

# SENATE BILL No. 853

March 6, 2014, Introduced by Senators JONES, HUNE, MARLEAU, SCHUITMAKER, BIEDA, ROBERTSON, HOPGOOD, JANSEN, HILDENBRAND, ANANICH, SMITH, BOOHER, EMMONS, KOWALL, GREEN, WARREN, ROCCA, MEEKHOF, YOUNG, MOOLENAAR, HANSEN, JOHNSON, BRANDENBURG and PAPPAGEORGE and referred to the Committee on Health Policy.

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.

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1           SEC. 5553. (1) "CONTACT LENS" MEANS A LENS PLACED DIRECTLY ON  
2 THE SURFACE OF THE EYE, REGARDLESS OF WHETHER IT IS INTENDED TO  
3 CORRECT A VISUAL DEFECT. CONTACT LENS INCLUDES, BUT IS NOT LIMITED  
4 TO, A COSMETIC, THERAPEUTIC, OR CORRECTIVE LENS.

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

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

9           (4) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

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

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

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

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

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

24          (2) "SPECTACLES" MEANS AN OPTICAL INSTRUMENT OR DEVICE WORN OR  
25 USED BY AN INDIVIDUAL THAT HAS 1 OR MORE LENSES DESIGNED TO CORRECT  
26 OR ENHANCE VISION TO ADDRESS THE VISUAL NEEDS OF THE INDIVIDUAL  
27 WEARER AND COMMONLY KNOWN AS GLASSES, INCLUDING SPECTACLES THAT MAY

1 BE ADJUSTED BY THE WEARER TO ACHIEVE DIFFERENT TYPES OR LEVELS OF  
2 VISUAL CORRECTION OR ENHANCEMENT.

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

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

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

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

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

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

22 (v) THE NUMBER OF REFILLS.

23 (vi) SPECIFIC WEARING INSTRUCTIONS AND CONTACT LENS DISPOSAL  
24 PARAMETERS, IF ANY.

25 (vii) THE PATIENT'S NAME.

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

27 (ix) THE DATE THE PRESCRIPTION IS ORIGINATED.

1           (x) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE  
2 NUMBER.

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

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

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

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

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

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

22           (iv) THE PATIENT'S NAME.

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

24           (vi) THE DATE THE PRESCRIPTION IS ORIGINATED.

25           (vii) THE PRESCRIBING LICENSEE'S NAME, ADDRESS, AND TELEPHONE  
26 NUMBER.

27           (viii) THE PRESCRIBING LICENSEE'S WRITTEN OR ELECTRONIC

1 SIGNATURE, OR OTHER FORM OF AUTHENTICATION.

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

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

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

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

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

14 (C) AN OPTICAL INSTRUMENT OR DEVICE THAT IS SOLD WITHOUT  
15 CONSIDERATION OF THE VISUAL STATUS OF THE INDIVIDUAL WHO WILL USE  
16 THE OPTICAL INSTRUMENT OR DEVICE.

17 SEC. 5561. A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

18 (A) EMPLOY OBJECTIVE OR SUBJECTIVE PHYSICAL MEANS TO DETERMINE  
19 THE ACCOMMODATIVE OR REFRACTIVE CONDITION OR RANGE OF POWER OF  
20 VISION OR MUSCULAR EQUILIBRIUM OF THE HUMAN EYE OR PRESCRIBE  
21 SPECTACLES OR CONTACT LENSES BASED ON THAT DETERMINATION UNLESS  
22 THAT ACTIVITY IS PERFORMED BY A LICENSEE.

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

25 (C) USE AN AUTOMATED REFRACTOR OR OTHER AUTOMATED TESTING  
26 DEVICE TO GENERATE OBJECTIVE REFRACTIVE DATA UNLESS THAT USE IS  
27 UNDER THE SUPERVISION OF A LICENSEE. AS USED IN THIS SUBDIVISION,

1 "SUPERVISION" MEANS THAT TERM AS DEFINED IN SECTION 16109.

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

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

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

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

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

20 (4) THE DIRECTOR MAY PROCEED UNDER SECTION 5567 IF HE OR SHE  
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) THE DIRECTOR, UPON FINDING AFTER NOTICE AND AN  
27 OPPORTUNITY FOR A HEARING THAT A PERSON HAS VIOLATED OR ATTEMPTED

1 TO VIOLATE THIS PART OR A RULE PROMULGATED UNDER THIS PART, MAY  
2 IMPOSE AN ADMINISTRATIVE FINE OF NOT MORE THAN \$1,000.00 FOR EACH  
3 VIOLATION OR ATTEMPTED VIOLATION. IF THE DIRECTOR FINDS THAT A  
4 VIOLATION OR ATTEMPTED VIOLATION DID NOT RESULT IN SIGNIFICANT HARM  
5 TO HUMAN HEALTH, THE DIRECTOR MAY ISSUE A WARNING INSTEAD OF  
6 IMPOSING AN ADMINISTRATIVE FINE.

7 (2) THE DIRECTOR SHALL ADVISE THE ATTORNEY GENERAL OF THE  
8 FAILURE OF A PERSON TO PAY AN ADMINISTRATIVE FINE IMPOSED UNDER  
9 THIS SECTION. THE ATTORNEY GENERAL MAY BRING AN ACTION IN A COURT  
10 OF COMPETENT JURISDICTION FOR THE FAILURE TO PAY AN ADMINISTRATIVE  
11 FINE IMPOSED UNDER THIS SECTION.

12 (3) AT THE REQUEST OF THE DIRECTOR, THE ATTORNEY GENERAL MAY  
13 FILE A CIVIL ACTION SEEKING AN INJUNCTION OR OTHER APPROPRIATE  
14 RELIEF IN THE NAME OF THE PEOPLE OF THIS STATE TO ENFORCE THIS PART  
15 AND THE RULES PROMULGATED UNDER THIS PART. THE COURT MAY IMPOSE ON  
16 A PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE THIS PART OR A RULE  
17 PROMULGATED UNDER THIS PART A CIVIL FINE OF NOT MORE THAN \$5,000.00  
18 FOR EACH VIOLATION OR ATTEMPTED VIOLATION AND MAY ORDER ADDITIONAL  
19 EQUITABLE OR INJUNCTIVE RELIEF TO ENSURE COMPLIANCE WITH THIS PART.  
20 IN ADDITION, THE ATTORNEY GENERAL MAY BRING AN ACTION IN CIRCUIT  
21 COURT TO RECOVER THE REASONABLE COSTS OF THE INVESTIGATION FROM A  
22 PERSON WHO VIOLATED OR ATTEMPTED TO VIOLATE THIS PART OR A RULE  
23 PROMULGATED UNDER THIS PART.