

working days (depending on time prescription verification request is received).

3. Amended Subsection O to clarify that a contact lens seller/dispenser has to “knowingly” sell lenses without a valid prescription (in violation of the provisions of Subsection L) to be guilty of a fourth degree felony.
4. Clarified that a contact lens seller/dispenser has to “knowingly” sell or dispense lens in violation of the registration requirement of Subsection P to be guilty of a misdemeanor.

Synopsis of Original Bill

The House Floor Substitute for House Bill 248 updates several sections of the Optometry Act to coincide with the American Association for Optometry’s (AOA) most recent practice guidelines, adds material about the release of contact lens prescriptions and the applicable licensure, requires registration of contact lens sellers/dispenses and gives regulatory authority to the Optometry Board. The bill also removes all previous references to licensed physicians.

Significant Issues

This legislation will assist the board in its goals to protect the health, safety, and welfare of the public by helping to ensure that mail order contact lens companies and other qualified sellers of contact lenses comply with FDA, Pharmacy and Optometry Board regulations regarding contact lens prescriptions and the sale of these devices. If this bill is enacted, mail order and other contact lens sellers will be required to register with the Board in order to sell contact lenses in New Mexico. The Board shall require these companies to adhere to state and federal laws regarding the sale of contact lenses. The bill includes AOA language requiring “positive” contact lens prescription verification by contact lens sellers before they can sell contact lenses to the patient.

FISCAL IMPLICATIONS

The Regulation and Licensing Department estimates the costs at \$28.5 in the first year, and \$21.3 on a recurring basis. This includes the cost of implementing the registration of non-licensed, third-party contact lens sellers/dispensers, which includes pay and employee benefits for one third (1/3) of an Administrator II FTE (Office and Administrator Support-Advanced – Pay Band 45); drafting rules; and conducting public rule hearings; filing and publishing adopted rules; attending to the various tasks of implementing the registration process.

Revenues of \$8.0 from fees after the implementation are projected based on survey of three other jurisdictions currently running this kind of program. Nebraska has registered fifteen (15) companies at \$200 each. Arizona registered sixteen (16) at \$500 each after implementation of their registration program. Texas’ program has been in force for 1-1/2 years and they charge each business \$300, but were unable to provide statistics on the number of registrants at the time of this writing.

The Optometry Board may require an emergency appropriation from its cash balance to cover startup-operating costs associated with this program for FY04.

TECHNICAL ISSUES

The New Mexico Drug, Device, and Cosmetic Act, Section 26-1-3.1 NMSA 1978 (1987 Repl. Pamp.), states *“Nothing in the New Mexico Drug, Device and Cosmetic Act shall be construed to allow any person except a licensed optometrist or physician to prescribe, dispense, adapt, employ, modify, provide, sell or fit contact or corneal lenses.”*

Amendment suggested by RLD staff:

Strike the word “sell” from the provision so that it will not conflict with this legislation to allow registered third-party persons/companies to sell contact lenses to New Mexico residents in accordance with promulgated rules.

GG/njw:yr