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**SENATE BILL 5411**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Cleveland, Rivers, Warnick, Conway, and Keiser

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

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

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

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

(3) The legislature recognizes that the use of technology which permits a consumer to submit data to an entity for the purposes of obtaining a prescription for corrective lenses, when the entity receiving the data is physically separated from the consumer and is therefore unable to provide the consumer with an actual eye examination, may lead the consumer to mistakenly believe he or she has received a comprehensive eye examination and may lead to the failure to detect serious eye health issues that would have been revealed if a comprehensive eye examination had been conducted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Dispense corrective lenses to a patient, whether as spectacles or contact lenses, without a valid prescription from a qualified vision care provider; or

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

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

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

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

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

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

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

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

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

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

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

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

(c) As part of the investigation under this section, the department may hold hearings, administer oaths, and take testimony in person or by deposition. Such hearings shall be conducted pursuant to the administrative procedure act, chapter 34.05 RCW.

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

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

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

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

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