



# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1271

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S.P. 453

In Senate, April 7, 2015

### An Act To Protect Patients Who Need Eye Care

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator VOLK of Cumberland.

Cosponsored by Representative MASTRACCIO of Sanford and

Senators: ALFOND of Cumberland, CUSHING of Penobscot, Representatives: FECTION of Biddeford, FREDETTE of Newport, GIDEON of Freeport, HOBBS of Saco.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 32 MRSA §2411, sub-§§6 to 13** are enacted to read:

3 **6. Contact lens.** "Contact lens" means any lens placed directly on the surface of the  
4 eye, regardless of whether it is intended to correct a visual defect. "Contact lens"  
5 includes, but is not limited to, cosmetic, therapeutic and corrective lenses.

6 **7. Dispense.** "Dispense" means the act of furnishing a pair of ophthalmic or contact  
7 lenses to a patient.

8 **8. Eye examination.** "Eye examination" means an assessment of the ocular health  
9 and visual status of a patient that does not consist solely of objective refractive data or  
10 information generated by an automated testing device, including an autorefractor, in order  
11 to establish a medical diagnosis or for the determination of a refractive error.

12 **9. Kiosk.** "Kiosk" means automated equipment or an application designed to be  
13 used on a phone, computer or Internet-based device that can be used either in person or  
14 remotely to provide refractive data or information.

15 **10. Ophthalmic lens.** "Ophthalmic lens" means an optical instrument or device  
16 worn or used by an individual that has one or more lenses designed to correct or enhance  
17 vision addressing the visual needs of the individual wearer and commonly known as  
18 glasses or spectacles, including ophthalmic lenses that may be adjusted by the wearer to  
19 achieve different types or levels of visual correction or enhancement. "Ophthalmic lens"  
20 does not include an optical instrument or device not intended to correct or enhance vision  
21 or that is sold without consideration of the visual status of the individual who will use the  
22 optical instrument or device.

23 **11. Provider.** "Provider" means an individual licensed as an optometrist under this  
24 chapter or an individual licensed as an osteopathic or medical doctor under chapter 36 or  
25 48, respectively, who has also completed a residency in ophthalmology.

26 **Sec. 2. 32 MRSA §2417, sub-§4, ¶A-1,** as enacted by PL 1993, c. 600, Pt. A,  
27 §146, is amended to read:

28 A-1. For ophthalmic lenses and contact lenses:

29 (1) The prescription must contain all the information necessary to be properly  
30 dispensed;

31 (2) The prescription must specify whether it is for contact lenses or ophthalmic  
32 lenses; ~~and~~

33 (3) All prescriptions must include the name of the patient, date of prescription,  
34 name and office location of prescriber and an expiration date. A prescription  
35 may not contain an expiration date of more than 2 years from the date of the eye  
36 examination by the provider unless the prescription contains a statement made by  
37 the provider of the reasons why a longer time frame is appropriate based on the  
38 medical needs of the patient;

1           (4) A person or entity may not dispense ophthalmic lenses or contact lenses to a  
2           patient without a valid prescription from a provider issued after an eye  
3           examination performed by the provider, except that a person or entity may  
4           dispense without a prescription ophthalmic lenses or contact lenses, solely for the  
5           correction of vision, that are of uniform focus power in each eye of between  
6           plano and +3.25 diopters; and

7           (5) A prescription for ophthalmic lenses or contact lenses may not be made  
8           based solely on the diagnosis of a refractive error of the human eye as generated  
9           by a kiosk.

10       **Sec. 3. 32 MRSA §2421, sub-§3** is enacted to read:

11       **3. Operation of kiosks.** The following provisions govern the operation of kiosks.

12       A. The ownership and operation of a kiosk, including use of a kiosk by a provider,  
13       must comply with section 2435.

14       B. In addition to the enforcement actions available to the board under section  
15       2431-A, the board has the following powers of enforcement for violations of this  
16       chapter that relate in any way to kiosks, their use or the issuance of prescriptions  
17       arising out of their use. Nothing in this paragraph may be construed to apply to  
18       enforcement for violations by physicians who are governed by the Board of  
19       Licensure in Medicine or the Board of Osteopathic Licensure.

20           (1) A person or governmental entity that believes a violation of this chapter in  
21           relation to a kiosk has occurred or has been attempted may make an allegation of  
22           that fact to the board in writing.

23           (2) If, upon reviewing an allegation under subparagraph (1), the board  
24           determines there is a reasonable basis to believe a violation of this chapter or  
25           attempted violation of this chapter has occurred in relation to a kiosk, its use or  
26           the issuance of a prescription arising out of kiosk use, the board shall investigate.

27           (3) The board may hold adjudicatory hearings and administer oaths and order  
28           testimony to be taken at a hearing or by deposition conducted pursuant to Title 5,  
29           sections 9051 to 10005.

30           (4) The board may proceed with an action if the board determines that a  
31           violation in relation to a kiosk, its use or the issuance of a prescription arising out  
32           of kiosk use has occurred.

33           (5) The board is not required to wait until human harm has occurred to initiate an  
34           investigation under this subsection.

35           (6) The board, upon finding, after notice and an opportunity for a hearing, that a  
36           person has violated or has attempted to violate any requirement related to a kiosk,  
37           its use or the issuance of a prescription arising out of kiosk use, may impose an  
38           administrative fine of not more than \$10,000 for each violation or attempted  
39           violation and may issue an order requiring reimbursement of the reasonable costs  
40           to the board of investigation and hearing.

