

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED
Committee Substitute
for
HOUSE BILL No. 1192

(By Mr. Polen and Mr. Myles)



PASSED April 14, 1973

In Effect 90 days from Passage



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FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73

1192

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 1192
(By MR. POLEN and MR. MYLES)

[Originating in the House Committee on the Judiciary.]

[Passed April 14, 1973; in effect ninety days from passage.]

AN ACT to amend article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-a and three-b, and to amend and reenact section ten of said article eight, all relating to the registration and practice of optometric corporations; prohibiting the practice of optometry in corporate capacity except as provided herein; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-a and three-b, and that section ten of said article eight be amended and reenacted, all to read as follows:

ARTICLE 8. OPTOMETRISTS.

§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
5 form prescribed by the board, and shall furnish proof satis-
6 factory to the board that the signer is a duly registered
7 optometrist, or if there be more than one that all the signers
8 of such application are such duly registered optometrists. A
9 fee of twenty-five dollars shall accompany each such applica-
10 tion, no part of which shall be returnable.

11 If the board finds that the signer is a duly registered
12 optometrist, or if there be more than one that all of the
13 signers of such application are such duly registered optome-
14 trists, the board shall notify the secretary of state that a
15 certificate of authorization has been issued to the individual
16 or individuals signing such application, to form an optometric
17 corporation.

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

**§30-8-3b. Practice of optometry by optometric corporations; limita-
tions; 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 con-
6 tained shall be construed to require a license or other legal
7 authorization of any individual employed by such corporation
8 to perform services for which no license or other legal autho-
9 rization is otherwise required. Nothing contained in sections
10 three-a and ten and this section of this article is meant or in-
11 tended to change in any way the rights, duties, privileges,
12 responsibilities and liabilities incident to the optometrist-patient
13 relationship nor is it meant or intended to change in any way
14 the personal character of the optometrist-patient relationship.

15 A corporation holding such certificate of authorization shall
16 register biennially, on or before the thirtieth day of June, on a
17 form prescribed by the board of optometry and shall pay an an-
18 nual registration fee of fifty dollars.

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

31 (c) No corporation shall practice optometry, or any of its
32 branches, or hold itself out as being capable of doing so, with-
33 out a certificate from the board, or after its certificate has been
34 revoked, or if suspended, during the term of such suspension. A
35 certificate signed by the secretary of the board of optometry to
36 which is affixed the official seal of the board to the effect that it
37 appears from the records of the board that no such certificate to
38 practice optometry or any of its branches in the state has been
39 issued to any such corporation specified therein or that such
40 certificate has been revoked or suspended shall be admissible in
41 evidence in all courts of this state and shall be prima facie
42 evidence of the facts stated therein.

43 (d) Any officer, shareholder or employee of such corpora-
44 tion who participates in a violation of any provision of this
45 section shall be guilty of a misdemeanor, and, upon conviction
46 thereof, shall be fined not more than one thousand dollars.

47 (e) If any provisions of section three-a or this section of this
48 article be held to be invalid, such invalidity shall not affect
49 the other provisions of said sections, and to this end the pro-
50 visions of said sections are severable.

**§30-8-10. Unlawful practice of optometry by or for 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 to hold itself out to
4 the public as being entitled to practice the profession of
5 optometry, or advertise the title of optometrist in such manner
6 as to convey the impression to the public that it is entitled to
7 practice optometry, or furnish optometric advice and services,
8 or advertise that, either alone or together with or by or
9 through any person, whether a duly registered and licensed
10 optometrist or not, it has, owns, conducts or maintains an
11 office or place for practice of optometry. Except as provided
12 in sections three-a and three-b of this article, no duly registered
13 and licensed optometrist shall associate himself with any
14 corporation or voluntary association for the practice of op-
15 tometry, or in any manner practice such profession, on a
16 salary or commission basis, for any such corporation or
17 voluntary association. Any corporation or voluntary associa-
18 tion violating any of the provisions of this section, or any
19 officer, trustee, director, agent, or employee of such corpora-
20 tion or voluntary association who, either directly or indirectly,
21 engages in any of the acts herein prohibited, or assists such
22 corporation or voluntary association to do such prohibited
23 acts, shall be guilty of a misdemeanor, and, upon conviction
24 thereof, shall be fined not less than one hundred nor more
25 than one thousand dollars. The fact that any such officer,
26 trustee, director, agent or employee shall be a duly registered
27 and licensed optometrist shall not be held to permit or allow
28 any such corporation or voluntary association to do the acts
29 prohibited herein, nor shall such fact be a defense upon the
30 trial of any of the persons hereinbefore mentioned for a viola-
31 tion of this section. Any duly registered and licensed optome-
32 trist who shall violate the provisions of this section shall be
33 guilty of a misdemeanor, and, upon conviction thereof, shall be
34 fined not less than ten dollars nor more than twenty-five dollars,
35 and each and every day such violation continues shall constitute
36 a separate offense; and in addition to the foregoing penalties,
37 such offending optometrist shall have his license to practice
38 suspended for a period of one year by the court in which such
39 conviction is had: *Provided*, That this section shall not apply
40 to a partnership of two or more duly registered and licensed
41 optometrists who practice under their own names.

42 It shall be unlawful for any registered optometrist to prac-
43 tice his profession as an employee, lessee, or sublessee of any

44 commercial or mercantile establishment or to practice his
45 profession in connection therewith, or to advertise either in
46 person or through any commercial or mercantile establishment
47 that he is a duly registered practitioner, and is practicing or will
48 practice optometry as an employee, lessee, or sublessee of
49 any such commercial or mercantile establishment or in con-
50 nection therewith. But nothing herein shall be construed to
51 prohibit or prevent the rendering of professional services
52 to the officers and employees of any person, firm or corpora-
53 tion by an optometrist, whether or not the compensation for
54 such services is paid by the officers and employees, or by
55 the employer, or jointly by all or any of them. Any person
56 violating this provision shall be guilty of a misdemeanor, and,
57 upon conviction thereof, shall be fined not less than fifty
58 nor more than five hundred dollars, and each and every day
59 such violation continues shall constitute a separate offense.
60 The circuit court of any county in which the violation
61 occurred shall have jurisdiction to restrain by injunction the
62 violation of any of the provisions of this article.

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

H. Darrel Darby
Chairman Senate Committee

Laurence Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Haward Carson
Clerk of the Senate

Ch Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Lewis J. McManus
Speaker House of Delegates

The within approved this the 27th
day of April, 1973.

Arch A. Prange Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 4/27/73
Time 2:05 p.m.

RECEIVED

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA