

1 HOUSE BILL 364

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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11 AN ACT

12 RELATING TO HEALTH CARE; LIMITING PRESCRIBING POWER FOR CONTACT  
13 LENSES AND SPECTACLES; PROVIDING FOR CRIMINAL PENALTIES AND  
14 CIVIL REMEDY.  
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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] CONTACT LENSES--SPECTACLES--  
18 LIMITATIONS ON PRESCRIPTIONS--CRIMINAL PENALTY--CIVIL REMEDY.--

19 A. Unless the person is licensed pursuant to the  
20 Optometry Act, the Medical Practice Act or the Osteopathic  
21 Medicine Act, a person shall not:

22 (1) perform an eye examination on an  
23 individual physically located in the state at the time of the  
24 eye examination;

25 (2) write a prescription for contact lenses or

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1 spectacles; or

2 (3) dispense or adapt contact lenses or  
3 spectacles without first receiving authorization to do so by a  
4 written prescription.

5 B. A person shall not write a prescription for  
6 contact lenses or spectacles unless an eye examination is  
7 performed before writing the prescription. The prescription  
8 shall take into consideration any medical findings and any  
9 refractive error determined during the eye examination.

10 C. A prescriber may refuse to provide a patient a  
11 copy of the patient's prescription for contact lenses or  
12 spectacles until the patient has paid for all services rendered  
13 in connection with the prescription.

14 D. Any person that fills a prescription for contact  
15 lenses or spectacles bears the full responsibility of the  
16 accuracy of the contact lenses or spectacles provided under the  
17 prescription. At no time, without the direction of a  
18 prescriber, shall any changes or substitutions be made in the  
19 brand or type of lenses the prescription calls for with the  
20 exceptions of tint change if requested by the patient.

21 E. A person who violates a provision of this  
22 section is guilty of:

23 (1) for a first or second violation, a  
24 misdemeanor and shall be sentenced pursuant to Section 31-19-1  
25 NMSA 1978; or

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1 (2) for a third or subsequent violation, a  
2 fourth degree felony and, notwithstanding the provisions of  
3 Section 31-18-15 NMSA 1978, shall be sentenced to a term of  
4 imprisonment not to exceed five years and a fine not to exceed  
5 ten thousand dollars (\$10,000), or both.

6 F. The board of optometry, the New Mexico medical  
7 board, the board of osteopathic medicine or any other person  
8 potentially aggrieved by a violation of this section may bring  
9 a suit in a court of competent jurisdiction to enjoin a  
10 violation of a provision of this section.

11 G. As used in this section:

12 (1) "autorefractor" means any electronic  
13 computer or automated testing device used remotely, in person  
14 or through any other communication interface to provide an  
15 objective or subjective measurement of an individual's  
16 refractive error;

17 (2) "contact lens" means any lens placed  
18 directly on the surface of the eye, regardless of whether or  
19 not it is intended to correct a visual defect, including any  
20 cosmetic, therapeutic or corrective lens;

21 (3) "dispense" means to furnish spectacles or  
22 contact lenses to an individual;

23 (4) "eye examination" means an in-person  
24 assessment at a physician's office or an optometrist's office,  
25 in a hospital setting or in a hospital health system setting

1 that:

2 (a) is performed in accordance with the  
3 applicable standard of care;

4 (b) consists of an assessment of the  
5 ocular health and visual status of an individual;

6 (c) does not consist of solely objective  
7 or subjective refractive data or information generated by an  
8 automated testing device, including an autorefractor or kiosk,  
9 in order to establish a medical diagnosis or for the  
10 determination of refractive error; and

11 (d) is performed on an individual who is  
12 physically located in this state at the time of the assessment;

13 (5) "kiosk" means any automatic or electronic  
14 equipment, application or computer software designed to be used  
15 on a telephone, teleconference device, computer, virtual  
16 reality device or internet-based device that can be used  
17 remotely, in person or through any other communication  
18 interface to conduct an eye examination or determine refractive  
19 error;

20 (6) "prescription" means an optometrist's or  
21 ophthalmologist's handwritten or electronic order for spectacle  
22 lenses or contact lenses based on an eye examination that  
23 corrects refractive error; and

24 (7) "spectacles" means an optical instrument  
25 or device worn or used by an individual that has one or more

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1 lenses designed to correct or enhance vision addressing the  
2 visual needs of the individual wearer, commonly known as  
3 "glasses" or "eyeglasses", including spectacles that may be  
4 adjusted by the wearer to achieve different types of visual  
5 correction or enhancement. "Spectacles" does not mean:

6 (a) an optical instrument or device that  
7 is not intended to correct or enhance vision or that is sold  
8 without consideration of the visual status of the individual  
9 who will use the optical instrument or device; or

10 (b) eyewear that is sold without a  
11 prescription.

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