

SENATE BILL 587

J2

4r2392
CF 4r1528

By: **Senator Conway**

Introduced and read first time: January 30, 2014

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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 this Act; and generally relating to the
13 State Board of Examiners in Optometry, cease and desist orders, injunctive
14 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
24 (2009 Replacement Volume and 2013 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article – Health Occupations
27 Section 11–505
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2013 Supplement)

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

4 **Article – Health Occupations**

5 **11–320.**

6 (A) THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL LICENSED
7 UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.

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

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

13 (I) THE UNAUTHORIZED PRACTICE OF OPTOMETRY;

14 (II) THE MISREPRESENTATION OF THE PRACTICE OF
15 OPTOMETRY;

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

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

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

22 (I) THE BOARD, IN ITS OWN NAME;

23 (II) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE;
24 OR

25 (III) A STATE’S ATTORNEY, IN THE NAME OF THE STATE.

26 (3) AN ACTION UNDER THIS SUBSECTION SHALL BE BROUGHT IN
27 THE COUNTY WHERE THE DEFENDANT:

28 (I) RESIDES; OR

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

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

5 **(5) AN ACTION UNDER THIS SUBSECTION IS IN ADDITION TO AND**
6 **NOT INSTEAD OF CRIMINAL PROSECUTION FOR DISCIPLINARY ACTION UNDER §**
7 **11-313 OF THIS SUBTITLE OR THE UNAUTHORIZED PRACTICE OF OPTOMETRY**
8 **UNDER §§ 11-501, 11-502, AND 11-504 OF THIS TITLE.**

9 11-501.

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

12 11-502.

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

16 11-504.

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

20 (b) The Board shall investigate any alleged violation of this section or §
21 11-404.4 of this title and may, notwithstanding § 11-205 of this title:

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

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

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

27 11-505.

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

1 **(B) (1) THIS SUBSECTION DOES NOT APPLY TO AN INDIVIDUAL**
2 **LICENSED UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.**

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

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

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