

H. B. 2662

(By Delegates Stansbury, Ellington, Householder, R. Phillips, Byrd,
Faircloth, Sponaugle, Weld, Moore, B. White and Pushkin)

[Introduced February 9, 2015; referred to the

Committee on Health and Human Resources.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all relating to enacting the eye care consumer protection law; defining certain terms; providing that contact lenses and spectacles require a prescription that must be performed by a licensee; requiring certain actions to be taken with regard to contact lens and spectacle prescriptions; prohibiting the dissemination of spectacles and contact lenses without a prescription from a licensee; providing that the West Virginia Board of Optometry enforce the Eye Care Consumer Protection Law; allowing the West Virginia Board of Optometry to promulgate rules regarding the enforcement of the Eye Care Consumer Protection Law; 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 §16-46-1; §16-46-2; §16-46-3; §16-46-4 and §16-46-5, all to read as follows:

ARTICLE 46. EYE CARE CONSUMER PROTECTION LAW.

1 **§16-46-1. Definitions.**

2 As used in this article:

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

6 (b) "Diagnostic contact lens" means a contact lens used to determine a proper contact lens
7 fit.

8 (c) "Examination and evaluation", for the purpose of writing a valid prescription, means an
9 assessment of the ocular health and visual status of a patient that does not consist solely of objective
10 refractive data or information generated by an automated refracting device or other automated testing
11 device.

12 (d) "Licensee" means any of the following:

13 (1) A physician who is licensed or otherwise authorized to engage in the practice of medicine
14 under article three, chapter thirty of this code;

15 (2) A physician who is licensed or otherwise authorized to engage in the practice of
16 osteopathy under article fourteen, chapter thirty of this code; or

17 (3) An optometrist who is licensed or otherwise authorized to engage in the practice of
18 optometry under article eight, chapter thirty of this code.

19 (e) "Spectacles" means an optical instrument or device worn or used by an individual that
20 has one or more lenses designed to correct or enhance vision to address the visual needs of the
21 individual wearer and commonly known as glasses, including spectacles that may be adjusted to
22 achieve different types or levels of visual correction or enhancement.

1 (f) "Valid prescription" means one of the following, as applicable:

2 (1) For a contact lens, a written or electronic order by a licensee who has conducted an
3 examination and evaluation of a patient and has determined a satisfactory fit for the contact lens
4 based on an analysis of the physiological compatibility of the lens or the cornea and the physical fit
5 and refractive functionality of the lens on the patient's eye. To be a valid prescription under this
6 subdivision, it must include at least all of the following information:

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

8 (B) The contact lens type or brand name, or for a private label contact lens, the name of the
9 manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent
10 or similar brand;

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

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

14 (E) The number of refills;

15 (F) Specific wearing instructions and contact lens disposal parameters, if any;

16 (G) The patient's name;

17 (H) The date of the examination and evaluation;

18 (I) The date the prescription is originated;

19 (J) The prescribing licensee's name, address, and telephone number;

20 (K) The prescribing licensee's written or electronic signature, or other form of authentication;

21 and

22 (L) An expiration date of not less than one year from the date of the examination and

1 evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs
2 of the patient.

3 (2) For spectacles, a written or electronic order by a licensee who has examined and
4 evaluated a patient. To be a valid prescription under this subdivision, it must include at least all of
5 the following information:

6 (A) A statement that the prescription is for spectacles;

7 (B) As applicable and as specified for each eye, the lens power including the spherical power,
8 cylindrical power including axis, prism, and power of the multifocal addition;

9 (C) Any special requirements, the omission of which would, in the opinion of the prescribing
10 licensee, adversely affect the vision or ocular health of the patient. As used in this paragraph,
11 “special requirements” includes, but is not limited to, type of lens design, lens material, tint, or lens
12 treatments;

13 (D) The patient’s name;

14 (E) The date of the examination and evaluation;

15 (F) The date the prescription is originated;

16 (G) The prescribing licensee’s name, address, and telephone number;

17 (H) The prescribing licensee’s written or electronic signature, or other form of authentication;

18 and

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

22 **§16-46-2. Prescriptions.**

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

3 (b) The requirements of this article do not apply to any of the following:

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

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

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

8 **§16-46-3. Prohibited Actions.**

9 A person may not do any of the following:

10 (a) Employ objective or subjective physical means to determine the accommodative or
11 refractive condition or range or power of vision or muscular equilibrium of the human eye or
12 prescribe spectacles or contact lenses based on that determination unless that activity is performed
13 by a licensee or performed by a person under the direct supervision of a licensee who is actually
14 present in the building while that determination is taking place.

15 (b) Dispense, give, or sell spectacles or contact lenses unless dispensed, given, or sold
16 pursuant to a valid prescription.

17 (c) Use an automated refractor or other automated testing device to generate objective
18 refractive data unless that use is under the direct supervision of a licensee.

19 **§16-46-4. Enforcement.**

20 (a) Except as otherwise provided in this article, the administration and enforcement of this
21 article is the responsibility of the West Virginia Board of Optometry and sections eighteen, nineteen,
22 twenty and twenty-one, article eight, chapter thirty of this code for complaints, investigations, due

1 process procedure, disciplinary action, hearings, rights of appeal, judicial review and criminal
2 proceedings shall be applicable to any violations of this article.

3 (b) If necessary, the West Virginia Board of Optometry may promulgate procedural,
4 legislative or interpretive rules, in accordance with the provisions of article three, chapter
5 twenty-nine-a of this code regarding the implementation, administration or enforcement of this
6 article.

7 (c) The West Virginia Board of Optometry is not required to wait until harm to human health
8 has occurred to initiate an investigation under this section.

9 **§16-46-5. Criminal Penalty for violation.**

10 A person violating this article is guilty of a misdemeanor and, upon conviction thereof, shall
11 be fined not less than \$1,000 nor more than \$5,000 or confined in jail not more than six months, or
12 both fined and confined.

NOTE: The purpose of this bill is to protect consumers by requiring a licensee to be directly involved in any prescription written for contact lenses and spectacles.

This article is new; therefore, it has been completely underscored.