
SUBSTITUTE HOUSE BILL 2034

State of Washington

57th Legislature

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By House Committee on Health Care (originally sponsored by Representatives Campbell, Hankins, O'Brien, Kagi, Reardon, Lambert, Boldt, Schoesler, Linville, Van Luven, Morris, Mastin, Murray, Santos, Talcott, Grant, Morell, Lisk, Dickerson, Carrell, Quall, Delvin, Miloscia, Conway, Buck, Kenney, Esser, Mulliken, G. Chandler, Bush, Ruderman, Benson, Haigh, Rockefeller, McDermott, Tokuda, Lovick, B. Chandler, Veloria, Dunn, Casada, Mielke, Pearson, Roach, Cooper, Simpson, Jackley, Ogden, Kessler, Anderson, DeBolt, Crouse, Pennington, Mitchell, Cairnes, D. Schmidt, Ericksen, Barlean, Pflug, Ahern, Cox, Hatfield, Doumit, Dunshee, Eickmeyer, Keiser, Poulsen, Gombosky, Romero, Fisher, Kirby and Hurst)

Read first time 02/22/2001. Referred to Committee on .

1 AN ACT Relating to authorizing optometrists to use and prescribe
2 approved drugs for diagnostic or therapeutic purposes without
3 limitation upon the methods of delivery in the practice of optometry;
4 and amending RCW 18.53.010, 18.53.140, 69.41.030, and 69.50.101.

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

6 **Sec. 1.** RCW 18.53.010 and 1989 c 36 s 1 are each amended to read
7 as follows:

8 (1) The practice of optometry is defined as the examination of the
9 human eye, the examination and ascertaining any defects of the human
10 vision system ~~((and))~~, the analysis of the process of vision, and the
11 treatment of the human eye and its associated structure. The practice
12 of optometry ~~((may))~~ includes, but is not ~~((necessarily be))~~ limited
13 to, the following:

14 (a) The employment of any objective or subjective means or method,
15 including the use of drugs ~~((topically applied to the eye))~~,
16 for diagnostic and therapeutic purposes by those licensed under this
17 chapter and who meet the requirements of subsections (2) and (3) of
18 this section, and the use of any diagnostic instruments or devices for
19 the examination or analysis of the human vision system, the measurement

1 of the powers or range of human vision, or the determination of the
2 refractive powers of the human eye or its functions in general; and

3 (b) The prescription and fitting of lenses, prisms, therapeutic or
4 refractive contact lenses and the adaption or adjustment of frames and
5 lenses used in connection therewith; and

6 (c) The prescription and provision of visual therapy, therapeutic
7 aids, and other optical devices(~~(, and the treatment with topically~~
8 ~~applied drugs by those licensed under this chapter and who meet the~~
9 ~~requirements of subsections (2) and (3) of this section)); and~~

10 (d) The ascertainment of the perceptive, neural, muscular, or
11 pathological condition of the visual system; and

12 (e) The adaptation of prosthetic eyes.

13 (2)(a) Those persons using drugs for diagnostic purposes in the
14 practice of optometry shall have a minimum of sixty hours of didactic
15 and supervised clinical instruction in general and ocular pharmacology
16 as applied to optometry(~~(, and for therapeutic purposes, an additional~~
17 ~~minimum of seventy-five hours of didactic and clinical instruction)) as
18 established by the board, and certification from an institution of
19 higher learning, accredited by those agencies recognized by the United
20 States office of education or the council on postsecondary
21 accreditation to qualify for certification by the optometry board of
22 Washington to use drugs for diagnostic and therapeutic purposes.~~

23 (b) Those persons using or prescribing topical drugs for
24 therapeutic purposes in the practice of optometry shall be certified
25 under (a) of this subsection, and shall have an additional minimum of
26 seventy-five hours of didactic and supervised clinical instruction as
27 established by the board, and certification from an institution of
28 higher learning, accredited by those agencies recognized by the United
29 States office of education or the council on postsecondary
30 accreditation to qualify for certification by the optometry board of
31 Washington to use drugs for therapeutic purposes.

32 (c) Those persons using or prescribing drugs administered orally
33 for therapeutic purposes in the practice of optometry shall be
34 certified under (b) of this subsection, and shall have an additional
35 minimum of sixteen hours of didactic and eight hours of supervised
36 clinical instruction as established by the board, and certification
37 from an institution of higher learning, accredited by those agencies
38 recognized by the United States office of education or the council on
39 postsecondary accreditation to qualify for certification by the

1 optometry board of Washington to use drugs administered orally for
2 therapeutic purposes.

3 (d) Such course or courses shall be the fiscal responsibility of
4 the participating and attending optometrist.

5 (3) The board shall establish a schedule of drugs for diagnostic
6 and treatment purposes limited to the practice of optometry, and no
7 person licensed pursuant to this chapter shall prescribe, dispense,
8 purchase, possess, or administer drugs except as authorized and to the
9 extent permitted by the board.

10 (4) The board shall establish a list of Schedule III through V
11 controlled substances, approved by the board of pharmacy, and no person
12 licensed under this chapter shall prescribe, dispense, purchase,
13 possess, or administer these drugs except as authorized and to the
14 extent permitted by the board.

15 (a) The board, in consultation with the board of pharmacy, shall
16 establish, by rule, specific guidelines for the prescription and
17 administration of drugs by optometrists, so that licensed optometrists
18 and persons filling their prescriptions have a clear understanding of
19 which drugs and which dosages or forms are included in the authority
20 granted by this section.

21 (b) No optometrist shall prescribe, dispense, or administer a
22 controlled substance for more than seven days in treating a particular
23 patient for a single trauma, episode, or condition.

24 (c) The prescription or administration of drugs as authorized in
25 this section is specifically limited to those drugs appropriate to
26 treatment of diseases or conditions of the human eye and its associated
27 structure that are within the scope of practice of optometry. The
28 prescription or administration of drugs for any other purpose is not
29 authorized by this section.

30 (5) The board shall develop a means of identification and
31 verification of optometrists certified to use therapeutic drugs for the
32 purpose of issuing prescriptions as authorized by this section.

33 (6) Nothing in this chapter shall be construed to authorize:
34 Administration of a drug by injection; surgery, including retinal
35 repair surgery and laser in situ keratomileusis surgery; or the use,
36 prescription, dispensing, purchase, possession, or administration of
37 any Schedule I and II controlled substances. The provisions of this
38 section shall be strictly construed.

1 **Sec. 2.** RCW 18.53.140 and 1991 c 3 s 138 are each amended to read
2 as follows:

3 It shall be unlawful for any person:

4 (1) To sell or barter, or offer to sell or barter any license
5 issued by the secretary; or

6 (2) To purchase or procure by barter any license with the intent to
7 use the same as evidence of the holder's qualification to practice
8 optometry; or

9 (3) To alter with fraudulent intent in any material regard such
10 license; or

11 (4) To use or attempt to use any such license which has been
12 purchased, fraudulently issued, counterfeited or materially altered as
13 a valid license; or

14 (5) To practice optometry under a false or assumed name, or as a
15 representative or agent of any person, firm or corporation with which
16 the licensee has no connection: PROVIDED, Nothing in this chapter nor
17 in the optometry law shall make it unlawful for any lawfully licensed
18 optometrist or association of lawfully licensed optometrists to
19 practice optometry under the name of any lawfully licensed optometrist
20 who may transfer by inheritance or otherwise the right to use such
21 name; or

22 (6) To practice optometry in this state either for him or herself
23 or any other individual, corporation, partnership, group, public or
24 private entity, or any member of the licensed healing arts without
25 having at the time of so doing a valid license issued by the secretary
26 of health; or

27 (7) To in any manner barter or give away as premiums either on his
28 own account or as agent or representative for any other purpose, firm
29 or corporation, any eyeglasses, spectacles, lenses or frames; or

30 (8) To use drugs in the practice of optometry, except (~~those~~
31 ~~topically applied for diagnostic or therapeutic purposes~~) as
32 authorized under RCW 18.53.010; or

33 (9) To use advertising whether printed, radio, display, or of any
34 other nature, which is misleading or inaccurate in any material
35 particular, nor shall any such person in any way misrepresent any goods
36 or services (including but without limitation, its use, trademark,
37 grade, quality, size, origin, substance, character, nature, finish,
38 material, content, or preparation) or credit terms, values, policies,
39 services, or the nature or form of the business conducted; or

1 (10) To advertise the "free examination of eyes," "free
2 consultation," "consultation without obligation," "free advice," or any
3 words or phrases of similar import which convey the impression to the
4 public that eyes are examined free or of a character tending to deceive
5 or mislead the public, or in the nature of "bait advertising;" or

6 (11) To use an advertisement of a frame or mounting which is not
7 truthful in describing the frame or mounting and all its component
8 parts. Or advertise a frame or mounting at a price, unless it shall be
9 depicted in the advertisement without lenses inserted, and in addition
10 the advertisement must contain a statement immediately following, or
11 adjacent to the advertised price, that the price is for frame or
12 mounting only, and does not include lenses, eye examination and
13 professional services, which statement shall appear in type as large as
14 that used for the price, or advertise lenses or complete glasses, viz.:
15 frame or mounting with lenses included, at a price either alone or in
16 conjunction with professional services; or

17 (12) To use advertising, whether printed, radio, display, or of any
18 other nature, which inaccurately lays claim to a policy or continuing
19 practice of generally underselling competitors; or

20 (13) To use advertising, whether printed, radio, display or of any
21 other nature which refers inaccurately in any material particular to
22 any competitors or their goods, prices, values, credit terms, policies
23 or services; or

24 (14) To use advertising whether printed, radio, display, or of any
25 other nature, which states any definite amount of money as "down
26 payment" and any definite amount of money as a subsequent payment, be
27 it daily, weekly, monthly, or at the end of any period of time.

28 **Sec. 3.** RCW 69.41.030 and 1996 c 178 s 17 are each amended to read
29 as follows:

30 It shall be unlawful for any person to sell, deliver, or possess
31 any legend drug except upon the order or prescription of a physician
32 under chapter 18.71 RCW, an osteopathic physician and surgeon under
33 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
34 is certified by the optometry board under RCW 18.53.010, a dentist
35 under chapter 18.32 RCW, a podiatric physician and surgeon under
36 chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
37 commissioned medical or dental officer in the United States armed
38 forces or public health service in the discharge of his or her official

1 duties, a duly licensed physician or dentist employed by the veterans
2 administration in the discharge of his or her official duties, a
3 registered nurse or advanced registered nurse practitioner under
4 chapter 18.79 RCW when authorized by the nursing care quality assurance
5 commission, an osteopathic physician assistant under chapter 18.57A RCW
6 when authorized by the board of osteopathic medicine and surgery, a
7 physician assistant under chapter 18.71A RCW when authorized by the
8 medical quality assurance commission, a physician licensed to practice
9 medicine and surgery or a physician licensed to practice osteopathic
10 medicine and surgery, a dentist licensed to practice dentistry, a
11 podiatric physician and surgeon licensed to practice podiatric medicine
12 and surgery, or a veterinarian licensed to practice veterinary
13 medicine, in any province of Canada which shares a common border with
14 the state of Washington or in any state of the United States:
15 PROVIDED, HOWEVER, That the above provisions shall not apply to sale,
16 delivery, or possession by drug wholesalers or drug manufacturers, or
17 their agents or employees, or to any practitioner acting within the
18 scope of his or her license, or to a common or contract carrier or
19 warehouseman, or any employee thereof, whose possession of any legend
20 drug is in the usual course of business or employment: PROVIDED
21 FURTHER, That nothing in this chapter or chapter 18.64 RCW shall
22 prevent a family planning clinic that is under contract with the
23 department of social and health services from selling, delivering,
24 possessing, and dispensing commercially prepackaged oral contraceptives
25 prescribed by authorized, licensed health care practitioners.

26 **Sec. 4.** RCW 69.50.101 and 1998 c 222 s 3 are each amended to read
27 as follows:

28 Unless the context clearly requires otherwise, definitions of terms
29 shall be as indicated where used in this chapter:

30 (a) "Administer" means to apply a controlled substance, whether by
31 injection, inhalation, ingestion, or any other means, directly to the
32 body of a patient or research subject by:

33 (1) a practitioner authorized to prescribe (or, by the
34 practitioner's authorized agent); or

35 (2) the patient or research subject at the direction and in the
36 presence of the practitioner.

37 (b) "Agent" means an authorized person who acts on behalf of or at
38 the direction of a manufacturer, distributor, or dispenser. It does

1 not include a common or contract carrier, public warehouseperson, or
2 employee of the carrier or warehouseperson.

3 (c) "Board" means the state board of pharmacy.

4 (d) "Controlled substance" means a drug, substance, or immediate
5 precursor included in Schedules I through V as set forth in federal or
6 state laws, or federal or board rules.

7 (e)(1) "Controlled substance analog" means a substance the chemical
8 structure of which is substantially similar to the chemical structure
9 of a controlled substance in Schedule I or II and:

10 (i) that has a stimulant, depressant, or hallucinogenic effect on
11 the central nervous system substantially similar to the stimulant,
12 depressant, or hallucinogenic effect on the central nervous system of
13 a controlled substance included in Schedule I or II; or

14 (ii) with respect to a particular individual, that the individual
15 represents or intends to have a stimulant, depressant, or
16 hallucinogenic effect on the central nervous system substantially
17 similar to the stimulant, depressant, or hallucinogenic effect on the
18 central nervous system of a controlled substance included in Schedule
19 I or II.

20 (2) The term does not include:

21 (i) a controlled substance;

22 (ii) a substance for which there is an approved new drug
23 application;

24 (iii) a substance with respect to which an exemption is in effect
25 for investigational use by a particular person under Section 505 of the
26 federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent
27 conduct with respect to the substance is pursuant to the exemption; or

28 (iv) any substance to the extent not intended for human consumption
29 before an exemption takes effect with respect to the substance.

30 (f) "Deliver" or "delivery," means the actual or constructive
31 transfer from one person to another of a substance, whether or not
32 there is an agency relationship.

33 (g) "Department" means the department of health.

34 (h) "Dispense" means the interpretation of a prescription or order
35 for a controlled substance and, pursuant to that prescription or order,
36 the proper selection, measuring, compounding, labeling, or packaging
37 necessary to prepare that prescription or order for delivery.

38 (i) "Dispenser" means a practitioner who dispenses.

1 (j) "Distribute" means to deliver other than by administering or
2 dispensing a controlled substance.

3 (k) "Distributor" means a person who distributes.

4 (l) "Drug" means (1) a controlled substance recognized as a drug in
5 the official United States pharmacopoeia/national formulary or the
6 official homeopathic pharmacopoeia of the United States, or any
7 supplement to them; (2) controlled substances intended for use in the
8 diagnosis, cure, mitigation, treatment, or prevention of disease in
9 individuals or animals; (3) controlled substances (other than food)
10 intended to affect the structure or any function of the body of
11 individuals or animals; and (4) controlled substances intended for use
12 as a component of any article specified in (1), (2), or (3) of this
13 subsection. The term does not include devices or their components,
14 parts, or accessories.

15 (m) "Drug enforcement administration" means the drug enforcement
16 administration in the United States Department of Justice, or its
17 successor agency.

18 (n) "Immediate precursor" means a substance:

19 (1) that the state board of pharmacy has found to be and by rule
20 designates as being the principal compound commonly used, or produced
21 primarily for use, in the manufacture of a controlled substance;

22 (2) that is an immediate chemical intermediary used or likely to be
23 used in the manufacture of a controlled substance; and

24 (3) the control of which is necessary to prevent, curtail, or limit
25 the manufacture of the controlled substance.

26 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),
27 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any
28 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)
29 the term includes any positional isomer; and in RCW 69.50.204(a)(35),
30 69.50.204(c), and 69.50.208(a) the term includes any positional or
31 geometric isomer.

32 (p) "Manufacture" means the production, preparation, propagation,
33 compounding, conversion, or processing of a controlled substance,
34 either directly or indirectly or by extraction from substances of
35 natural origin, or independently by means of chemical synthesis, or by
36 a combination of extraction and chemical synthesis, and includes any
37 packaging or repackaging of the substance or labeling or relabeling of
38 its container. The term does not include the preparation, compounding,

1 packaging, repackaging, labeling, or relabeling of a controlled
2 substance:

3 (1) by a practitioner as an incident to the practitioner's
4 administering or dispensing of a controlled substance in the course of
5 the practitioner's professional practice; or

6 (2) by a practitioner, or by the practitioner's authorized agent
7 under the practitioner's supervision, for the purpose of, or as an
8 incident to, research, teaching, or chemical analysis and not for sale.

9 (q) "Marijuana" or "marihuana" means all parts of the plant
10 Cannabis, whether growing or not; the seeds thereof; the resin
11 extracted from any part of the plant; and every compound, manufacture,
12 salt, derivative, mixture, or preparation of the plant, its seeds or
13 resin. The term does not include the mature stalks of the plant, fiber
14 produced from the stalks, oil or cake made from the seeds of the plant,
15 any other compound, manufacture, salt, derivative, mixture, or
16 preparation of the mature stalks (except the resin extracted
17 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
18 which is incapable of germination.

19 (r) "Narcotic drug" means any of the following, whether produced
20 directly or indirectly by extraction from substances of vegetable
21 origin, or independently by means of chemical synthesis, or by a
22 combination of extraction and chemical synthesis:

23 (1) Opium, opium derivative, and any derivative of opium or opium
24 derivative, including their salts, isomers, and salts of isomers,
25 whenever the existence of the salts, isomers, and salts of isomers is
26 possible within the specific chemical designation. The term does not
27 include the isoquinoline alkaloids of opium.

28 (2) Synthetic opiate and any derivative of synthetic opiate,
29 including their isomers, esters, ethers, salts, and salts of isomers,
30 esters, and ethers, whenever the existence of the isomers, esters,
31 ethers, and salts is possible within the specific chemical designation.

32 (3) Poppy straw and concentrate of poppy straw.

33 (4) Coca leaves, except coca leaves and extracts of coca leaves
34 from which cocaine, ecgonine, and derivatives or ecgonine or their
35 salts have been removed.

36 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

37 (6) Cocaine base.

38 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
39 thereof.

1 (8) Any compound, mixture, or preparation containing any quantity
2 of any substance referred to in subparagraphs (1) through (7).

3 (s) "Opiate" means any substance having an addiction-forming or
4 addiction-sustaining liability similar to morphine or being capable of
5 conversion into a drug having addiction-forming or addiction-sustaining
6 liability. The term includes opium, substances derived from opium
7 (opium derivatives), and synthetic opiates. The term does not include,
8 unless specifically designated as controlled under RCW 69.50.201, the
9 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
10 (dextromethorphan). The term includes the racemic and levorotatory
11 forms of dextromethorphan.

12 (t) "Opium poppy" means the plant of the species *Papaver somniferum*
13 L., except its seeds.

14 (u) "Person" means individual, corporation, business trust, estate,
15 trust, partnership, association, joint venture, government,
16 governmental subdivision or agency, or any other legal or commercial
17 entity.

18 (v) "Poppy straw" means all parts, except the seeds, of the opium
19 poppy, after mowing.

20 (w) "Practitioner" means:

21 (1) A physician under chapter 18.71 RCW, a physician assistant
22 under chapter 18.71A RCW, an osteopathic physician and surgeon under
23 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who
24 is certified by the optometry board under RCW 18.53.010 subject to any
25 limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a
26 podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian
27 under chapter 18.92 RCW, a registered nurse, advanced registered nurse
28 practitioner, or licensed practical nurse under chapter 18.79 RCW, a
29 pharmacist under chapter 18.64 RCW or a scientific investigator under
30 this chapter, licensed, registered or otherwise permitted insofar as is
31 consistent with those licensing laws to distribute, dispense, conduct
32 research with respect to or administer a controlled substance in the
33 course of their professional practice or research in this state.

34 (2) A pharmacy, hospital or other institution licensed, registered,
35 or otherwise permitted to distribute, dispense, conduct research with
36 respect to or to administer a controlled substance in the course of
37 professional practice or research in this state.

38 (3) A physician licensed to practice medicine and surgery, a
39 physician licensed to practice osteopathic medicine and surgery, a

1 dentist licensed to practice dentistry, a podiatric physician and
2 surgeon licensed to practice podiatric medicine and surgery, or a
3 veterinarian licensed to practice veterinary medicine in any state of
4 the United States.

5 (x) "Prescription" means an order for controlled substances issued
6 by a practitioner duly authorized by law or rule in the state of
7 Washington to prescribe controlled substances within the scope of his
8 or her professional practice for a legitimate medical purpose.

9 (y) "Production" includes the manufacturing, planting, cultivating,
10 growing, or harvesting of a controlled substance.

11 (z) "Secretary" means the secretary of health or the secretary's
12 designee.

13 (aa) "State," unless the context otherwise requires, means a state
14 of the United States, the District of Columbia, the Commonwealth of
15 Puerto Rico, or a territory or insular possession subject to the
16 jurisdiction of the United States.

17 (bb) "Ultimate user" means an individual who lawfully possesses a
18 controlled substance for the individual's own use or for the use of a
19 member of the individual's household or for administering to an animal
20 owned by the individual or by a member of the individual's household.

21 (cc) "Electronic communication of prescription information" means
22 the communication of prescription information by computer, or the
23 transmission of an exact visual image of a prescription by facsimile,
24 or other electronic means for original prescription information or
25 prescription refill information for a Schedule III-V controlled
26 substance between an authorized practitioner and a pharmacy or the
27 transfer of prescription information for a controlled substance from
28 one pharmacy to another pharmacy.

29 NEW SECTION. **Sec. 5.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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