
SUBSTITUTE SENATE BILL 5411

State of Washington

65th Legislature

2017 Regular Session

By Senate Health Care (originally sponsored by Senators Cleveland, Rivers, Warnick, Conway, and Keiser)

1 AN ACT Relating to consumer protection in eye care; and adding a
2 new chapter to Title 18 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that health
5 care consumers, including eye health care consumers, can benefit from
6 developments in technology that offer advantages such as increased
7 convenience or increased speed in delivery of services. However, the
8 legislature also recognizes that such consumers can be misled or
9 harmed by the use of developments in technology that are not properly
10 supervised by competent health care providers.

11 (2) The legislature recognizes that the use of technology which
12 permits a consumer to submit data to an entity for the purposes of
13 obtaining a prescription for corrective lenses or obtaining any other
14 diagnosis or assistance, when the entity receiving the data is
15 physically separated from the consumer and therefore is not able to
16 monitor the collection of the data to assure that it is collected
17 properly, may result in the presentation of inaccurate data to the
18 entity.

19 (3) The legislature recognizes that the use of technology which
20 permits a consumer to submit data to an entity for the purposes of
21 obtaining a prescription for corrective lenses, when the entity

1 receiving the data is physically separated from the consumer and is
2 therefore unable to provide the consumer with an actual eye
3 examination, may lead the consumer to mistakenly believe he or she
4 has received a comprehensive eye examination and may lead to the
5 failure to detect serious eye health issues that would have been
6 revealed if a comprehensive eye examination had been conducted.

7 (4) Therefore, the legislature has concluded it is imperative
8 that consumers be protected from improper or unsupervised use of
9 technology for purposes of obtaining a prescription for corrective
10 lenses or obtaining any other diagnosis or assistance, without unduly
11 restricting the development and implementation of technology that can
12 provide genuine benefits to consumers.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires
15 otherwise.

16 (1) "Comprehensive eye examination" means an assessment of the
17 ocular health and visual status of a patient, in order to establish a
18 medical diagnosis and in connection with the establishment of the
19 patient's refractive error. Comprehensive eye examination does not
20 include any form of examination or evaluation that consists solely of
21 objective refractive data or information obtained through the use of
22 remote technology without the involvement or supervision of a
23 qualified vision care provider.

24 (2) "Contact lens" means any lens placed directly on the surface
25 of the eye, regardless of whether or not it is intended to correct a
26 visual defect. Contact lens includes, but is not limited to,
27 cosmetic, therapeutic, and corrective lenses.

28 (3) "Corrective lenses" means any lenses, including lenses in
29 spectacles and contact lenses, that are manufactured in accordance
30 with the specific terms of a prescription for an individual patient
31 written by a qualified vision care provider, after completion of a
32 comprehensive eye examination and refraction of the patient and for
33 the purpose of correcting the patient's refractive error.

34 (4) "Department" means the department of health.

35 (5) "Diagnostic information and data" means any and all
36 information and data, including but not necessarily limited to
37 photographs and scans, generated by or through the use of any remote
38 technology.

1 (6) "Dispense" means the act of furnishing corrective lenses,
2 either in spectacles or as contact lenses, to a patient pursuant to
3 the patient's prescription.

4 (7) "Dispensing optician" has the same meaning as in RCW
5 18.34.060.

6 (8) "Over-the-counter glasses" means eyeglasses or lenses that do
7 not have any refractive or magnifying characteristics, and eyeglasses
8 or lenses for the enhancement of vision solely through magnification.
9 Over-the-counter glasses does not include eyeglasses with adjustable
10 lenses, eyeglasses containing lenses with different magnifications,
11 eyeglasses with magnification greater than +3.25 diopters in power,
12 contact lenses, or corrective lenses of any sort.

13 (9) "Prescription" means the written or electronic directive from
14 a qualified vision care provider for corrective lenses and consists
15 of the refractive powers.

16 (10) "Qualified vision care provider" means an ophthalmologist or
17 optometrist who performs eye examinations under chapter 18.53, 18.57,
18 or 18.71 RCW.

19 (11) "Remote technology" means any automated equipment or testing
20 device and any application designed to be used on or with a phone,
21 computer, or internet-based device that can be used to generate data
22 for purposes of determining an individual's apparent refractive error
23 without the physical presence and actual participation of a qualified
24 vision care provider.

25 (12) "Spectacles" means any device worn by an individual that has
26 one or more lenses through which the wearer looks. Spectacles are
27 commonly known and referred to as glasses, and may include cosmetic
28 or corrective lenses.

29 NEW SECTION. **Sec. 3.** (1) It is unlawful for any person in this
30 state to:

31 (a) Write or otherwise prepare a prescription for lenses intended
32 to correct an individual's refractive error without the individual
33 first having received a comprehensive eye examination and refraction
34 from a qualified vision care provider writing the prescription; or

35 (b) Sell any contact lenses or spectacles, other than over-the-
36 counter glasses, to any individual in the state unless the individual
37 has a valid prescription from a qualified vision care provider and
38 the person selling the contact lenses or spectacles is properly
39 licensed to dispense corrective lenses.

1 (2) It is unlawful for any person to offer or otherwise make
2 available to consumers in this state remote technology without fully
3 complying with the following:

4 (a) The remote technology must be approved by the United States
5 food and drug administration for the intended use;

6 (b) The remote technology must be designed and operated in a
7 manner that provides any accommodation required by the federal
8 Americans with disabilities act;

9 (c) The remote technology, when used for the collection and
10 transmission of diagnostic information and data, must gather and
11 transmit any protected health information in compliance with the
12 federal health insurance portability and accountability act;

13 (d) The remote technology, when used for the collection and
14 transmission of diagnostic information and data to be read and
15 interpreted, may only transmit the diagnostic information and data to
16 a qualified vision care provider;

17 (e) If the remote technology is intended to be used to transmit
18 diagnostic information and data to be read and interpreted by a
19 qualified vision care provider, the physical location of the remote
20 technology, or the web site or other location where a patient can
21 access the remote technology, must prominently display the name and
22 state license number of the individual who will read and interpret
23 the diagnostic information and data;

24 (f) If the remote technology is intended to be used as the basis
25 for a qualified vision care provider to write a prescription or
26 perform any other service or procedure, the service or procedure must
27 have a recognized current procedural terminology (CPT) code; and

28 (g) The owner, lessee, or operator of the remote technology must
29 maintain liability insurance to cover claims made by individuals
30 diagnosed or treated based on information and data, including
31 photographs and scans, generated by the automated equipment.

32 (3) Whenever remote technology is used as the basis for a
33 qualified vision care provider to write a prescription or perform any
34 other service or procedure, the provider shall be held to the same
35 standards of practice as are applicable to qualified vision care
36 providers practicing in traditional in-person clinical settings.

37 (4)(a) The department shall review any written complaint received
38 by it from any person alleging that a violation of this chapter, or
39 of rules and regulations adopted pursuant to this chapter, has
40 occurred or been attempted.

1 (b) The department shall initiate an investigation if, based on
2 its review of a written complaint, it obtains information forming a
3 reasonable basis to believe a violation of this chapter or the rules
4 and regulations adopted pursuant to this chapter has occurred or been
5 attempted, whether or not any person is or is believed to have been
6 harmed by such suspected violation.

7 (c) As part of the investigation under this section, the
8 department may hold hearings, administer oaths, and take testimony in
9 person or by deposition. Such hearings shall be conducted pursuant to
10 the uniform disciplinary act, chapter 18.130 RCW.

11 (d) If, as a result of an investigation pursuant to this section,
12 the department finds that a person has violated or attempted to
13 violate this chapter, it may impose a civil penalty of not less than
14 one thousand dollars and not more than ten thousand dollars for each
15 violation, except that if the violation or attempted violation is the
16 first violation by the subject of the investigation and the
17 department finds that the violation or attempted violation did not
18 result in significant harm to human health, the department may issue
19 a warning instead of imposing a civil penalty.

20 (e) At the request of the department, the attorney general may
21 file a civil action seeking an injunction or other appropriate relief
22 to enforce this chapter and the rules and regulations adopted and
23 promulgated under this chapter.

24 NEW SECTION. **Sec. 4.** This chapter may be known and cited as the
25 consumer protection in eye care act.

26 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act
27 constitute a new chapter in Title 18 RCW.

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