WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

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ENROLLED
Committee Substitute for
HOUSE BILL No. 1192

(By Mr. Releagy, Mr. Myles)

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PASSED April 14, 1973

In Effect 90 days from Passage

1/1973

FILED IN THE OFFICE
EDGAR F. HILL, III
SECRETARY OF STATE
THIS DATE 5/3/73
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 optometry in the state of West Virginia wish to form an optometric corporation, such optometrist or optometrists shall
file a written application with the board of optometry, on a
form prescribed by the board, and shall furnish proof satis-
factory to the board that the signer is a duly registered
optometrist, or if there be more than one that all the signers
of such application are such duly registered optometrists. A
fee of twenty-five dollars shall accompany each such applica-
tion, no part of which shall be returnable.

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

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

(a) An optometric corporation may practice optometry only
through an individual optometrist or optometrists duly regis-
tered to practice optometry in the state of West Virginia, but
such optometrist or optometrists may be employees rather than
shareholders of such corporation, and nothing herein con-
tained shall be construed to require a license or other legal
authorization of any individual employed by such corporation
to perform services for which no license or other legal author-
ization is otherwise required. Nothing contained in sections
three-a and ten and this section of this article is meant or in-
tended to change in any way the rights, duties, privileges,
responsibilities and liabilities incident to the optometrist-patient
relationship nor is it meant or intended to change in any way
the personal character of the optometrist-patient relationship.
A corporation holding such certificate of authorization shall register biennially, on or before the thirtieth day of June, on a form prescribed by the board of optometry and shall pay an annual registration fee of fifty dollars.

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

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

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

(e) If any provisions of section three-a or this section of this article be held to be invalid, such invalidity shall not affect the other provisions of said sections, and to this end the provisions 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.

Except as provided in sections three-a and three-b of this
article, no corporation or voluntary association shall practice, or assume to practice, or in any manner to hold itself out to the public as being entitled to practice the profession of optometry, or advertise the title of optometrist in such manner as to convey the impression to the public that it is entitled to practice optometry, or furnish optometric advice and services, or advertise that, either alone or together with or by or through any person, whether a duly registered and licensed optometrist or not, it has, owns, conducts or maintains an office or place for practice of optometry. Except as provided in sections three-a and three-b of this article, no duly registered and licensed optometrist shall associate himself with any corporation or voluntary association for the practice of optometry, or in any manner practice such profession, on a salary or commission basis, for any such corporation or voluntary association. Any corporation or voluntary association violating any of the provisions of this section, or any officer, trustee, director, agent, or employee of such corporation or voluntary association who, either directly or indirectly, engages in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars. The fact that any such officer, trustee, director, agent or employee shall be a duly registered and licensed optometrist shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons hereinbefore mentioned for a violation of this section. Any duly registered and licensed optometrist who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty-five dollars, and each and every day such violation continues shall constitute a separate offense; and in addition to the foregoing penalties, such offending optometrist shall have his license to practice suspended for a period of one year by the court in which such conviction is had: Provided, That this section shall not apply to a partnership of two or more duly registered and licensed optometrists who practice under their own names. It shall be unlawful for any registered optometrist to practice his profession as an employee, lessee, or sublessee of any
commercial or mercantile establishment or to practice his profession in connection therewith, or to advertise either in person or through any commercial or mercantile establishment that he is a duly registered practitioner, and is practicing or will practice optometry as an employee, lessee, or sublessee of any such commercial or mercantile establishment or in connection therewith. But nothing herein shall be construed to prohibit or prevent the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such services is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any person violating this provision shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and each and every day such violation continues shall constitute a separate offense. The circuit court of any county in which the violation occurred shall have jurisdiction to restrain by injunction the violation of any of the provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE GOVERNOR

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