in connection therewith, or to
46 advertise either in person or through any commercial or
47 mercantile establishment that he or she is a duly registered
48 practitioner, and is practicing or will practice optometry as an
49 employee, lessee, or sublessee of any such commercial or
50 mercantile establishment or in connection therewith. But
51 nothing herein shall be construed to prohibit or prevent the
52 rendering of professional services to the officers and employees

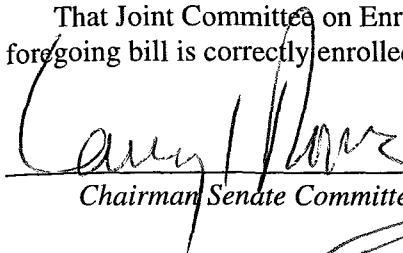
53 of any person, firm or corporation by an optometrist, whether
54 or not the compensation for such services is paid by the officers
55 and employees, or by the employer, or jointly by all or any of
56 them. Any person violating this provision shall be guilty of a
57 misdemeanor and, upon conviction thereof, shall be fined not
58 less than one thousand nor more than five thousand dollars, and
59 each and every day such violation continues shall constitute a
60 separate offense.

61 The circuit court of any county in which the violation
62 occurred shall have jurisdiction to restrain by injunction the
63 violation of any of the provisions of this article.

§30-8-11. Continuation of the board.

1 The West Virginia board of optometry shall continue to
2 exist until the first day of July, two thousand seven, pursuant to
3 the provisions of article ten, chapter four of this code, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

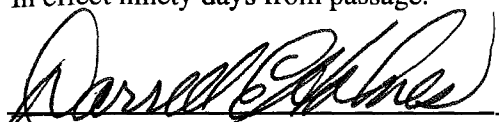
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

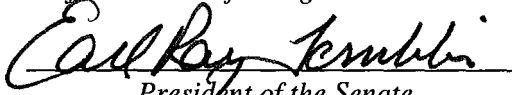

Chairman House Committee

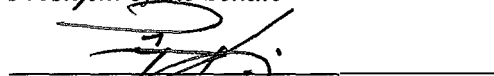
Originating in the House.

In effect ninety days from passage.

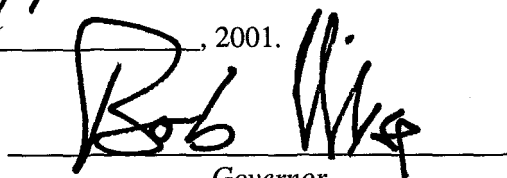

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 2001.


Governor

PRESENTED TO THE

GOVERNOR

Date

4/24/01

Time

4:50 pm