

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

for

## **H. B. 2662**

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(BY DELEGATE(S) STANSBURY, ELLINGTON,  
HOUSEHOLDER, R. PHILLIPS, BYRD, FAIRCLOTH, SPONAUGLE,  
WELD, MOORE, B. WHITE AND PUSHKIN)

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[Passed March 12, 2015;  
in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all relating to the practice of optometry; defining certain terms; providing that contact lenses require a prescription that must be performed by a licensee; providing that spectacles require a prescription that must be performed by a licensee; requiring certain actions to be taken with regard to prescriptions; prohibiting the dissemination of contact lenses without a prescription from a licensee; prohibiting the dissemination of spectacles without a prescription from a licensee;

providing the board to enforce this article; allowing the board to promulgate rules; and providing criminal penalties.

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

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

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

**§30-8A-1. Definitions.**

1 As used in this article:

2 (a) “Contact Lens” means a lens placed directly on the  
3 surface of the eye, regardless of whether it is intended to correct  
4 a visual defect. Contact lens includes, but is not limited to, a  
5 cosmetic, therapeutic, or corrective lens.

6 (b) “Board” means the West Virginia Board of Optometry.

7 (c) “Diagnostic contact lens” means a contact lens used to  
8 determine a proper contact lens fit.

9 (d) “Direct supervision” means supervision that occurs when  
10 a licensee is actually present in the building.

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

16 (f) “Licensee” means a person who is authorized to engage  
17 in the practice of optometry under article eight, chapter thirty of  
18 this code.

19 (g) “Special requirements” means the type of lens design,  
20 lens material, tint, or lens treatments.

21 (h) “Spectacles” means an optical instrument or device worn  
22 or used by an individual that has one or more lenses designed to  
23 correct or enhance vision to address the visual needs of the  
24 individual wearer. This includes spectacles that may be adjusted  
25 to achieve different types or levels of visual correction or  
26 enhancement.

27 (i) “Valid prescription” means one of the following, as  
28 applicable:

29 (1) For a contact lens, a written or electronic order by a  
30 licensee who has conducted an examination and evaluation of a  
31 patient and has determined a satisfactory fit for the contact lens  
32 based on an analysis of the physiological compatibility of the  
33 lens or the cornea and the physical fit and refractive functionality  
34 of the lens on the patient’s eye. To be a valid prescription under  
35 this subdivision, it shall at least include the following:

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

37 (B) The contact lens type or brand name, or for a private  
38 label contact lens, the name of the manufacturer, trade name of  
39 the private label brand, and, if applicable, trade name of the  
40 equivalent or similar brand;

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

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

45 (E) The number of refills;

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

- 48 (G) The patient's name;
- 49 (H) The date of the examination and evaluation;
- 50 (I) The date the prescription is originated;
- 51 (J) The prescribing licensee's name, address, and telephone  
52 number;
- 53 (K) The prescribing licensee's written or electronic  
54 signature, or other form of authentication; and
- 55 (L) An expiration date of not less than one year from the  
56 date of the examination and evaluation or a statement of the  
57 reasons why a shorter time is appropriate based on the medical  
58 needs of the patient.
- 59 (2) For spectacles, a written or electronic order by a licensee  
60 who has examined and evaluated a patient. To be a valid  
61 prescription under this subdivision, it shall include at least the  
62 following:
- 63 (A) A statement that the prescription is for spectacles;
- 64 (B) As applicable and as specified for each eye, the lens  
65 power including the spherical power, cylindrical power including  
66 axis, prism, and power of the multifocal addition;
- 67 (C) Any special requirements, the omission in the opinion of  
68 the prescribing licensee, would adversely affect the vision or  
69 ocular health of the patient;
- 70 (D) The patient's name;
- 71 (E) The date of the examination and evaluation;
- 72 (F) The date the prescription is originated;

73 (G) The prescribing licensee's name, address, and telephone  
74 number;

75 (H) The prescribing licensee's written or electronic  
76 signature, or other form of authentication; and

77 (I) An expiration date of not less than one year from the date  
78 of the examination and evaluation or a statement of the reasons  
79 why a shorter time is appropriate based on the medical needs of  
80 the patient.

**§30-8A-2. Prescriptions.**

1 (a) Except as otherwise provided in subsection (b),  
2 spectacles and contact lenses are medical devices and are subject  
3 to the requirements of this article.

4 (b) The requirements of this article do not apply to the  
5 following:

6 (1) A diagnostic contact lens that is used by a licensee during  
7 an examination and evaluation;

8 (2) An optical instrument or device that is not intended to  
9 correct or enhance vision; or

10 (3) An optical instrument or device that is sold without  
11 consideration of the visual status of the individual who will use  
12 the optical instrument or device.

**§30-8A-3. Prohibited Actions.**

1 A person may not:

2 (1) Employ objective or subjective physical means to  
3 determine the accommodative or refractive condition; the range,  
4 power of vision or muscular equilibrium of the human eye or

5 prescribe spectacles or contact lenses based on that  
6 determination unless that activity is performed by a licensee or  
7 performed by a person under direct supervision.

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

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

**§30-8A-4. Enforcement.**

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

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

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

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

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

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

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2015.

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*Governor*

