

COMMITTEE SUBSTITUTE

for

H. B. 2662

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

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

A BILL 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.