

SENATE BILL 587

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4lr2392
CF HB 791

By: **Senator Conway**

Introduced and read first time: January 30, 2014

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 21, 2014

CHAPTER _____

1 AN ACT concerning

2 **State Board of Examiners in Optometry – Cease and Desist Orders,**
3 **Injunctive Relief, and Penalties**

4 FOR the purpose of authorizing the State Board of Examiners in Optometry to issue a
5 cease and desist order or obtain injunctive relief for a violation of certain
6 provisions of law; providing that certain actions may be brought by certain
7 persons in certain counties; providing that proof of certain damages is not
8 required for certain actions; providing that a person who violates certain
9 provisions of law is subject to a civil fine not exceeding a certain amount to be
10 assessed by the Board in accordance with certain regulations; ~~requiring the~~
11 ~~Board to pay certain penalties into the State Board of Examiners in Optometry~~
12 ~~Fund~~; providing for the application of certain provisions of this Act; and
13 generally relating to the State Board of Examiners in Optometry, cease and
14 desist orders, injunctive relief, and penalties.

15 BY adding to
16 Article – Health Occupations
17 Section 11–320
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Health Occupations
22 Section 11–501, 11–502, and 11–504
23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 11–505
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

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

Article – Health Occupations

11–320.

(A) THIS SECTION DOES NOT APPLY TO ~~AN~~:

**(1) AN INDIVIDUAL LICENSED UNDER TITLE 14, SUBTITLE 3 OF
THIS ARTICLE; OR**

**(2) AN INDIVIDUAL SUPERVISED BY AN INDIVIDUAL LICENSED
UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.**

**(B) THE BOARD MAY ISSUE A CEASE AND DESIST ORDER OR OBTAIN
INJUNCTIVE RELIEF FOR A VIOLATION OF ANY PROVISION OF § 11–313 OF THIS
SUBTITLE OR § 11–501, § 11–502, OR § 11–504 OF THIS TITLE.**

**(C) (1) AN ACTION MAY BE MAINTAINED IN THE NAME OF THE STATE
OR THE BOARD TO ENJOIN:**

(I) THE UNAUTHORIZED PRACTICE OF OPTOMETRY;

**(II) THE MISREPRESENTATION OF THE PRACTICE OF
OPTOMETRY;**

**(III) THE ACT OF KNOWINGLY DISPENSING CONTACT LENSES
OR REPLACEMENT CONTACT LENSES WITHOUT A VALID AND UNEXPIRED
PRESCRIPTION OR A REPLACEMENT CONTACT LENS PRESCRIPTION; OR**

**(IV) CONDUCT THAT IS GROUNDS FOR DISCIPLINARY
ACTION UNDER § 11–313 OF THIS SUBTITLE.**

(2) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT BY:

(I) THE BOARD, IN ITS OWN NAME;

1 **(II) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE;**
2 **OR**

3 **(III) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.**

4 **(3) AN ACTION UNDER THIS SUBSECTION SHALL BE BROUGHT IN**
5 **THE COUNTY WHERE THE DEFENDANT:**

6 **(I) RESIDES; OR**

7 **(II) ENGAGES IN THE ACT SOUGHT TO BE ENJOINED.**

8 **(4) PROOF OF ACTUAL DAMAGE OR THAT ANY PERSON WILL**
9 **SUSTAIN ANY DAMAGE IF AN INJUNCTION IS NOT GRANTED IS NOT REQUIRED**
10 **FOR AN ACTION UNDER THIS SUBSECTION.**

11 **(5) AN ACTION UNDER THIS SUBSECTION IS IN ADDITION TO AND**
12 **NOT INSTEAD OF CRIMINAL PROSECUTION FOR DISCIPLINARY ACTION UNDER §**
13 **11-313 OF THIS SUBTITLE OR THE UNAUTHORIZED PRACTICE OF OPTOMETRY**
14 **UNDER §§ 11-501, 11-502, AND 11-504 OF THIS TITLE.**

15 11-501.

16 Except as otherwise provided in this title, a person may not practice, attempt to
17 practice, or offer to practice optometry in this State unless licensed by the Board.

18 11-502.

19 Unless licensed to practice optometry under this title, a person may not
20 represent to the public by title, by description of services, methods, or procedures, or
21 otherwise, that the person practices optometry.

22 11-504.

23 (a) Knowingly selling or dispensing contact lenses or replacement contact
24 lenses without a valid and unexpired prescription or replacement contact lens
25 prescription shall be considered a violation of this title.

26 (b) The Board shall investigate any alleged violation of this section or §
27 11-404.4 of this title and may, notwithstanding § 11-205 of this title:

28 (1) Issue subpoenas, administer oaths, and examine witnesses; and

29 (2) Enforce any provision of this title by injunction or other
30 appropriate proceedings.

(c) An action under this section is in addition to and not instead of criminal prosecution under § 11-505 of this subtitle.

11-505.

(A) A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months or both.

(B) (1) THIS SUBSECTION DOES NOT APPLY TO ~~AN~~:

(I) AN INDIVIDUAL LICENSED UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE; OR

(II) AN INDIVIDUAL SUPERVISED BY AN INDIVIDUAL LICENSED UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.

(2) A PERSON WHO VIOLATES § 11-501, § 11-502, OR § 11-504 OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE NOT EXCEEDING \$50,000 TO BE ASSESSED BY THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

~~(3) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SUBSECTION INTO THE STATE BOARD OF EXAMINERS IN OPTOMETRY FUND.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.