

SENATE FILE NO. SF0095

Eye care consumer protection-2.

Sponsored by: Senator(s) Barnard, Driskill and Hicks

A BILL

for

1 AN ACT relating to consumer protection; creating the
 2 Consumer Protection in Eye Care Act; providing definitions;
 3 specifying prohibited acts; providing exemptions; providing
 4 requirements to operate a kiosk; establishing standards as
 5 specified; providing for enforcement as specified;
 6 providing rulemaking authority; providing for a repeal
 7 date; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 33-23-118 and 40-12-701 through
 12 40-12-707 are created to read:

13

14 **33-23-118. Enforcement.**

15

1 The board shall enforce the provisions of the Consumer
2 Protection in Eye Care Act, W.S. 40-12-701 through
3 40-12-707.

4

5

ARTICLE 7

6

CONSUMER PROTECTION IN EYE CARE ACT

7

8

40-12-701. Short title.

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10 This act may be cited as the "Wyoming Consumer Protection
11 in Eye Care Act."

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13

40-12-702. Definitions.

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15

(a) As used in this act:

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18

(i) "Board" means the Wyoming state board of
examiners in optometry, created by W.S. 33-23-104;

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(ii) "Corrective optical aid" means any contact
lens, eyeglasses or other optical device or instrument used
to correct or enhance vision or for therapeutic purposes;

23

1 (iii) "Dispense" means to furnish a corrective
2 optical aid to a person;

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4 (iv) "Established treatment site" means a
5 location where a person seeks care from a provider through
6 a provider patient relationship and which maintains
7 sufficient technology and equipment to permit an adequate
8 physical evaluation as appropriate for the person's
9 presenting complaint;

10

11 (v) "Eye examination" means an assessment of the
12 ocular health and visual status of a person to establish a
13 medical diagnosis or to correct vision disorders but does
14 not include examinations consisting solely of objective
15 refractive data or information generated by an automated
16 testing device, including an autorefractor;

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18 (vi) "In-person evaluation" means an eye
19 examination conducted by a provider who is at the same
20 physical location as the person undergoing the eye
21 examination;

22

1 (vii) "Kiosk" means automated equipment or an
2 application designed to be used on a telephone, computer or
3 Internet based device that can be used in person or
4 remotely to conduct or assist with any component of an eye
5 examination;

6
7 (viii) "Over-the-counter optical aid" means any
8 ready to wear eyeglasses or other optical device or
9 instrument excluding contact lenses that:

10
11 (A) Are sold over the counter where
12 consumer selects the device to be purchased;

13
14 (B) Have uniform lenses.

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16 (ix) "Prescription" means an order, formula or
17 recipe issued in any form of oral, written, electronic or
18 other means of transmission by a provider based on the
19 results of an eye examination;

20
21 (x) "Provider" means a person licensed as an
22 optometrist under the provisions of W.S. 33-23-101 through
23 33-23-118;

1

2 (xi) "This act" means W.S. 40-12-701 through
3 40-12-707.

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5 **40-12-703. Prohibited acts; exemptions.**

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7 (a) No person in this state may dispense any
8 corrective optical aid, other than an over-the-counter
9 optical aid, to another person without a valid prescription
10 from a provider. A valid prescription for a corrective
11 optical aid shall:

12

13 (i) Contain an expiration date of not less than
14 one (1) year from the date of the eye examination by the
15 provider or a statement by the provider of the reasons why
16 a shorter time is appropriate based on the medical needs of
17 the person issued the prescription;

18

19 (ii) Take into consideration any medical
20 findings and any refractive error discovered during the eye
21 examination; and

22

1 (iii) Be released by a provider pursuant to W.S.
2 33-23-101(d).

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4 (b) Nothing in this act shall be construed as
5 restricting the practice, services or activities of any
6 person licensed under title 33 of Wyoming statutes while
7 practicing within the scope of practice provided under the
8 person's licensure act under title 33 of Wyoming statutes.

9

10 **40-12-704. Kiosk operation; requirements.**

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12 (a) No person shall operate a kiosk unless:

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14 (i) The federal food and drug administration has
15 approved the intended use of the kiosk;

16

17 (ii) The procedure for which the kiosk is used
18 has a recognized current procedural terminology code
19 maintained by the American Medical Association;

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21 (iii) The kiosk is designed and operated in a
22 manner that provides any accommodation required by the

1 federal Americans with Disabilities Act of 1990, 42 U.S.C.
2 § 12101 et seq., as the act existed on January 1, 2015;

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4 (iv) The kiosk and accompanying technology used
5 to collect and transmit information and data, including
6 photographs and scans, comply with the federal Health
7 Insurance Portability and Accountability Act of 1996, 42
8 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., and 42 U.S.C.
9 1320d et seq., as the act existed on January 1, 2015;

10

11 (v) Diagnostic information and data, including
12 photographs and scans, gathered by the kiosk are read and
13 interpreted by a provider who shall:

14

15 (A) Establish the identity of the person
16 engaging kiosk services; and

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18 (B) Ensure that the person engaging kiosk
19 services has previously had at least one (1) in-person
20 evaluation at an established treatment site with a provider
21 within two (2) years of engaging kiosk services, provided,
22 however, that an in-person evaluation is not required for
23 new conditions relating to a provider's existing patient

1 unless the provider deems that an in-person evaluation is
2 necessary to provide adequate care for that patient.

3

4 (vi) The kiosk prominently displays the name and
5 state license number of the provider who will read and
6 interpret the diagnostic information and data, including
7 photographs and scans, produced by the kiosk; and

8

9 (vii) The owner, operator or lessee of the kiosk
10 maintains liability insurance in an amount established by
11 rules promulgated pursuant to this act to cover claims made
12 by persons diagnosed or treated based on information and
13 data, including photographs and scans, generated by the
14 kiosk.

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16 **40-12-705. Standards.**

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18 Evaluation, treatment and consultation recommendations made
19 using a kiosk, including electronically generated
20 prescriptions, shall be held to the same standards of
21 appropriate practice as those who conduct in-person
22 evaluations.

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1 **40-12-706. Violations; enforcement.**

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3 (a) Any person who violates any provision of W.S.
4 40-12-701 through 40-12-707 is guilty of a misdemeanor and
5 upon conviction shall be fined not more than seven hundred
6 fifty dollars (\$750.00) or imprisoned not more than six (6)
7 months in the county jail, or both.

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9 (b) For any person aggrieved by a violation of W.S.
10 40-12-701 through 40-12-707, the Wyoming state board of
11 examiners of optometry, the attorney general or the
12 district attorney may institute suit in the county in which
13 the violation of W.S. 40-12-701 through 40-12-707 occurred
14 to require enforcement by injunctive procedures and to
15 recover a civil penalty not to exceed ten thousand dollars
16 (\$10,000.00) for each separate violation, plus costs.

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18 (c) Where a civil penalty is sought the defendant
19 shall be entitled to a jury trial.

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21 **40-12-707. Rulemaking.**

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1 The board shall adopt rules and regulations to administer
2 this act pursuant to the Wyoming Administrative Procedure
3 Act, W.S. 16-3-101 et seq.

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5 **Section 2.** W.S. 33-23-101(a)(ix) and (e) is amended
6 to read:

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8 **33-23-101. Definitions and exceptions.**

9

10 (a) As used in this act:

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12 (ix) "This act" means W.S. 33-23-101 through
13 ~~33-23-117~~ 33-23-118.

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15 (e) The provisions of this chapter do not prohibit
16 the sale of goggles, sunglasses, colored glasses or
17 occupational eye-protective devices if they do not have
18 refractive values, nor do the provisions of this act
19 prohibit the sale of complete ready-to-wear eyeglasses as
20 merchandise by any person not holding himself out as
21 competent to examine, test or prescribe for the human eye
22 or its refractive errors. The provisions of this chapter

1 also do not prohibit the sale of over-the-counter optical
2 aids, as provided in W.S. 40-12-701 through 40-12-707.

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4 **Section 3.** W.S. 33-23-118 and 40-12-701 through
5 40-12-707 are repealed effective July 1, 2027.

6

7 **Section 4.** This act is effective July 1, 2016.

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9

(END)