

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 235

FINAL READING

Introduced by Howard, 9; Kolterman, 24.

Read first time January 13, 2015

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to public health and welfare; to adopt the
- 2 Consumer Protection in Eye Care Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as the Consumer
2 Protection in Eye Care Act.

3 Sec. 2. For purposes of the Consumer Protection in Eye Care Act:

4 (1) Contact lens means any lens placed directly on the surface of
5 the eye, regardless of whether or not it is intended to correct a visual
6 defect. Contact lens includes, but is not limited to, any cosmetic,
7 therapeutic, or corrective lens;

8 (2) Department means the Department of Health and Human Services;

9 (3) Dispense means the act of furnishing spectacles or contact
10 lenses to a patient;

11 (4) Eye examination means an assessment of the ocular health and
12 visual status of a patient that does not consist solely of objective
13 refractive data or information generated by an automated testing device,
14 including an autorefractor, in order to establish a medical diagnosis or
15 for the establishment of a refractive error;

16 (5) Kiosk means automated equipment or application designed to be
17 used on a telephone, a computer, or an Internet-based device that can be
18 used either in person or remotely to conduct an eye examination;

19 (6) Over-the-counter spectacles means eyeglasses or lenses in a
20 frame for the correction of vision that may be sold by any person, firm,
21 or corporation at retail without a prescription;

22 (7) Prescription means a provider's handwritten or electronic order
23 based on an eye examination that corrects refractive error;

24 (8) Provider means a physician, an osteopathic physician, or a
25 physician assistant licensed under the Medicine and Surgery Practice Act
26 or an optometrist licensed under the Optometry Practice Act;

27 (9) Spectacles means an optical instrument or device worn or used by
28 an individual that has one or more lenses designed to correct or enhance
29 vision addressing the visual needs of the individual wearer, commonly
30 known as glasses or eyeglasses, including spectacles that may be adjusted
31 by the wearer to achieve different types or levels of visual correction

1 or enhancement. Spectacles does not include an optical instrument or
2 device that is not intended to correct or enhance vision or sold without
3 consideration of the visual status of the individual who will use the
4 optical instrument or device.

5 Sec. 3. No person in this state may dispense contact lenses or
6 spectacles, other than over-the-counter spectacles, to a patient without
7 a valid prescription from a provider. A valid prescription for spectacles
8 or contact lenses (1) shall contain an expiration date of not less than
9 two years for spectacles or one year for contact lenses from the date of
10 the eye examination by the provider or a statement by the provider of the
11 reasons why a shorter time is appropriate based on the medical needs of
12 the patient and (2) may not be made based solely on information about the
13 human eye generated by a kiosk. The prescription shall take into
14 consideration any medical findings and any refractive error discovered
15 during the eye examination. A provider may not refuse to release a
16 prescription for spectacles or contact lenses to a patient.

17 Sec. 4. No person shall operate a kiosk in Nebraska unless:

18 (1) The kiosk is registered or approved by the federal Food and Drug
19 Administration for the intended use;

20 (2) The kiosk is designed and operated in a manner that provides any
21 accommodation required by the federal Americans with Disabilities Act of
22 1990, 42 U.S.C. 12101 et seq., as such act existed on January 1, 2015;

23 (3) The kiosk and accompanying technology used for the collection
24 and transmission of information and data, including photographs and
25 scans, gathers and transmits protected health information in compliance
26 with the federal Health Insurance Portability and Accountability Act of
27 1996, as such act existed on January 1, 2015;

28 (4) The procedure for which the kiosk is used has a recognized
29 Current Procedural Terminology code maintained by the American Medical
30 Association;

31 (5)(a) If the kiosk has a physical location, the name and state

1 license number of the provider who will read and interpret the diagnostic
2 information and data shall be prominently displayed on the kiosk; or

3 (b) If the kiosk is an application, the name and state license
4 number of the provider who will read and interpret the diagnostic
5 information and data shall be displayed on the patient's prescription;

6 (6) Diagnostic information and data, including photographs and
7 scans, gathered by the kiosk is read and interpreted by a provider if
8 clinically appropriate; and

9 (7) The owner or lessee of the kiosk maintains liability insurance
10 in an amount adequate to cover claims made by individuals diagnosed or
11 treated based on information and data, including photographs and scans,
12 generated by the kiosk.

13 Sec. 5. The lenses in over-the-counter spectacles shall be of
14 uniform focus power in each eye and shall not exceed +3.25 diopters.

15 Sec. 6. (1) The Uniform Credentialing Act shall apply to any person
16 alleged or believed to have violated the Consumer Protection in Eye Care
17 Act. The department shall investigate potential violations of the
18 Consumer Protection in Eye Care Act according to the procedures of the
19 Uniform Credentialing Act and shall take appropriate action as provided
20 by the Uniform Credentialing Act.

21 (2) In addition to the remedies, penalties, or relief available
22 under the Uniform Credentialing Act, the department may impose a civil
23 penalty against a person who does not hold a credential under the Uniform
24 Credentialing Act who has violated or attempted to violate the Consumer
25 Protection in Eye Care Act. The civil penalty shall not exceed ten
26 thousand dollars for each violation, up to the maximum provided in
27 section 38-198. If the department finds that a violation or attempted
28 violation occurred and did not result in significant harm to human
29 health, the department may issue a warning instead of imposing a civil
30 penalty. Any civil penalty imposed pursuant to this section may be
31 collected as provided in section 38-198.

1 (3) At the request of the department, the Attorney General may file
2 a civil action seeking an injunction or other appropriate relief to
3 enforce the Consumer Protection in Eye Care Act and the rules and
4 regulations adopted and promulgated under the Consumer Protection in Eye
5 Care Act.

6 Sec. 7. The department, in consultation with the Board of Optometry
7 and the Board of Medicine and Surgery, may adopt and promulgate rules and
8 regulations to carry out the Consumer Protection in Eye Care Act.