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By: **Delegates Morhaim, Arnick, Owings, Stull, Weir, Kach, Elliott, Finifter,  
Zirkin, and Bronrott**

Introduced and read first time: February 1, 1999

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Opticians Act**

3 FOR the purpose of requiring the certification of certain opticians by the State Board  
4 of Physician Quality Assurance; providing that this Act does not limit the rights  
5 of certain persons or dealers or require a certain reimbursement for certain  
6 services; specifying the qualifications for certification on or before a certain  
7 date; providing for the term and renewal of certification on or before a certain  
8 date; requiring a certificate holder to display a certain certificate in a certain  
9 manner; authorizing the Board to investigate certain complaints and to send a  
10 copy of the complaints to the Consumer Protection Division of the Office of the  
11 Attorney General; authorizing the Board, subject to certain procedural  
12 requirements, to take certain disciplinary actions against certain persons on  
13 certain grounds; authorizing the Board to impose a fine under certain  
14 circumstances for certain purposes; requiring the Board to take certain action  
15 after the filing of certain charges; providing for the effectiveness and retention  
16 of a certain order of the Board and the disposition of a certain certificate;  
17 specifying certain rights of appeal by certain persons; authorizing the Board to  
18 adopt certain regulations; requiring the Board to invite and consider proposals  
19 from certain persons before adopting certain regulations; prohibiting the  
20 unauthorized practice of ophthalmic dispensing without a certain certification  
21 and certain other acts; providing a certain penalty for certain violations;  
22 defining certain terms; and generally relating to the certification of certain  
23 opticians.

24 BY adding to

25 Article - Health Occupations

26 Section 10A-101 through 10A-501, inclusive, to be under the new title "Title  
27 10A. Opticians"

28 Annotated Code of Maryland

29 (1994 Replacement Volume and 1998 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
31 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Health Occupations**

## 2 TITLE 10A. OPTICIANS.

## 3 SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

4 10A-101.

5 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

6 (B) "BOARD" MEANS THE STATE BOARD OF PHYSICIAN QUALITY ASSURANCE  
7 ESTABLISHED UNDER TITLE 14 OF THIS ARTICLE.8 (C) "CERTIFICATE" MEANS A CERTIFICATE ISSUED BY THE BOARD TO  
9 PRACTICE OPHTHALMIC DISPENSING.10 (D) "CERTIFIED OPTICIAN" MEANS AN OPTICIAN WHO IS CERTIFIED BY THE  
11 BOARD TO PRACTICE OPHTHALMIC DISPENSING.

12 (E) "PRACTICE OPHTHALMIC DISPENSING" MEANS:

13 (1) ON THE BASIS OF A PRESCRIPTION FROM A LICENSED OPTOMETRIST  
14 OR PHYSICIAN, TO DESIGN, VERIFY, AND DELIVER TO THE INTENDED WEARER, USING  
15 STANDARD OPHTHALMIC EQUIPMENT, LENSES, FRAMES, CONTACT LENSES, AND  
16 OTHER SPECIALLY FABRICATED OPTICAL DEVICES;17 (2) TO TAKE MEASUREMENTS TO DETERMINE THE SIZE, SHAPE, AND  
18 SPECIFICATIONS OF THE LENSES, FRAMES, CONTACT LENSES, OR LENS FORMS BEST  
19 SUITED TO THE INTENDED WEARER'S NEEDS;20 (3) TO PREPARE AND DELIVER WORK ORDERS TO LABORATORY  
21 TECHNICIANS ENGAGED IN GRINDING LENSES AND FABRICATING EYEWEAR;22 (4) TO VERIFY THE QUALITY OF FINISHED OPHTHALMIC PRODUCTS,  
23 INCLUDING THE ADJUSTMENT OF LENSES OR FRAMES TO THE INTENDED WEARER'S  
24 FACE OR EYES;25 (5) TO REPLACE, REPAIR, OR REPRODUCE PREVIOUSLY PREPARED  
26 OPHTHALMIC LENSES, CONTACT LENSES, OR OTHER SPECIALLY FABRICATED  
27 OPHTHALMIC DEVICES; AND28 (6) TO ADJUST, REPLACE, REPAIR, OR REPRODUCE PREVIOUSLY  
29 PREPARED OPHTHALMIC FRAMES.30 (F) (1) "PRESCRIPTION" MEANS A WRITTEN DIRECTION FROM A LICENSED  
31 PHYSICIAN OR OPTOMETRIST OR A WRITTEN RECORD OF A VERBAL DIRECTION FROM  
32 A LICENSED PHYSICIAN OR OPTOMETRIST FOR THERAPEUTIC OR CORRECTIVE  
33 LENSES, OR CONTACT LENSES, WHICH CONSIST OF THE REFRACTIVE POWER AND,  
34 WHEN NECESSARY, THE VERTEX DISTANCE, CYLINDER AXIS, AND PRISM.

1 (2) "PRESCRIPTION" DOES NOT INCLUDE A REPLACEMENT CONTACT  
2 LENS PRESCRIPTION.

3 10A-102.

4 (A) IN THIS SECTION, "SUPERVISION" MEANS THE PROVISION OF:

5 (1) DIRECTION AND CONTROL THROUGH PERSONAL INSPECTION AND  
6 EVALUATION OF WORK; AND

7 (2) CONSULTATION AND INSTRUCTION AS NEEDED.

8 (B) THIS TITLE DOES NOT LIMIT THE RIGHT OF:

9 (1) A PERSON TO PRACTICE A HEALTH OCCUPATION THAT THE PERSON  
10 IS AUTHORIZED TO PRACTICE UNDER THIS ARTICLE;

11 (2) A DEALER OR PERSON TO SELL PRESCRIPTION EYEGLASSES OR  
12 LENSES TO A LICENSED OPTOMETRIST, PHYSICIAN, OR CERTIFIED OPTICIAN;

13 (3) A DEALER OR PERSON TO SELL EYEGLASSES OR LENSES IF THE  
14 DEALER OR PERSON DOES NOT PRACTICE OR CLAIM TO PRACTICE OPHTHALMIC  
15 DISPENSING; OR

16 (4) A PERSON TO PRACTICE OPHTHALMIC DISPENSING IF THE PRACTICE  
17 IS CONDUCTED UNDER THE SUPERVISION OF A LICENSED PHYSICIAN,  
18 OPTOMETRIST, OR A CERTIFIED OPTICIAN.

19 (C) NOTWITHSTANDING THAT A CERTIFIED OPTICIAN MAY PROVIDE  
20 OPHTHALMIC DISPENSING SERVICES WITHIN THE SCOPE OF THE CERTIFIED  
21 OPTICIAN'S PRACTICE, NOTHING IN THIS TITLE REQUIRES A NONPROFIT HEALTH  
22 SERVICE PLAN, INSURER, HEALTH MAINTENANCE ORGANIZATION, OR PERSON  
23 ACTING AS A THIRD PARTY ADMINISTRATOR TO REIMBURSE A CERTIFIED OPTICIAN  
24 FOR ANY SERVICES THE CERTIFIED OPTICIAN RENDERS.

25 (D) NOTWITHSTANDING THAT THIS TITLE PROVIDES FOR CERTIFICATION OF  
26 OPTICIANS AND THAT A CERTIFIED OPTICIAN MAY PRACTICE OPHTHALMIC  
27 DISPENSING WITHIN THE SCOPE AUTHORIZED UNDER THIS TITLE, THIS TITLE DOES  
28 NOT EXPAND THE SCOPE OF SERVICES OF CERTIFIED OPTICIANS TO INCLUDE  
29 REFRACTION OR REFRACTIVE SERVICES, AND A CERTIFIED OPTICIAN IS EXPRESSLY  
30 PROHIBITED FROM PRACTICING REFRACTION OR REFRACTIVE SERVICES.

31 SUBTITLE 2. CERTIFICATION.

32 10A-201.

33 EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, AN INDIVIDUAL SHALL BE  
34 CERTIFIED BY THE BOARD BEFORE THE INDIVIDUAL MAY PRACTICE OPHTHALMIC  
35 DISPENSING IN THIS STATE.

1 10A-202.

2 (A) TO QUALIFY FOR AN INITIAL CERTIFICATE ON OR BEFORE OCTOBER 1,  
3 2004, AN INDIVIDUAL SHALL SUBMIT TO THE BOARD SATISFACTORY EVIDENCE OF  
4 SCHOLASTIC OR PROFESSIONAL EDUCATION OR EXPERIENCE AT LEAST EQUAL TO  
5 THE FOLLOWING:

6 (1) A CURRENT AND VALID CERTIFICATION BY THE AMERICAN BOARD  
7 OF OPTICIANRY AND, IF THE APPLICANT IS TO DISPENSE CONTACT LENSES, A  
8 CURRENT AND VALID CERTIFICATION BY THE NATIONAL CONTACT LENS  
9 EXAMINERS; OR

10 (2) THE SUCCESSFUL COMPLETION OF AN EQUIVALENT COURSE OF  
11 STUDY OFFERED BY AN ACCREDITED COMMUNITY COLLEGE.

12 (B) THE BOARD MAY WAIVE THE REQUIREMENTS OF SUBSECTION (A) OF THIS  
13 SECTION FOR AN APPLICANT WHO DEMONSTRATES EXPERIENCE AND COMPETENCY  
14 IN THE PRACTICE OF OPHTHALMIC DISPENSING.

15 (C) AN APPLICANT WHO IS CERTIFIED OR LICENSED TO PRACTICE  
16 OPHTHALMIC DISPENSING IN ANY OTHER STATE SHALL SUBMIT SATISFACTORY  
17 EVIDENCE OF SCHOLASTIC AND PROFESSIONAL EDUCATION THAT IS AT LEAST  
18 EQUAL TO THE STANDARDS IN EFFECT AT THE TIME OF THE APPLICANT'S  
19 COMPLETION OF SCHOLASTIC AND PROFESSIONAL EDUCATION.

20 (D) PAYS TO THE BOARD A FEE TO BE DETERMINED BY THE BOARD.

21 10A-203.

22 (A) UNLESS OTHERWISE DETERMINED BY THE BOARD, EACH TERM OF  
23 CERTIFICATION IS 2 YEARS.

24 (B) BEFORE A CERTIFICATE EXPIRES, THE CERTIFICATE HOLDER  
25 PERIODICALLY MAY RENEW THE CERTIFICATE FOR AN ADDITIONAL TERM, IF THE  
26 CERTIFICATE HOLDER:

27 (1) OTHERWISE IS ENTITLED TO BE CERTIFIED;

28 (2) PAYS TO THE BOARD A FEE TO BE DETERMINED BY THE BOARD; AND

29 (3) SUBMITS TO THE BOARD A RENEWAL APPLICATION ON THE FORM  
30 THAT THE BOARD REQUIRES.

31 (C) TO RENEW A CERTIFICATE ON OR AFTER OCTOBER 1, 2004, A CERTIFICATE  
32 HOLDER SHALL SUBMIT TO THE BOARD SATISFACTORY EVIDENCE OF SCHOLASTIC  
33 OR PROFESSIONAL EDUCATION OR EXPERIENCE AT LEAST EQUAL TO THE  
34 FOLLOWING:

35 (1) A CURRENT AND VALID CERTIFICATION BY THE AMERICAN BOARD  
36 OF OPTICIANRY AND, IF THE APPLICANT IS TO DISPENSE CONTACT LENSES, A

1 CURRENT AND VALID CERTIFICATION BY THE NATIONAL CONTACT LENS  
2 EXAMINERS; OR

3 (2) THE SUCCESSFUL COMPLETION OF AN EQUIVALENT COURSE OF  
4 STUDY OFFERED BY AN ACCREDITED COMMUNITY COLLEGE.

5 (D) THE BOARD MAY WAIVE THE REQUIREMENTS OF SUBSECTION (C) OF THIS  
6 SECTION FOR AN APPLICANT WHO DEMONSTRATES EXPERIENCE AND COMPETENCY  
7 IN THE PRACTICE OF OPHTHALMIC DISPENSING.

8 (E) THE BOARD SHALL RENEW THE CERTIFICATE OF EACH CERTIFICATE  
9 HOLDER WHO MEETS THE REQUIREMENTS OF THIS SECTION.

10 10A-204.

11 EACH CERTIFICATE HOLDER SHALL DISPLAY THE CERTIFICATE  
12 CONSPICUOUSLY AT ALL TIMES IN THE CERTIFICATE HOLDER'S OFFICE OR PLACE  
13 OF EMPLOYMENT WHILE ENGAGING IN THE PRACTICE OF OPHTHALMIC  
14 DISPENSING.

15 SUBTITLE 3. MISCELLANEOUS PROVISIONS.

16 10A-301.

17 THE BOARD MAY:

18 (1) INVESTIGATE ANY COMPLAINT REGARDING CERTIFICATION OR  
19 QUALITY OF CARE IN OPHTHALMIC DISPENSING AND SHALL SEND A COPY OF EACH  
20 COMPLAINT THE BOARD RECEIVES TO THE CONSUMER PROTECTION DIVISION OF  
21 THE OFFICE OF THE ATTORNEY GENERAL; AND

22 (2) ADOPT REGULATIONS FOR THE ENFORCEMENT OF THIS TITLE,  
23 INCLUDING THE IMPOSITION OF A FINE NOT TO EXCEED \$500 FOR A SINGLE  
24 VIOLATION.

25 10A-302.

26 SUBJECT TO THE HEARING PROVISIONS OF § 10A-303 OF THIS SUBTITLE, THE  
27 BOARD, ON THE AFFIRMATIVE VOTE OF A MAJORITY OF ITS FULL AUTHORIZED  
28 MEMBERSHIP, MAY DENY A CERTIFICATE TO ANY APPLICANT OR REPRIMAND ANY  
29 CERTIFICATE HOLDER, OR SUSPEND OR REVOKE A CERTIFICATE IF THE  
30 CERTIFICATE HOLDER:

31 (1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO  
32 OBTAIN A CERTIFICATE FOR THE APPLICANT OR CERTIFICATE HOLDER OR FOR  
33 ANOTHER;

34 (2) FRAUDULENTLY OR DECEPTIVELY USES A CERTIFICATE;

1 (3) FAILS TO DISPLAY THE CERTIFICATE AS REQUIRED UNDER § 10A-204  
2 OF THIS TITLE;

3 (4) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED  
4 BY THE BOARD; OR

5 (5) VIOLATES ANY REGULATION ADOPTED BY THE BOARD.

6 10A-303.

7 (A) EXCEPT AS OTHERWISE PROVIDED IN THE ADMINISTRATIVE PROCEDURE  
8 ACT, BEFORE THE BOARD TAKES ANY ACTION UNDER § 10A-302 OF THIS SUBTITLE, IT  
9 SHALL GIVE THE INDIVIDUAL AGAINST WHOM THE ACTION IS CONTEMPLATED AN  
10 OPPORTUNITY FOR A HEARING BEFORE A HEARING OFFICER.

11 (B) THE HEARING OFFICER SHALL GIVE NOTICE AND HOLD THE HEARING IN  
12 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT EXCEPT THAT FACTUAL  
13 FINDINGS SHALL BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

14 (C) THE INDIVIDUAL MAY BE REPRESENTED AT THE HEARING BY COUNSEL.

15 (D) IF AFTER DUE NOTICE THE INDIVIDUAL AGAINST WHOM THE ACTION IS  
16 CONTEMPLATED FAILS OR REFUSES TO APPEAR, THE HEARING OFFICER MAY HEAR  
17 AND REFER THE MATTER TO THE BOARD FOR DISPOSITION.

18 (E) AFTER PERFORMING ANY NECESSARY HEARING UNDER THIS SECTION,  
19 THE HEARING OFFICER SHALL REFER PROPOSED FACTUAL FINDINGS TO THE BOARD  
20 FOR THE BOARD'S DISPOSITION.

21 (F) THE BOARD MAY ADOPT REGULATIONS TO GOVERN THE TAKING OF  
22 DEPOSITIONS AND DISCOVERY IN THE HEARING OF CHARGES.

23 (G) THE HEARING OF CHARGES MAY NOT BE STAYED OR CHALLENGED BY ANY  
24 PROCEDURAL DEFECTS ALLEGED TO HAVE OCCURRED PRIOR TO THE FILING OF  
25 CHARGES.

26 10A-304.

27 (A) IF AFTER A HEARING UNDER § 10A-303 OF THIS SUBTITLE, THE BOARD  
28 FINDS THAT THERE ARE GROUNDS UNDER § 10A-302 OF THIS SUBTITLE TO SUSPEND  
29 OR REVOKE A CERTIFICATE TO PRACTICE OPHTHALMIC DISPENSING, OR TO  
30 REPRIMAND A CERTIFICATE HOLDER, THE BOARD MAY IMPOSE A FINE SUBJECT TO  
31 THE BOARD'S REGULATIONS:

32 (1) INSTEAD OF SUSPENDING THE CERTIFICATE HOLDER; OR

33 (2) IN ADDITION TO SUSPENDING OR REVOKING THE CERTIFICATE OR  
34 REPRIMANDING THE CERTIFICATE HOLDER.

35 (B) THE BOARD SHALL PAY ANY FINES COLLECTED UNDER THIS SECTION  
36 INTO THE GENERAL FUND OF THE STATE.

1 10A-305.

2 (A) AFTER THE CHARGES ARE FILED, IF A MAJORITY OF THE FULL  
3 AUTHORIZED MEMBERSHIP OF THE BOARD FINDS THAT THERE ARE GROUNDS FOR  
4 AN ACTION UNDER § 10A-302 OF THIS SUBTITLE, THE BOARD SHALL PASS AN ORDER  
5 IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

6 (B) AFTER THE CHARGES ARE FILED, IF THE BOARD FINDS THAT THERE ARE  
7 NO GROUNDS FOR ACTION UNDER § 10A-302 OF THIS SUBTITLE, THE BOARD:

8 (1) SHALL IMMEDIATELY DISMISS THE CHARGES AND EXONERATE THE  
9 CERTIFICATE HOLDER;

10 (2) (I) SHALL EXPUNGE ALL RECORDS OF THE CHARGES 3 YEARS  
11 AFTER THE CHARGES ARE DISMISSED; OR

12 (II) IF THE CERTIFICATE HOLDER EXECUTES A DOCUMENT  
13 RELEASING THE BOARD FROM ANY LIABILITY RELATED TO THE CHARGES, SHALL  
14 IMMEDIATELY EXPUNGE ALL RECORDS OF THE CHARGES; AND

15 (3) MAY NOT TAKE ANY FURTHER ACTION ON THE CHARGES.

16 10A-306.

17 (A) AN ORDER OF SUSPENSION OR REVOCATION IS EFFECTIVE, IN  
18 ACCORDANCE WITH ITS TERMS AND CONDITIONS, AS SOON AS THE BOARD FILES IT  
19 UNDER THIS TITLE.

20 (B) ON SUSPENSION OR REVOCATION OF ANY CERTIFICATE, THE  
21 CERTIFICATE HOLDER SHALL SURRENDER THE CERTIFICATE TO THE BOARD.

22 (C) AT THE END OF THE SUSPENSION PERIOD, THE BOARD SHALL RETURN TO  
23 THE CERTIFICATE HOLDER ANY LICENSE CERTIFICATE SURRENDERED UNDER THIS  
24 SECTION.

25 (D) THE BOARD SHALL KEEP A COPY OF THE ORDER OF SUSPENSION OR  
26 REVOCATION AS A PERMANENT RECORD.

27 10A-307.

28 (A) EXCEPT AS PROVIDED IN THIS SECTION FOR AN ACTION UNDER § 10A-302  
29 OF THIS SUBTITLE, ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD IN  
30 A CONTESTED CASE, AS DEFINED IN THE ADMINISTRATIVE PROCEDURE ACT, MAY:

31 (1) APPEAL THAT DECISION TO THE BOARD OF REVIEW; AND

32 (2) THEN TAKE ANY FURTHER APPEAL ALLOWED BY THE  
33 ADMINISTRATIVE PROCEDURE ACT.

1 (B) (1) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD  
2 UNDER § 10A-302 OF THIS SUBTITLE MAY NOT APPEAL TO THE SECRETARY OR BOARD  
3 OF REVIEW BUT MAY TAKE A DIRECT JUDICIAL APPEAL.

4 (2) THE APPEAL SHALL BE MADE AS PROVIDED FOR JUDICIAL REVIEW  
5 OF FINAL DECISIONS IN THE ADMINISTRATIVE PROCEDURE ACT.

6 (C) AN ORDER OF THE BOARD MAY NOT BE STAYED PENDING REVIEW.

7 SUBTITLE 4. PROHIBITED ACTS; PENALTIES.

8 10A-401.

9 EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT  
10 PRACTICE, ATTEMPT TO PRACTICE, OR OFFER TO PRACTICE OPHTHALMIC  
11 DISPENSING UNLESS CERTIFIED BY THE BOARD.

12 10A-402.

13 UNLESS A PERSON IS CERTIFIED TO PRACTICE OPHTHALMIC DISPENSING, THE  
14 PERSON MAY NOT:

15 (1) REPRESENT TO THE PUBLIC BY TITLE, DESCRIPTION OF SERVICES,  
16 METHODS, OR PROCEDURES, OR OTHERWISE, THAT THE PERSON IS CERTIFIED BY  
17 THE BOARD TO PRACTICE OPHTHALMIC DISPENSING IN THIS STATE;

18 (2) USE ANY TITLE, ABBREVIATION, SIGN, CARD, OR OTHER  
19 REPRESENTATION THAT THE PERSON IS A CERTIFIED OPTICIAN; OR

20 (3) USE THE TITLE "C.O." OR THE WORDS "CERTIFIED OPTICIAN" WITH  
21 THE INTENT TO REPRESENT THAT THE PERSON PRACTICES OPHTHALMIC  
22 DISPENSING.

23 10A-403.

24 ANY PERSON WHO VIOLATES § 10A-401 OR § 10A-402 OF THIS SUBTITLE IS  
25 SUBJECT TO A FINE NOT EXCEEDING \$500.

26 SUBTITLE 5. SHORT TITLE.

27 10A-501.

28 THIS TITLE MAY BE CITED AS THE "MARYLAND OPTICIANS ACT".

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 1999.