

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 387 (Chairman, Education, Health, and Environmental Affairs Committee)
(By Request – Departmental – Health and Mental Hygiene)

Education, Health, and Environmental Affairs

Health and Government Operations

Department of Health and Mental Hygiene - Selling and Dispensing of Contact Lenses and Replacement Contact Lenses

This departmental bill modifies the current law prohibition against knowingly selling or dispensing replacement contact lenses without a valid and unexpired replacement contact lens prescription by adding the dispensing of contact lenses without a prescription to the prohibition. Violators are guilty of a misdemeanor and on conviction are subject to a fine up to \$1,000. The Department of Health and Mental Hygiene (DHMH) must adopt regulations governing the selling and dispensing of plano and zero-powered contact lenses and replacement contact lenses. The bill's provisions may not affect the decision in, or results of, Board of Examiners in Optometry, *et al.* v. Richard Spitz, Jr., 300 Md. 466 (1984).

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues to the extent that civil fines increase. No effect on expenditures.

Local Effect: None.

Small Business Effect: DHMH has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: Knowingly selling or dispensing replacement contact lenses without a valid or unexpired replacement contact lens prescription is a violation of statute. The State Board of Examiners in Optometry may impose a civil fine of up to \$1,000 on a

licensed optometrist who fails to provide a replacement contact lens prescription or who knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription, or otherwise does not comply with statute.

In *Board of Examiners in Optometry, et al. v. Richard Spitz, Jr.*, 300 Md. 466 (1984), the Court of Appeals of Maryland ruled that as long as an optician fits contact lenses pursuant to a prescription and has the customer return to the ophthalmologist to determine the prescription is properly filled, the optician has not engaged in the practice of optometry.

Background: The board and DHMH report that they have been contacted by manufacturers, licensees, and the media over the past two years with concerns about over-the-counter sales of cosmetic contact lenses by beauty supply stores and other businesses.

According to the federal Food and Drug Administration, cosmetic contact lenses are prescription products and require professional eye care oversight to assure safe use by consumers.

The bill's provisions restricting the selling and dispensing of contact lenses, as opposed to replacement contact lenses, without a valid and unexpired prescription are intended to protect the public health from contact lenses being sold or dispensed for cosmetic purposes by those individuals without a license to practice optometry and without a valid and unexpired prescription.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2003
nncs/jr Revised - Senate Third Reader - March 26, 2003
Revised - Enrolled Bill - April 14, 2003

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

