

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 853

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding part 55A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 55A

EYE CARE CONSUMER PROTECTION

SEC. 5551. (1) THIS PART MAY BE REFERRED TO AS THE "EYE CARE
CONSUMER PROTECTION LAW".

(2) AS USED IN THIS PART, THE WORDS AND PHRASES DEFINED IN
SECTIONS 5553 TO 5557 HAVE THE MEANINGS ASCRIBED TO THEM IN THOSE
SECTIONS.

(3) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS CODE.

SEC. 5553. (1) "CONTACT LENS" MEANS A LENS PLACED DIRECTLY ON

1 THE SURFACE OF THE EYE, REGARDLESS OF WHETHER IT IS INTENDED TO
2 CORRECT A VISUAL DEFECT. CONTACT LENS INCLUDES, BUT IS NOT LIMITED
3 TO, A COSMETIC, THERAPEUTIC, OR CORRECTIVE LENS.

4 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND
5 REGULATORY AFFAIRS.

6 (3) "DIAGNOSTIC CONTACT LENS" MEANS A CONTACT LENS USED TO
7 DETERMINE A PROPER CONTACT LENS FIT.

8 (4) "EXAMINATION AND EVALUATION", FOR THE PURPOSE OF WRITING A
9 VALID PRESCRIPTION, MEANS AN ASSESSMENT OF THE OCULAR HEALTH AND
10 VISUAL STATUS OF A PATIENT THAT DOES NOT CONSIST SOLELY OF
11 OBJECTIVE REFRACTIVE DATA OR INFORMATION GENERATED BY AN AUTOMATED
12 REFRACTING DEVICE OR OTHER AUTOMATED TESTING DEVICE.

13 SEC. 5555. (1) "LICENSEE" MEANS ANY OF THE FOLLOWING:

14 (A) A PHYSICIAN WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
15 ENGAGE IN THE PRACTICE OF MEDICINE UNDER PART 170 AND WHO
16 SPECIALIZES IN EYE CARE.

17 (B) A PHYSICIAN WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
18 ENGAGE IN THE PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY UNDER
19 PART 175 AND WHO SPECIALIZES IN EYE CARE.

20 (C) AN OPTOMETRIST WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
21 ENGAGE IN THE PRACTICE OF OPTOMETRY UNDER PART 174.

22 (2) "SPECTACLES" MEANS AN OPTICAL INSTRUMENT OR DEVICE WORN OR
23 USED BY AN INDIVIDUAL THAT HAS 1 OR MORE LENSES DESIGNED TO CORRECT
24 OR ENHANCE VISION TO ADDRESS THE VISUAL NEEDS OF THE INDIVIDUAL
25 WEARER AND COMMONLY KNOWN AS GLASSES, INCLUDING SPECTACLES THAT MAY
26 BE ADJUSTED BY THE WEARER TO ACHIEVE DIFFERENT TYPES OR LEVELS OF
27 VISUAL CORRECTION OR ENHANCEMENT.

1 SEC. 5557. "VALID PRESCRIPTION" MEANS 1 OF THE FOLLOWING, AS
2 APPLICABLE:

3 (A) FOR A CONTACT LENS, A WRITTEN OR ELECTRONIC ORDER BY A
4 LICENSEE WHO HAS CONDUCTED AN EXAMINATION AND EVALUATION OF A
5 PATIENT AND HAS DETERMINED A SATISFACTORY FIT FOR THE CONTACT LENS
6 BASED ON AN ANALYSIS OF THE PHYSIOLOGICAL COMPATIBILITY OF THE LENS
7 ON THE CORNEA AND THE PHYSICAL FIT AND REFRACTIVE FUNCTIONALITY OF
8 THE LENS ON THE PATIENT'S EYE. TO BE A VALID PRESCRIPTION UNDER
9 THIS SUBDIVISION, IT MUST INCLUDE AT LEAST ALL OF THE FOLLOWING
10 INFORMATION:

11 (i) A STATEMENT THAT THE PRESCRIPTION IS FOR A CONTACT LENS.

12 (ii) THE CONTACT LENS TYPE OR BRAND NAME, OR FOR A PRIVATE
13 LABEL CONTACT LENS, THE NAME OF THE MANUFACTURER, TRADE NAME OF THE
14 PRIVATE LABEL BRAND, AND, IF APPLICABLE, TRADE NAME OF THE
15 EQUIVALENT OR SIMILAR BRAND.

16 (iii) ALL SPECIFICATIONS NECESSARY TO ORDER AND FABRICATE THE
17 CONTACT LENS, INCLUDING POWER, MATERIAL, BASE CURVE OR APPROPRIATE
18 DESIGNATION, AND DIAMETER, IF APPLICABLE.

19 (iv) THE QUANTITY OF CONTACT LENSES TO BE DISPENSED.

20 (v) THE NUMBER OF REFILLS.

21 (vi) SPECIFIC WEARING INSTRUCTIONS AND CONTACT LENS DISPOSAL
22 PARAMETERS, IF ANY.

23 (vii) THE PATIENT'S NAME.

24 (viii) THE DATE OF THE EXAMINATION AND EVALUATION.

25 (ix) THE DATE THE PRESCRIPTION IS ORIGINATED.

26 (x) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE
27 NUMBER.

1 (xi) THE PRESCRIBING LICENSEE'S WRITTEN OR ELECTRONIC
2 SIGNATURE, OR OTHER FORM OF AUTHENTICATION.

3 (xii) AN EXPIRATION DATE OF NOT LESS THAN 1 YEAR FROM THE DATE
4 OF THE EXAMINATION AND EVALUATION OR A STATEMENT OF THE REASONS WHY
5 A SHORTER TIME IS APPROPRIATE BASED ON THE MEDICAL NEEDS OF THE
6 PATIENT.

7 (B) FOR SPECTACLES, A WRITTEN OR ELECTRONIC ORDER BY A
8 LICENSEE WHO HAS EXAMINED AND EVALUATED A PATIENT. TO BE A VALID
9 PRESCRIPTION UNDER THIS SUBDIVISION, IT MUST INCLUDE AT LEAST ALL
10 OF THE FOLLOWING INFORMATION:

11 (i) A STATEMENT THAT THE PRESCRIPTION IS FOR SPECTACLES.

12 (ii) AS APPLICABLE AND AS SPECIFIED FOR EACH EYE, THE LENS
13 POWER INCLUDING THE SPHERICAL POWER, CYLINDRICAL POWER INCLUDING
14 AXIS, PRISM, AND POWER OF THE MULTIFOCAL ADDITION.

15 (iii) ANY SPECIAL REQUIREMENTS, THE OMISSION OF WHICH WOULD, IN
16 THE OPINION OF THE PRESCRIBING LICENSEE, ADVERSELY AFFECT THE
17 VISION OR OCULAR HEALTH OF THE PATIENT. AS USED IN THIS
18 SUBPARAGRAPH, "SPECIAL REQUIREMENTS" INCLUDES, BUT IS NOT LIMITED
19 TO, TYPE OF LENS DESIGN, LENS MATERIAL, TINT, OR LENS TREATMENTS.

20 (iv) THE PATIENT'S NAME.

21 (v) THE DATE OF THE EXAMINATION AND EVALUATION.

22 (vi) THE DATE THE PRESCRIPTION IS ORIGINATED.

23 (vii) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE
24 NUMBER.

25 (viii) THE PRESCRIBING LICENSEE'S WRITTEN OR ELECTRONIC
26 SIGNATURE, OR OTHER FORM OF AUTHENTICATION.

27 (ix) AN EXPIRATION DATE OF NOT LESS THAN 1 YEAR FROM THE DATE

1 OF THE EXAMINATION AND EVALUATION OR A STATEMENT OF THE REASONS WHY
2 A SHORTER TIME IS APPROPRIATE BASED ON THE MEDICAL NEEDS OF THE
3 PATIENT.

4 SEC. 5559. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2),
5 SPECTACLES AND CONTACT LENSES ARE MEDICAL DEVICES AND ARE SUBJECT
6 TO THE REQUIREMENTS OF THIS PART FOR THE PROTECTION OF CONSUMERS.

7 (2) THIS PART DOES NOT APPLY TO ANY OF THE FOLLOWING:

8 (A) A DIAGNOSTIC CONTACT LENS THAT IS USED BY A LICENSEE
9 DURING AN EXAMINATION AND EVALUATION.

10 (B) AN OPTICAL INSTRUMENT OR DEVICE THAT IS NOT INTENDED TO
11 CORRECT OR ENHANCE VISION.

12 (C) AN OPTICAL INSTRUMENT OR DEVICE THAT IS NOT MADE,
13 DESIGNED, OR SOLD SPECIFICALLY FOR A PARTICULAR INDIVIDUAL.

14 SEC. 5561. (1) A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

15 (A) EMPLOY OBJECTIVE OR SUBJECTIVE PHYSICAL MEANS TO DETERMINE
16 THE ACCOMMODATIVE OR REFRACTIVE CONDITION OR RANGE OF POWER OF
17 VISION OR MUSCULAR EQUILIBRIUM OF THE HUMAN EYE UNLESS THAT
18 ACTIVITY IS PERFORMED BY A LICENSEE OR UNDER THE SUPERVISION OF A
19 LICENSEE.

20 (B) PRESCRIBE SPECTACLES OR CONTACT LENSES BASED ON A
21 DETERMINATION DESCRIBED IN SUBDIVISION (A) UNLESS THAT ACTIVITY IS
22 PERFORMED BY A LICENSEE.

23 (C) DISPENSE, GIVE, OR SELL SPECTACLES OR CONTACT LENSES
24 UNLESS DISPENSED, GIVEN, OR SOLD PURSUANT TO A VALID PRESCRIPTION.

25 (D) USE AN AUTOMATED REFRACTOR OR OTHER AUTOMATED TESTING
26 DEVICE TO GENERATE OBJECTIVE REFRACTIVE DATA UNLESS THAT USE IS BY
27 A LICENSEE OR UNDER THE SUPERVISION OF A LICENSEE.

1 (2) AS USED IN THIS SECTION, "SUPERVISION" MEANS THAT TERM AS
2 DEFINED IN SECTION 16109.

3 SEC. 5563. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, THE
4 ADMINISTRATION AND ENFORCEMENT OF THIS PART IS THE RESPONSIBILITY
5 OF THE DEPARTMENT.

6 (2) THE DEPARTMENT MAY PROMULGATE RULES UNDER THE
7 ADMINISTRATIVE PROCEDURES ACT OF 1969 THAT IT DETERMINES NECESSARY
8 TO IMPLEMENT, ADMINISTER, AND ENFORCE THIS PART.

9 SEC. 5565. (1) A PERSON OR GOVERNMENTAL ENTITY THAT BELIEVES
10 THAT A VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER THIS PART
11 HAS OCCURRED OR HAS BEEN ATTEMPTED MAY MAKE AN ALLEGATION OF THAT
12 FACT TO THE DEPARTMENT IN WRITING.

13 (2) IF, UPON REVIEWING AN ALLEGATION UNDER SUBSECTION (1), THE
14 DEPARTMENT DETERMINES THERE IS A REASONABLE BASIS TO BELIEVE THE
15 EXISTENCE OF A VIOLATION OR ATTEMPTED VIOLATION OF THIS PART OR A
16 RULE PROMULGATED UNDER THIS PART, THE DEPARTMENT SHALL INVESTIGATE.

17 (3) THE DEPARTMENT MAY HOLD HEARINGS, ADMINISTER OATHS, AND
18 ORDER TESTIMONY TO BE TAKEN AT A HEARING OR BY DEPOSITION CONDUCTED
19 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

20 (4) THE DEPARTMENT MAY PROCEED UNDER SECTION 5567 IF IT
21 DETERMINES THAT A VIOLATION OF THIS PART OR A RULE PROMULGATED
22 UNDER THIS PART HAS OCCURRED.

23 (5) THIS SECTION DOES NOT REQUIRE THE DEPARTMENT TO WAIT UNTIL
24 HARM TO HUMAN HEALTH HAS OCCURRED TO INITIATE AN INVESTIGATION
25 UNDER THIS SECTION.

26 SEC. 5567. (1) AFTER A DETERMINATION AS DESCRIBED IN SECTION
27 5565(4), THE DEPARTMENT MAY ORDER A PERSON TO CEASE AND DESIST FROM

1 A VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER THIS PART.

2 (2) A PERSON ORDERED TO CEASE AND DESIST UNDER THIS SECTION IS
3 ENTITLED TO A HEARING BEFORE THE DEPARTMENT IF A WRITTEN REQUEST
4 FOR A HEARING IS FILED WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF
5 THE ORDER.

6 (3) THE DEPARTMENT MAY ASSESS COSTS RELATED TO THE
7 INVESTIGATION OF A VIOLATION OF THIS PART OR RULES PROMULGATED
8 UNDER THIS PART. THE DEPARTMENT MAY ISSUE AN ORDER FOR COSTS
9 ASSESSED UNDER THIS SUBSECTION AFTER A HEARING HELD IN COMPLIANCE
10 WITH THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

11 (4) THE DEPARTMENT MAY REFER A CASE FOR FURTHER ENFORCEMENT
12 ACTION UNDER SECTION 5569 OR 5571 AGAINST A PERSON THAT FAILS TO
13 COMPLY WITH A CEASE AND DESIST ORDER THAT IS NOT CONTESTED OR THAT
14 IS UPHELD FOLLOWING A HEARING.

15 (5) THE DEPARTMENT IS NOT REQUIRED TO ISSUE A CEASE AND DESIST
16 ORDER BEFORE TAKING ACTION UNDER SECTION 5569 OR 5571.

17 SEC. 5569. (1) THE DEPARTMENT MAY FILE A CIVIL ACTION IN A
18 COURT OF COMPETENT JURISDICTION SEEKING AN INJUNCTION OR OTHER
19 APPROPRIATE RELIEF TO ENFORCE THIS PART OR A RULE PROMULGATED UNDER
20 THIS PART.

21 (2) IN AN ACTION UNDER SUBSECTION (1), THE COURT MAY IMPOSE ON
22 A PERSON THAT VIOLATES OR ATTEMPTS TO VIOLATE THIS PART OR A RULE
23 PROMULGATED UNDER THIS PART A CIVIL FINE OF NOT LESS THAN \$5,000.00
24 FOR EACH VIOLATION OR ATTEMPTED VIOLATION. THE COURT MAY ALSO AWARD
25 COSTS OF AN INVESTIGATION AND ATTORNEY FEES FROM A PERSON THAT
26 VIOLATES OR ATTEMPTS TO VIOLATE THIS PART OR A RULE PROMULGATED
27 UNDER THIS PART.

Senate Bill No. 853 (H-1) as amended June 10, 2014

1 SEC. 5571. A PERSON THAT VIOLATES THIS PART OR A RULE
2 PROMULGATED UNDER THIS PART OR VIOLATES A CEASE AND DESIST ORDER
3 ISSUED UNDER THIS PART IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
4 IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT LESS THAN
5 \$5,000.00 OR MORE THAN \$25,000.00, OR BOTH. IF SUCCESSFUL IN
6 OBTAINING A CONVICTION, THE AGENCY PROSECUTING THE CASE IS ENTITLED
7 TO ACTUAL COSTS AND ATTORNEY FEES FROM THE DEFENDANT.
 [Enacting section 1. This amendatory act takes effect 90 days after
the date it is enacted into law.]