

SENATE BILL NO. 202—SENATOR LEE

FEBRUARY 28, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the sale of contact lenses. (BDR 19-987)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the sale of contact lenses; requiring the governing body of a local government to solicit comments from the health authority before adopting a rule that affects businesses which sell contact lenses; allowing the sale of certain nonprescription contact lenses in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, certain contact lenses intended to correct, relieve or remedy
2 an abnormal condition of the eye or intended for therapeutic purposes require a
3 prescription to be dispensed. (NRS 636.025, 637.022, 637.090) **Section 1** of this
4 bill requires the governing body of a local government to solicit comment from the
5 Health Division of the Department of Health and Human Services or the local
6 board of health before adopting a rule that affects businesses which sell contact
7 lenses. **Section 4** of this bill allows the sale of nonprescription contact lenses for
8 theatrical purposes to a customer who is 18 years of age or older if a disclosure is
9 provided to the customer at the time of the sale. **Section 4** also provides that a
10 violation of that section is a deceptive trade practice.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 237 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before a governing body of a local government adopts a proposed rule that would affect a business which sells contact lenses, the governing body must notify and request comment from the Health Division of the Department of Health and Human Services or the local board of health. Notification provided pursuant to this subsection must include the date by which the comments must be received by the governing body or its designee, which must be at least 15 working days after the notification is sent.

2. The governing body of a local government shall not include the adoption of a proposed rule that would affect a business which sells contact lenses on the agenda for a meeting of the governing body unless:

(a) Any comments received pursuant to subsection 1 have been prepared and are available for public inspection at the time the agenda is first posted; or

(b) The date specified for the submission of comments pursuant to subsection 1 has passed without the governing body receiving any comments.

Sec. 2. NRS 237.030 is hereby amended to read as follows:

237.030 As used in NRS 237.030 to 237.150, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 237.040, 237.050 and 237.060 have the meanings ascribed to them in those sections.

Sec. 3. NRS 237.070 is hereby amended to read as follows:

237.070 The provisions of NRS 237.030 to 237.150, inclusive, *and section 1 of this act* do not apply with respect to a rule for which a local government does not have the authority to consider less stringent alternatives, including, without limitation, a rule that the local government is required to adopt pursuant to a federal or state statute or regulation or pursuant to a contract or agreement into which the local government has entered.

Sec. 4. Chapter 598 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law which restricts who may sell contact lenses, a person may sell to a customer who is 18 years of age or older contact lenses that:

(a) Do not require a prescription; and

(b) Are designed for temporary use for theatrical purposes.



1 2. *A person who sells contact lenses pursuant to subsection 1*
2 *shall provide a disclosure to the customer at the time of the sale*
3 *which indicates that:*

4 (a) *The person selling the contact lenses is not a licensed*
5 *physician, optometrist or dispensing optician; and*

6 (b) *The contact lenses are not intended to correct the*
7 *customer's vision or to address any issues relating to the health of*
8 *the customer's eyes.*

9 3. *A violation of this section constitutes a deceptive trade*
10 *practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

11 **Sec. 5.** NRS 598.0999 is hereby amended to read as follows:

12 598.0999 1. Except as otherwise provided in NRS 598.0974,
13 a person who violates a court order or injunction issued pursuant to
14 the provisions of NRS 598.0903 to 598.0999, inclusive, upon a
15 complaint brought by the Commissioner, the Director, the district
16 attorney of any county of this State or the Attorney General shall
17 forfeit and pay to the State General Fund a civil penalty of not more
18 than \$10,000 for each violation. For the purpose of this section, the
19 court issuing the order or injunction retains jurisdiction over the
20 action or proceeding. Such civil penalties are in addition to any
21 other penalty or remedy available for the enforcement of the
22 provisions of NRS 598.0903 to 598.0999, inclusive.

23 2. Except as otherwise provided in NRS 598.0974, in any
24 action brought pursuant to the provisions of NRS 598.0903 to
25 598.0999, inclusive, if the court finds that a person has willfully
26 engaged in a deceptive trade practice, the Commissioner, the
27 Director, the district attorney of any county in this State or the
28 Attorney General bringing the action may recover a civil penalty not
29 to exceed \$5,000 for each violation. The court in any such action
30 may, in addition to any other relief or reimbursement, award
31 reasonable attorney's fees and costs.

32 3. A natural person, firm, or any officer or managing agent of
33 any corporation or association who knowingly and willfully engages
34 in a deceptive trade practice:

35 (a) For the first offense, is guilty of a misdemeanor.

36 (b) For the second offense, is guilty of a gross misdemeanor.

37 (c) For the third and all subsequent offenses, is guilty of a
38 category D felony and shall be punished as provided in
39 NRS 193.130.

40 ➔ The court may require the natural person, firm, or officer or
41 managing agent of the corporation or association to pay to the
42 aggrieved party damages on all profits derived from the knowing
43 and willful engagement in a deceptive trade practice and treble
44 damages on all damages suffered by reason of the deceptive trade
45 practice.



4. Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, 598.100 to 598.2801, inclusive, *and section 4 of this act*, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➡ The court may grant or deny the relief sought or may order other appropriate relief.

6. If a person violates any provision of NRS 228.500 to 228.640, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Attorney General may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➡ The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 6. This act becomes effective on July 1, 2011.

