

E AND R AMENDMENTS TO LB 235

Introduced by Hansen, 26, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

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

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

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

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

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

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

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

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

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

26          (8) Provider means a physician, an osteopathic physician, or a  
27 physician assistant licensed under the Medicine and Surgery Practice Act

1 or an optometrist licensed under the Optometry Practice Act;

2 (9) Spectacles means an optical instrument or device worn or used by  
3 an individual that has one or more lenses designed to correct or enhance  
4 vision addressing the visual needs of the individual wearer, commonly  
5 known as glasses or eyeglasses, including spectacles that may be adjusted  
6 by the wearer to achieve different types or levels of visual correction  
7 or enhancement. Spectacles does not include an optical instrument or  
8 device that is not intended to correct or enhance vision or sold without  
9 consideration of the visual status of the individual who will use the  
10 optical instrument or device.

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

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

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

26 (2) The kiosk is designed and operated in a manner that provides any  
27 accommodation required by the federal Americans with Disabilities Act of  
28 1990, 42 U.S.C. 12101 et seq., as such act existed on January 1, 2015;

29 (3) The kiosk and accompanying technology used for the collection  
30 and transmission of information and data, including photographs and  
31 scans, gathers and transmits protected health information in compliance

1 with the federal Health Insurance Portability and Accountability Act of  
2 1996, as such act existed on January 1, 2015;

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

6 (5)(a) If the kiosk has a physical location, the name and state  
7 license number of the provider who will read and interpret the diagnostic  
8 information and data shall be prominently displayed on the kiosk; or

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

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

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

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

21 Sec. 6. (1) The Uniform Credentialing Act shall apply to any person  
22 alleged or believed to have violated the Consumer Protection in Eye Care  
23 Act. The department shall investigate potential violations of the  
24 Consumer Protection in Eye Care Act according to the procedures of the  
25 Uniform Credentialing Act and shall take appropriate action as provided  
26 by the Uniform Credentialing Act.

27 (2) In addition to the remedies, penalties, or relief available  
28 under the Uniform Credentialing Act, the department may impose a civil  
29 penalty against a person who does not hold a credential under the Uniform  
30 Credentialing Act who has violated or attempted to violate the Consumer  
31 Protection in Eye Care Act. The civil penalty shall not exceed ten

1 thousand dollars for each violation, up to the maximum provided in  
2 section 38-198. If the department finds that a violation or attempted  
3 violation occurred and did not result in significant harm to human  
4 health, the department may issue a warning instead of imposing a civil  
5 penalty. Any civil penalty imposed pursuant to this section may be  
6 collected as provided in section 38-198.

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

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