

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 235

Introduced by Howard, 9.

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 an individual licensed under the Medicine and
25 Surgery Practice Act or the Optometry Practice Act; and

26 (9) Spectacles means an optical instrument or device worn or used by
27 an individual that has one or more lenses designed to correct or enhance
28 vision addressing the visual needs of the individual wearer, commonly
29 known as glasses or eyeglasses, including spectacles that may be adjusted
30 by the wearer to achieve different types or levels of visual correction
31 or enhancement. Spectacles does not include an optical instrument or

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

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

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

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

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

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

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

30 (5) The physical location of the kiosk prominently displays the name
31 and state license number of the provider who will read and interpret the

1 diagnostic information and data, including photographs and scans;

2 (6) Diagnostic information and data, including photographs and
3 scans, gathered by the kiosk is read and interpreted by a provider; and

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

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

10 Sec. 6. (1) Any person who believes a violation of the Consumer
11 Protection in Eye Care Act or the rules and regulation adopted pursuant
12 to the act has occurred or been attempted may file a complaint with the
13 department in writing. If, upon reviewing the complaint, the department
14 determines there is a reasonable basis to believe a violation or
15 attempted violation has occurred, the department shall investigate. The
16 department on its own initiative may initiate an investigation if it has
17 a reasonable basis to believe a violation of the act or the rules and
18 regulations has occurred or been attempted. The act does not require the
19 department to wait until human harm has occurred to initiate an
20 investigation.

21 (2) As part of the investigation under this section, the department
22 may hold hearings, administer oaths, and take testimony in person or by
23 deposition. Such hearings shall be conducted pursuant to the
24 Administrative Procedure Act. The findings of the investigation and any
25 hearings held pursuant to the investigation shall be in writing.

26 (3) If as a result of an investigation pursuant to this section the
27 department finds that a person has violated or attempted to violate the
28 Consumer Protection in Eye Care Act, it may impose a civil penalty of not
29 more than ten thousand dollars for each violation, up to the maximum
30 provided in section 38-198. If the department finds that a violation or
31 attempted violation occurred and did not result in significant harm to

1 human health, the department may issue a warning instead of imposing a
2 civil penalty. Any civil penalty imposed pursuant to this section may be
3 collected as provided in such section.

4 (4) At the request of the department, the Attorney General may file
5 a civil action seeking an injunction or other appropriate relief to
6 enforce the act and the rules and regulations adopted and promulgated
7 under the act.

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