

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1271

S.P. 453

In Senate, April 7, 2015

An Act To Protect Patients Who Need Eye Care

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

A handwritten signature in cursive script, reading '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: FECTIONEAU 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.

1 (7) The board shall advise the Attorney General of the failure of a person to pay
2 an administrative fine or reimburse costs of investigation and hearing imposed
3 under this paragraph. The Attorney General may bring an action in a court of
4 competent jurisdiction for the failure to pay any amount imposed under this
5 paragraph.

6 (8) The board may request that the Attorney General file a civil action seeking
7 an injunction or other appropriate relief to enforce this subsection. The court
8 may impose on a person for violations of this subsection that relate in any way to
9 a kiosk, its use or the issuance of a prescription arising out of kiosk use a fine of
10 not more than \$20,000 for each violation or attempted violation. In addition, the
11 Attorney General may bring an action to recover the reasonable costs of the
12 investigation and hearing.

13 (9) The board may adopt rules to implement, administer and enforce this
14 subsection. Rules adopted pursuant to this subparagraph are routine technical
15 rules under Title 5, chapter 375, subchapter 2-A.

16 C. Nothing in this subsection prohibits the Attorney General from initiating an action
17 without referral or request from the board if the Attorney General determines there is
18 a reasonable basis to believe a violation or attempted violation of this subsection
19 occurred.

20 D. It is neither a violation of this subsection nor grounds for professional discipline
21 or liability for an optometrist to fill a prescription for a patient based in part on
22 measurements obtained through a kiosk.

23 **Sec. 4. 32 MRSA §3300-D** is enacted to read:

24 **§3300-D. Issuance of prescription for ophthalmic lenses**

25 A physician licensed pursuant to section 3275 may not issue a prescription for
26 ophthalmic lenses, as defined in section 2411, subsection 10, solely in reliance on a
27 measurement of the eye by a kiosk, as defined in section 2411, subsection 9, without
28 conducting an eye examination, as defined in section 2411, subsection 8.

29 **SUMMARY**

30 This bill regulates the use of kiosks as a means of performing eye examinations. It
31 defines "kiosk" as automated equipment or an application designed to be used on a phone,
32 computer or Internet-based device that can be used either in person or remotely to provide
33 refractive data or information. The bill provides that a person or entity may not dispense
34 ophthalmic lenses or contact lenses to a patient without a valid prescription from an
35 optometrist or ophthalmologist after an eye examination except that a prescription is not
36 required to dispense so-called over-the-counter reading glasses. It also provides that a
37 prescription for ophthalmic lenses or contact lenses may not be made solely on the data
38 generated by a kiosk and it provides administrative enforcement provisions related to
39 kiosks.