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**WEST VIRGINIA LEGISLATURE** WEST VIRGINIA  
SEVENTY-NINTH LEGISLATURE SECRETARY OF STATE  
REGULAR SESSION, 2010

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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 230**

(SENATORS BOWMAN, KESSLER, YOST,  
BROWNING, SNYDER, D. FACEMIRE  
AND WELLS, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 230

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AN ACT to repeal §30-8-2a, §30-8-2b, §30-8-3a, §30-8-3b and §30-8-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-8-1, §30-8-2, §30-8-3, §30-8-4, §30-8-5, §30-8-6, §30-8-7, §30-8-8, §30-8-9, §30-8-10 and §30-8-11 of said code; and to amend said code by adding thereto eleven new sections, designated §30-8-12, §30-8-13, §30-8-14, §30-8-15, §30-8-16, §30-8-17, §30-8-18, §30-8-19, §30-8-20, §30-8-21 and §30-8-22, all relating to the Board of Optometry; prohibiting the practice of optometry without a license or permit; providing other applicable sections; providing definitions; providing the board composition; setting forth the powers and duties of the board; clarifying the rule-making authority; clarifying the scope of practice; establishing expanded authority for injections; continuing a special revenue account; licensing requirements; exemptions; providing for licensure for persons licensed in another state; clarifying prescriptive authority;

clarifying injection authority; establishing special volunteer license; optometric business requirements; establishing renewal requirements; providing permit requirements; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

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

That sections §30-8-2a, §30-8-2b, §30-8-3a, §30-8-3b, and §30-8-5a of the Code of West Virginia, 1931, as amended, be repealed; that §30-8-1, §30-8-2, §30-8-3, §30-8-4, §30-8-5, §30-8-6, §30-8-7, §30-8-8, §30-8-9, §30-8-10 and §30-8-11 of said code be amended and reenacted; and that said code be amended by adding thereto eleven new sections, designated §30-8-12, §30-8-13, §30-8-14, §30-8-15, §30-8-16, §30-8-17, §30-8-18, §30-8-19, §30-8-20, §30-8-21 and §30-8-22, all to read as follows:

**ARTICLE 8. OPTOMETRISTS.**

**§30-8-1. Unlawful acts.**

1 (a) It is unlawful for any person to practice or offer to  
2 practice optometry in this state without a license or permit  
3 issued under the provisions of this article, or advertise or  
4 use any title or description tending to convey the impres-  
5 sion that they are an optometrist unless the person has  
6 been duly licensed or permitted under the provisions of  
7 this article.

8 (b) A business entity may not render any service or  
9 engage in any activity which, if rendered or engaged in by  
10 an individual, would constitute the practice of optometry,  
11 except through a licensee or permittee.

12 (c) A licensee may not practice optometry as an em-  
13 ployee of any commercial or mercantile establishment.

14 (d) A licensee may not practice optometry on premises  
15 not separate from premises whereon eyeglasses, lenses,  
16 eyeglass frames or any other merchandise or products are  
17 sold by any other person. For the purposes of this section,  
18 any room or suite of rooms in which optometry is prac-  
19 ticed shall be considered separate premises if it has a  
20 separate and direct entrance from a street or public  
21 hallway or corridor within a building, which corridor is  
22 partitioned off by partitions from floor to ceiling.

23 (e) A person who is not licensed under this article as an  
24 optometrist may not characterize himself or herself as an  
25 “optometrist” or “doctor of optometry” nor may a person  
26 use the designation “OD”.

**§30-8-2. Applicable law.**

1 The practice of optometry and the Board of Optometry  
2 are subject to the provisions of article one of this chapter,  
3 the provisions of this article and the board’s rules.

**§30-8-3. Definitions.**

1 As used in this article:

2 (a) “Appendages” means the eyelids, the eyebrows, the  
3 conjunctiva and the lacrimal apparatus.

4 (b) “Applicant” means any person making application  
5 for a license, certificate or temporary permit under the  
6 provisions of this article.

7 (c) “Board” means the West Virginia Board of Optome-  
8 try.

9 (d) “Business entity” means any firm, partnership,  
10 association, company, corporation, limited partnership,

11 limited liability company or other entity owned by licens-  
12 ees that practices optometry.

13 (e) "Certificate" means a prescription certificate issued  
14 under section fifteen of this article.

15 (f) "Certificate holder" means a person authorized to  
16 prescribe certain drugs under section fifteen of this article.

17 (g) "Examination, diagnosis and treatment" means a  
18 method compatible with accredited optometric education  
19 and professional competence pursuant to this article.

20 (h) "License" means a license to practice optometry.

21 (i) "Licensee" means an optometrist licensed under the  
22 provisions of this article.

23 (j) "Ophthalmologist" means a physician specializing in  
24 ophthalmology licenced in West Virginia to practice  
25 medicine and surgery under article thereof this chapter or  
26 osteopathy under article fourteen of this chapter.

27 (k) "Permittee" means a person holding a temporary  
28 permit.

29 (l) "Practice of optometry" means the examining,  
30 diagnosing and treating of any visual defect or abnormal  
31 condition of the human eye or its appendages within the  
32 scope established in this article or associated rules.

33 (m) "Temporary permit" or "permit" means a permit  
34 issued to a person who has graduated from an approved  
35 school, has taken the examination prescribed by the board,  
36 and is awaiting the results of the examination.

**§30-8-4. Board of Optometry.**

1 (a) The West Virginia Board of Optometry is continued.  
2 The members of the board in office on July 1, 2010, shall,  
3 unless sooner removed, continue to serve until their

4 respective terms expire and until their successors have  
5 been appointed and qualified.

6 (b) The board shall consist of the following members  
7 appointed by the Governor, by and with the advice and  
8 consent of the Senate:

9 (1) Five licensed optometrists; and

10 (2) Two citizen members, who are not licensed under the  
11 provisions of this article and who do not perform any  
12 services related to the practice of the profession regulated  
13 under the provisions of this article.

14 (c) Each licensed member of the board, at the time of his  
15 or her appointment, must have held a professional license  
16 in this state for a period of not less than three years  
17 immediately preceding the appointment.

18 (d) Each member of the board must be a resident of this  
19 state during the appointment term.

20 (e) The term shall be three years. A member may not  
21 serve more than two consecutive full terms. A member  
22 may continue to serve until a successor has been appointed  
23 and has qualified.

24 (f) A vacancy on the board shall be filled by appointment  
25 by the Governor for the unexpired term of the member  
26 whose office is vacant and the appointment shall be made  
27 within sixty days of the vacancy.

28 (g) The Governor may remove any member from the  
29 board for neglect of duty, incompetency or official miscon-  
30 duct.

31 (h) A member of the board immediately and automati-  
32 cally forfeits membership to the board if his or her license  
33 to practice is suspended or revoked, is convicted of a  
34 felony under the laws of any jurisdiction, or becomes a  
35 nonresident of this state.

36 (i) The board shall elect annually a president and a  
37 secretary-treasurer from its members who serve at the will  
38 of the board.

39 (j) Each member of the board is entitled to compensation  
40 and expense reimbursement in accordance with article one  
41 of this chapter.

42 (k) A majority of the members of the board constitutes a  
43 quorum.

44 (l) The board shall hold at least two meetings a year.  
45 Other meetings may be held at the call of the president or  
46 upon the written request of two members at the time and  
47 place as designated in the call or request.

48 (m) Prior to commencing his or her duties as a member  
49 of the board, each member shall take and subscribe to the  
50 oath required by section five, article four of the Constitu-  
51 tion of this state.

**§30-8-5. Powers and duties of the board.**

1 (a) The board has all the powers and duties set forth in  
2 this article, by rule, in article one of this chapter and  
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer  
6 examinations;

7 (2) Establish requirements for licenses, certificates and  
8 permits;

9 (3) Establish procedures for submitting, approving and  
10 rejecting applications for licenses, certificates and permits;

11 (4) Determine the qualifications of any applicant for  
12 licenses, certificates and permits;

13 (5) Prepare, conduct, administer and grade examinations  
14 for licenses;

15 (6) Determine the passing grade for the examinations;

16 (7) Maintain records of the examinations by the board or  
17 a third party administer, including the number of persons  
18 taking the examinations and the pass and fail rate;

19 (8) Hire, discharge, establish the job requirements and  
20 fix the compensation of the executive secretary;

21 (9) Maintain an office and hire, discharge, establish the  
22 job requirements and fix the compensation of employees,  
23 investigators and contracted employees necessary to  
24 enforce the provisions of this article;

25 (10) Investigate alleged violations of the provisions of  
26 this article, legislative rules, orders and final decisions of  
27 the board;

28 (11) Conduct disciplinary hearings of persons regulated  
29 by the board;

30 (12) Determine disciplinary action and issue orders;

31 (13) Institute appropriate legal action for the enforce-  
32 ment of the provisions of this article;

33 (14) Maintain an accurate registry of names and ad-  
34 dresses of all licensees regulated by the board;

35 (15) Keep accurate and complete records of its proceed-  
36 ings, and certify the same as may be necessary and appro-  
37 priate;

38 (16) Establish the continuing education requirements for  
39 licensees;

40 (17) Issue, renew, combine, deny, suspend, revoke or  
41 reinstate licenses, certificates and permits;



42 (18) Establish a fee schedule;

43 (19) Propose rules in accordance with the provisions of  
44 article three, chapter twenty-nine-a of this code to imple-  
45 ment the provisions of this article; and

46 (20) Take all other actions necessary and proper to  
47 effectuate the purposes of this article.

48 (c) The board may:

49 (1) Contract with third parties to administer the exami-  
50 nations required under the provisions of this article;

51 (2) Sue and be sued in its official name as an agency of  
52 this state; and

53 (3) Confer with the Attorney General or his or her  
54 assistant in connection with legal matters and questions.

**§30-8-6. Rulemaking.**

1 (a) The board shall propose rules for legislative approval,  
2 in accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code, to implement the provisions of  
4 this article, including:

5 (1) Standards and requirements for licenses, certificates  
6 and permits;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or  
9 administer examinations and reexaminations;

10 (4) Educational and experience requirements;

11 (5) The passing grade on the examinations;

12 (6) Standards for approval of courses and curriculum;

13 (7) Procedures for the issuance and renewal of licenses,  
14 certificates and permits;

15 (8) A fee schedule;

16 (9) A prescription drug formulary classifying those  
17 categories of oral drugs rational to the diagnosis and  
18 treatment of visual defects or abnormal conditions of the  
19 human eye and its appendages, which may be prescribed  
20 by licensees from Schedules III, IV and V of the Uniform  
21 Controlled Substances Act. The drug formulary may also  
22 include oral antibiotics, oral nonsteroidal anti-inflamma-  
23 tory drugs and oral carbonic anhydrase inhibitors;

24 (10) Requirements for prescribing and dispensing  
25 contact lenses that contain and deliver pharmaceutical  
26 agents that have been approved by the Food and Drug  
27 Administration as a drug;

28 (11) Continuing education requirements for licensees;

29 (12) The procedures for denying, suspending, revoking,  
30 reinstating or limiting the practice of licensees, certificate  
31 holders and permittees;

32 (13) Requirements for inactive or revoked licenses,  
33 certificates or permits;

34 (14) Requirements for an expanded scope of practice for  
35 those procedures that are taught at 50% of all accredited  
36 optometry schools; and

37 (15) Any other rules necessary to effectuate the provi-  
38 sions of this article.

39 (b) All of the board's rules in effect on July 1, 2010, shall  
40 remain in effect until they are amended or repealed, and  
41 references to provisions of former enactments of this  
42 article are interpreted to mean provisions of this article.

43 (c) The board shall promulgate procedural and interpre-  
44 tive rules in accordance with section eight, article three,  
45 chapter twenty-nine-a of this code.

**§30-8-7. Fees; special revenue account; administrative fines.**

1 (a) All fees and other moneys, except administrative  
2 fines, received by the board shall be deposited in a sepa-  
3 rate special revenue fund in the State Treasury designated  
4 the “West Virginia Board of Optometry Fund”, which is  
5 continued. The fund is used by the board for the adminis-  
6 tration of this article. Except as may be provided in  
7 article one of this chapter, the board retains the amount in  
8 the special revenue account from year to year. No com-  
9 pensation or expense incurred under this article is a  
10 charge against the General Revenue Fund.

11 (b) Any amount received as fines, imposed pursuant to  
12 this article, shall be deposited into the General Revenue  
13 Fund of the State Treasury.

**§30-8-8. License to practice optometry.**

1 (a) To be eligible for a license to engage in the practice  
2 of optometry, the applicant must:

3 (1) Be at least twenty-one years of age;

4 (2) Be of good moral character;

5 (3) Graduate from a school approved by the Accredita-  
6 tion Council on Optometric Education or successor  
7 organization;

8 (4) Pass an examination prescribed by the board;

9 (5) Complete an interview with the board;

10 (6) Not be addicted to the use of alcohol, drugs or other  
11 controlled substances;

12 (7) Not have been convicted of a felony in any jurisdic-  
13 tion within ten years preceding the date of application for  
14 license, which conviction has not been reversed; and

15 (8) Not have been convicted of a misdemeanor or felony  
16 in any jurisdiction if the offense for which he or she was  
17 convicted related to the practice of optometry, which  
18 conviction has not been reversed.

19 (b) A registration to practice issued by the board prior to  
20 July 1, 2010, shall for all purposes be considered a license  
21 issued under this article: *Provided*, That a person holding  
22 a registration issued prior to July 1, 2010, must renew  
23 pursuant to the provisions of this article.

**§30-8-9. Scope of Practice.**

1 (a) An licensee may:

2 (1) Examine, diagnosis and treat diseases and conditions  
3 of the human eye and its appendage within the scope  
4 established in this article or associated rules;

5 (2) Administer or prescribe any drug for topical applica-  
6 tion to the anterior segment of the human eye for use in  
7 the examination, diagnosis or treatment of diseases and  
8 conditions of the human eye and its appendages: *Provided*,  
9 That the licensee has first obtained a certificate;

10 (3)(A) Administer or prescribe any drug from the drug  
11 formulary, as established by the board pursuant to section  
12 six of this article, for use in the examination, diagnosis or  
13 treatment of diseases and conditions of the human eye and  
14 its appendages: *Provided*, That the licensee has first  
15 obtained a certificate;

16 (B) New drugs and new drug indications may be added  
17 to the drug formulary by approval of the board;

18 (4) Administer epinephrine by injection to treat emer-  
19 gency cases of anaphylaxis or anaphylactic shock;

20 (5) Prescribe and dispense contact lenses that contain  
21 and deliver pharmaceutical agents and that have been  
22 approved by the Food and Drug Administration as a drug;

23 (6) Prescribe, fit, apply, replace, duplicate or alter lenses,  
24 prisms, contact lenses, orthoptics, vision training, vision  
25 rehabilitation;

26 (7) Perform the following procedures:

27 (A) Remove a foreign body from the ocular surface and  
28 adnexa utilizing a non-intrusive method;

29 (B) Remove a foreign body, external eye, conjunctival,  
30 superficial, using topical anesthesia;

31 (C) Remove embedded foreign bodies or concretions  
32 from conjunctiva, using topical anesthesia, not involving  
33 sclera;

34 (D) Remove corneal foreign body not through to the  
35 second layer of the cornea using topical anesthesia;

36 (E) Epilation of lashes by forceps;

37 (F) Closure of punctum by plug; and

38 (G) Dilation of the lacrimal puncta with or without  
39 irrigation;

40 (8) Furnish or provide any prosthetic device to correct or  
41 relieve any defects or abnormal conditions of the human  
42 eye and its appendages;

43 (9) Order laboratory tests rational to the examination,  
44 diagnosis, and treatment of a disease or condition of the  
45 human eye and its appendages;

46 (10) Use a diagnostic laser; and

47 (11) A licensee is also permitted to perform those proce-  
48 dures authorized by the board prior to January 1, 2010.

49 (b) A licensee may not:

- 50 (1) Perform surgery except as provided in this article or  
51 by legislative rule;
- 52 (2) Use a therapeutic laser;
- 53 (3) Use Schedule II controlled substances;
- 54 (4) Treat systemic disease; or
- 55 (5) Present to the public that he or she is a specialist in  
56 surgery of the eye.

**§30-8-10. Exceptions from licensure.**

1 The following persons are exempt from licensure under  
2 this article:

3 (1) Persons licensed to practice medicine and surgery  
4 under article three of this chapter or osteopathy under  
5 article fourteen of this chapter; and

6 (2) Persons and business entities who sell or manufacture  
7 ocular devices in a permanently established place of  
8 business, who neither practice nor attempt to practice  
9 optometry.

**§30-8-11. Issuance of license; renewal of license; renewal fee.**

1 (a) A licensee shall annually or biennially on or before  
2 July 1, renew his or her license by completing a form  
3 prescribed by the board, paying the renewal fee and  
4 submitting any other information required by the board.

5 (b) The board shall charge a fee for renewal of a license,  
6 and a late fee for any renewal not paid by the due date.

7 (c) The board shall require as a condition of renewal of  
8 a license that each licensee complete continuing education.

9 (d) The board may deny an application for renewal for  
10 any reason which would justify the denial of an original  
11 application for a license.

**§30-8-12. Temporary permits.**

1 (a) Upon proper application and the payment of a fee,  
2 the board may issue, without examination, a temporary  
3 permit to engage in the practice of optometry in this state.

4 (b) If the permittee receives a passing score on the  
5 examination, a temporary permit expires thirty days after  
6 the permittee receives the results of the examination.

7 (c) If the permittee receives a failing score on the exami-  
8 nation, the temporary permit expires immediately.

9 (d) An applicant under this subsection may only be  
10 issued one temporary permit. Upon the expiration of a  
11 temporary permit, a person may not practice as an optom-  
12 etrist until he or she is fully licensed under the provisions  
13 of this article. In no event may a permittee practice on a  
14 temporary permit beyond a period of ninety consecutive  
15 days.

16 (e) A temporary permittee under this section shall work  
17 under the supervision of a licensee, with the scope of such  
18 supervision to be defined by the board by legislative rule.

**§30-8-13. License from another jurisdiction; license to practice  
in this state.**

1 (a) The board may issue a license to practice to an  
2 applicant of good moral character who holds a valid  
3 license or other authorization to practice optometry from  
4 another jurisdiction, if the applicant demonstrates that he  
5 or she:

6 (1) Holds a license or other authorization to practice  
7 optometry in another state which requirements are  
8 substantially equivalent to those required in this state;

9 (2) Does not have charges pending against his or her  
10 license or other authorization to practice, and has never  
11 had a license or other authorization to practice revoked;

12 (3) Has not previously failed an examination for profes-  
13 sional licensure in this state;

14 (4) Has paid the applicable fee;

15 (5) Has passed the examination prescribed by the board;  
16 and

17 (6) Has fulfilled any other requirement specified by the  
18 board.

19 (b) In its discretion, the board may interview and  
20 examine an applicant for licensing under this section. The  
21 board may enter into agreements for reciprocal licensing  
22 with other jurisdictions having substantially similar  
23 requirements for licensure.

**§30-8-14. Prescriptive authority.**

1 (a) A licensee may prescribe: (1) topical pharmaceutical  
2 agents, (2) oral pharmaceutical agents that are included in  
3 the drug formulary established by the board pursuant to  
4 section six of this article or new drugs or new drug  
5 indications added by a decision of the board, and (3)  
6 contact lenses that contain and deliver pharmaceutical  
7 agents that have been approved by the Food and Drug  
8 Administration as a drug.

9 (b) An applicant must:

10 (1) Submit a completed application;

11 (2) Pay the appropriate fee;

12 (3) Show proof of current liability insurance coverage;

13 (4) Complete the board required training;

14 (5) Pass an examination; and

15 (6) Complete any other criteria the board may establish  
16 by rule.



**§30-8-15. Administration of injectable pharmaceutical agents**

1 (a) A licensee may not administer pharmaceutical agents  
2 by injection, other than epinephrine to treat emergency  
3 cases of anaphylaxis or anaphylactic shock, unless the  
4 provisions of this section, along with any legislative rule  
5 promulgated pursuant to this section, have been met.

6 (b) Additional pharmaceutical agents by injection may  
7 be included in the rules for legislative approval in accor-  
8 dance with the provisions of article three, chapter twenty-  
9 nine-a of this code. These rules shall provide, at a mini-  
10 mum, for the following:

11 (1) Establishment of a course, or provide a list of ap-  
12 proved courses, in administration of pharmaceutical  
13 agents by injection;

14 (2) Definitive treatment guidelines which shall include,  
15 but not be limited to, appropriate observation for an  
16 adverse reaction of an individual following the adminis-  
17 tration of a pharmaceutical agent by injection;

18 (3) A requirement that a licensee shall have completed a  
19 board approved injectable administration course and  
20 completed an American Red Cross or American Heart  
21 Association basic life-support training, and maintain  
22 certification in the same;

23 (4) Continuing education requirements for this area of  
24 practice;

25 (5) Reporting requirements for licensees administering  
26 pharmaceutical agents by injection to report to the  
27 primary care physician or other licensed health care  
28 provider as identified by the person receiving the pharma-  
29 ceutical agent by injection;

30 (6) Reporting requirements for licensees administering  
31 pharmaceutical agents by injection to report to the  
32 appropriate entities;

33 (7) That a licensee may not delegate the authority to  
34 administer pharmaceutical agents by injection to any  
35 other person; and

36 (8) Any other provisions necessary to implement the  
37 provisions of this section.

38 (c) In no event may a licensee be granted authority under  
39 this section to administer a pharmaceutical agent by  
40 injection directly into the globe of the eye.

**§30-8-16. Special volunteer license; civil immunity for voluntary services rendered to indigents.**

1 (a) There is established a special volunteer license for  
2 optometrists who are retired or are retiring from the active  
3 practice of optometry and wish to donate their expertise  
4 for the care and treatment of indigent and needy patients  
5 in the clinic setting of clinics organized, in whole or in  
6 part, for the delivery of health care services without  
7 charge.

8 (b) The special volunteer license shall be issued by the  
9 board to optometrists licensed or otherwise eligible for  
10 licensure under this article without the payment of an  
11 application fee, license fee or renewal fee, and shall be  
12 issued for the remainder of the licensing period, and  
13 renewed consistent with the boards other licensing  
14 requirements.

15 (c) The board shall develop application forms for the  
16 special volunteer license provided in this section which  
17 shall contain the optometrist's acknowledgment that:

18 (1) The optometrist's practice under the special volun-  
19 teer license will be exclusively devoted to providing  
20 optometrical care to needy and indigent persons in West  
21 Virginia;

22 (2) The optometrist will not receive any payment or  
23 compensation, either direct or indirect, or have the

24 expectation of any payment or compensation, for any  
25 optometrical services rendered under the special volunteer  
26 license;

27 (3) The optometrist will supply any supporting docu-  
28 mentation that the board may reasonably require; and

29 (4) The optometrist agrees to continue to participate in  
30 continuing education as required by the board for a  
31 special volunteer license.

32 (d) Any optometrist who renders any optometrical  
33 service to indigent and needy patients of a clinic orga-  
34 nized, in whole or in part, for the delivery of health care  
35 services without charge, under a special volunteer license  
36 authorized under this section without payment or compen-  
37 sation or the expectation or promise of payment or  
38 compensation is immune from liability for any civil action  
39 arising out of any act or omission resulting from the  
40 rendering of the optometrical service at the clinic unless  
41 the act or omission was the result of the optometrist's  
42 gross negligence or willful misconduct. In order for the  
43 immunity under this subsection to apply, before the  
44 rendering of any services by the optometrist at the clinic,  
45 there must be a written agreement between the optome-  
46 trist and the clinic stating that the optometrist will  
47 provide voluntary uncompensated optometrical services  
48 under the control of the clinic to patients of the clinic  
49 before the rendering of any services by the optometrist at  
50 the clinic: *Provided*, That any clinic entering into such  
51 written agreement is required to maintain liability cover-  
52 age of not less than \$1 million per occurrence.

53 (e) Notwithstanding the provisions of subsection (d) of  
54 this section, a clinic organized, in whole or in part, for the  
55 delivery of health care services without charge is not  
56 relieved from imputed liability for the negligent acts of an  
57 optometrist rendering voluntary optometrical services at

58 or for the clinic under a special volunteer license under  
59 this section.

60 (f) For purposes of this section, “otherwise eligible for  
61 licensure” means the satisfaction of all the requirements  
62 for licensure in this article except the fee requirements.

63 (g) Nothing in this section may be construed as requiring  
64 the board to issue a special volunteer license to any  
65 optometrist whose license is or has been subject to any  
66 disciplinary action or to any optometrist who has surren-  
67 dered a license or caused such license to lapse, expire and  
68 become invalid in lieu of having a complaint initiated or  
69 other action taken against his or her license, or who has  
70 elected to place a license in inactive status in lieu of  
71 having a complaint initiated or other action taken against  
72 his or her license, or who has been denied a license.

73 (h) Any policy or contract of liability insurance provid-  
74 ing coverage for liability sold, issued or delivered in this  
75 state to any optometrist covered under the provisions of  
76 this article shall be read so as to contain a provision or  
77 endorsement whereby the company issuing such policy  
78 waives or agrees not to assert as a defense on behalf of the  
79 policyholder or any beneficiary thereof, to any claim  
80 covered by the terms of such policy within the policy  
81 limits, the immunity from liability of the insured by reason  
82 of the care and treatment of needy and indigent patients  
83 by an optometrist who holds a special volunteer license.

**§30-8-17. Optometric business entities.**

1 (a) Only licensees may own a business entity that  
2 practices optometry.

3 (b) A licensee may be employed by the business entity.

4 (c) A business entity shall cease to engage in the practice  
5 of optometry when it is not wholly owned by licensees:  
6 *Provided*, That the personal representative of a deceased

7 shareholder shall have a period, not to exceed eighteen  
8 months from the date of such shareholder's death, to  
9 dispose of such shares.

**§30-8-18. Complaints; investigations; due process procedure;  
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on  
2 credible information, and shall upon the written complaint  
3 of any person cause an investigation to be made to deter-  
4 mine whether grounds exist for disciplinary action under  
5 this article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board  
7 shall provide a copy of the complaint to the licensee,  
8 certificate holder or permittee.

9 (c) After reviewing any information obtained through an  
10 investigation, the board shall determine if probable cause  
11 exists that the licensee or permittee has violated subsec-  
12 tion (g) of this section or rules promulgated pursuant to  
13 this article.

14 (d) Upon a finding that probable cause exists that the  
15 licensee or permittee has violated subsection (g) of this  
16 section or rules promulgated pursuant to this article, the  
17 board may enter into a consent decree or hold a hearing  
18 for the suspension or revocation of the license, certificate  
19 or permit or the imposition of sanctions against the  
20 licensee, certificate holder or permittee. Any hearing shall  
21 be held in accordance with the provisions of this article,  
22 and the provisions of articles five and six, chapter twenty-  
23 nine-a of this code.

24 (e) Any member of the board or the executive secretary  
25 of the board may issue subpoenas and subpoenas duces  
26 tecum on behalf of the board to obtain testimony and  
27 documents to aid in the investigation of allegations  
28 against any person regulated by the article.

29 (f) Any member of the board or its executive secretary  
30 may sign a consent decree or other legal document on  
31 behalf of the board.

32 (g) The board may, after notice and opportunity for  
33 hearing, deny or refuse to renew, suspend or revoke the  
34 license, certificate or permit of, impose probationary  
35 conditions upon or take disciplinary action against, any  
36 licensee, certificate holder or permittee for any of the  
37 following reasons once a violation has been proven by a  
38 preponderance of the evidence:

39 (1) Obtaining a license, certificate or permit by fraud,  
40 misrepresentation or concealment of material facts;

41 (2) Being convicted of a felony or other crime involving  
42 moral turpitude;

43 (3) Being guilty of unprofessional conduct which placed  
44 the public at risk;

45 (4) Intentional violation of a lawful order;

46 (5) Having had an authorization to practice optometry  
47 revoked, suspended, other disciplinary action taken, by the  
48 proper authorities of another jurisdiction;

49 (6) Having had an application to practice optometry  
50 denied by the proper authorities of another jurisdiction;

51 (7) Exceeded the scope of practice of optometry;

52 (8) Aiding or abetting unlicensed practice;

53 (9) Engaging in an act while acting in a professional  
54 capacity which has endangered or is likely to endanger the  
55 health, welfare or safety of the public; or

56 (10) False and deceptive advertising; this includes, but  
57 is not limited to, the following:

58 (A) Advertising “free examination of eyes,” or words of  
59 similar import and meaning; or

60 (B) Advertising frames or mountings for glasses, contact  
61 lenses, or other optical devices which does not accurately  
62 describe the same in all its component parts.

63 (h) For the purposes of subsection (g) of this section  
64 disciplinary action may include:

65 (1) Reprimand;

66 (2) Probation;

67 (3) Administrative fine, not to exceed \$1,000 per day per  
68 violation;

69 (4) Mandatory attendance at continuing education  
70 seminars or other training;

71 (5) Practicing under supervision or other restriction;

72 (6) Requiring the licensee or certificate holders to report  
73 to the board for periodic interviews for a specified period  
74 of time; or

75 (7) Other corrective action considered by the board to be  
76 necessary to protect the public, including advising other  
77 parties whose legitimate interests may be at risk.

**§30-8-19. Procedures for hearing; right of appeal.**

1 (a) Hearings shall be governed by the provisions of  
2 section eight, article one of this chapter.

3 (b) The board may conduct the hearing or elect to have  
4 an administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law  
6 judge, at the conclusion of a hearing he or she shall  
7 prepare a proposed written order containing findings of  
8 fact and conclusions of law. The proposed order may

9 contain proposed disciplinary actions if the board so  
10 directs. The board may accept, reject or modify the  
11 decision of the administrative law judge.

12 (d) Any member or the executive secretary of the board  
13 has the authority to administer oaths, examine any person  
14 under oath and issue subpoenas and subpoenas duces  
15 tecum.

16 (e) If, after a hearing, the board determines the licensee,  
17 certificate holder or permittee has violated the provisions  
18 of this article or the board's legislative rules, a formal  
19 written decision shall be prepared which contains findings  
20 of fact, conclusions of law and a specific description of the  
21 disciplinary actions imposed.

**§30-8-20. Judicial review.**

1 Any licensee, certificate holder or permittee adversely  
2 affected by a decision of the board entered after a hearing  
3 may obtain judicial review of the decision in accordance  
4 with section four, article five, chapter twenty-nine-a of  
5 this code, and may appeal any ruling resulting from  
6 judicial review in accordance with article six, chapter  
7 twenty-nine-a of this code.

**§30-8-21. Criminal proceedings; penalties.**

1 (a) When, as a result of an investigation under this  
2 article or otherwise, the board has reason to believe that  
3 a licensee, certificate holder or permittee has committed a  
4 criminal offense under this article, the board may bring its  
5 information to the attention of an appropriate law-  
6 enforcement official.

7 (b) A person violating section one of this article is guilty  
8 of a misdemeanor and, upon conviction thereof, shall be  
9 fined not less than \$1,000 nor more than \$5,000 or con-  
10 fined in jail not more than six months, or both fined and  
11 confined.



**§30-8-22. Single act evidence of practice.**

1 In any action brought or in any proceeding initiated  
2 under this article, evidence of the commission of a single  
3 act prohibited by this article is sufficient to justify a  
4 penalty, injunction, restraining order or conviction  
5 without evidence of a general course of conduct.

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

.....  
Chairman Senate Committee

.....  
Chairman House Committee

Originated in the Senate.

In 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 is approved ..... this the 2nd .....

Day of April ....., 2010.

.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 30 2010

Time 4:20 pm