

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 requirements to
4 operate a kiosk; establishing standards as specified;
5 providing for enforcement as specified; providing for joint
6 rulemaking by the state board of examiners in optometry and
7 the state board of medicine; and providing for an effective
8 date.

9

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

11

12 **Section 1.** W.S. 33-23-118 and 40-12-701 through
13 40-12-707 are created to read:

14

15 **33-23-118. Enforcement.**

16

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.

9

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

12

13

40-12-702. Definitions.

14

15

(a) As used in this act:

16

17

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

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21

(ii) "Dispense" means to furnish a corrective
22 optical aid to a person;

23

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

7
8 (iv) "Eye examination" means a physical
9 assessment of the ocular health and visual status of a
10 person to establish a medical diagnosis or to correct
11 vision disorders but does not include examinations
12 consisting solely of objective refractive data or
13 information generated by an automated testing device,
14 including an autorefractor;

15
16 (v) "In-person evaluation" means an eye
17 examination conducted by a provider who is at the same
18 physical location as the person undergoing the eye
19 examination;

20
21 (vi) "Kiosk" means automated equipment or an
22 application designed to be used on a telephone, computer or

1 Internet based device that can be used in person or
2 remotely to conduct an eye examination;

3
4 (vii) "Over-the-counter optical aid" means any
5 eyeglasses or other optical device or instrument excluding
6 contact lenses that:

7
8 (A) Are worn solely for cosmetic,
9 protective or other noncorrective, nonenhancement or
10 nontherapeutic purposes;

11
12 (B) Have uniform focus power in each lens;
13 and

14
15 (C) Are neither less than +1.00 diopter nor
16 greater than +3.25 diopters in power.

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

22

1 (ix) "Provider" means a person licensed as an
2 optometrist under the provisions of W.S. 33-23-101 through
3 33-23-118 or licensed under the Medical Practice Act, W.S.
4 33-26-101 et seq.;

5
6 (x) "This act" means W.S. 40-12-701 through
7 40-12-707.

8

9 **40-12-703. Prohibited acts.**

10

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

16

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

22

1 (ii) Take into consideration any medical
2 findings and any refractive error discovered during the eye
3 examination;

4
5 (iii) Not be made based solely on information
6 about the human eye generated by a kiosk; and

7
8 (iv) Be released by a provider pursuant to W.S.
9 33-23-101(d).

10
11 **40-12-704. Kiosk operation; requirements.**

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

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

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

21
22 (iii) The kiosk is designed and operated in a
23 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;

3
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

17
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, provided,
21 however, that an in-person evaluation is not required for
22 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.

15
16 **40-12-705. Standards.**

17
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.

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

2

3 (a) If a person alleged to have committed any
4 violation of this act or any rule or regulation promulgated
5 pursuant to this act is licensed solely by the state board
6 of examiners in optometry, that board shall, upon receiving
7 a written sworn complaint or upon its own initiative,
8 investigate the alleged violation and may impose a civil
9 penalty not to exceed ten thousand dollars (\$10,000.00) for
10 each separate violation.

11

12 (b) If a person alleged to have committed any
13 violation of this act or any rule or regulation promulgated
14 pursuant to this act is licensed solely by the state board
15 of medicine, that board shall, upon receiving a written
16 sworn complaint or upon its own initiative, investigate the
17 alleged violation and may impose a civil penalty not to
18 exceed ten thousand dollars (\$10,000.00) for each separate
19 violation.

20

21 (c) If the person alleged to have committed any
22 violation of this act or any rule or regulation promulgated
23 pursuant to this act is neither licensed by the state board

1 of examiners in optometry nor the state board of medicine,
2 or is licensed by both boards, either board may, upon
3 receiving a written sworn complaint or upon its own
4 initiative, investigate the alleged violation and may
5 impose a civil penalty not to exceed ten thousand dollars
6 (\$10,000.00) for each separate violation.

7

8 (d) At the request of the state board of examiners in
9 optometry or the state board of medicine and consistent
10 with subsections (a), (b) and (c) of this section, the
11 attorney general may file a civil action seeking an
12 injunction or other appropriate relief to enforce the
13 provisions of, or rules and regulations promulgated under,
14 this act.

15

16 **40-12-707. Joint rulemaking.**

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18 The board of state examiners in optometry and the state
19 board of medicine shall jointly establish consistent rules
20 and regulations for the implementation of this act.

21

1 **Section 2.** W.S. 33-23-101(a)(ix) and (e),
2 33-26-202(b)(ii) by creating a new subparagraph (C) and (v)
3 and 33-26-401(a) are amended to read:

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5 **33-23-101. Definitions and exceptions.**

6
7 (a) As used in this act:

8
9 (ix) "This act" means W.S. 33-23-101 through
10 ~~33-23-117~~ 33-23-118.

11
12 (e) The provisions of this chapter do not prohibit
13 the sale of goggles, sunglasses, colored glasses or
14 occupational eye-protective devices if they do not have
15 refractive values, nor do the provisions of this act
16 prohibit the sale of complete ready-to-wear eyeglasses as
17 merchandise by any person not holding himself out as
18 competent to examine, test or prescribe for the human eye
19 or its refractive errors. The provisions of this chapter
20 also do not prohibit the sale of over-the-counter optical
21 aids, as provided in W.S. 40-12-701 through 40-12-707.

22
23 **33-26-202. Board; duties; general powers.**

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2 (b) The board is empowered and directed to:

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4 (ii) Investigate allegations and take
5 disciplinary action on the following grounds:

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7 (C) A person who is licensed by the board
8 has violated an applicable provision of the Wyoming
9 Consumer Protection in Eye Care Act, W.S. 40-12-701 through
10 40-12-707.

11

12 (v) Adopt, amend, repeal, enforce and promulgate
13 reasonable rules and regulations necessary to implement the
14 provisions of this chapter and pursuant to W.S. 40-12-707;

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16 **33-26-401. Board duties; investigation; interview.**

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18 (a) The board shall investigate, upon a written and
19 signed complaint or by its own motion, any information that
20 if proven would fall within the jurisdiction of the board
21 and would constitute a violation of this act or as provided
22 in W.S. 40-12-706(b) and (c).

23

