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HOUSE BILL 2034

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State of Washington

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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 02/13/2001. Referred to Committee on Health Care.

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 the human vision system. 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 clinical instruction in general and ocular pharmacology as applied  
16 to optometry(~~(, and for therapeutic purposes, an additional minimum of~~  
17 ~~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 clinical instruction as established  
27 by the board, and certification from an institution of higher learning,  
28 accredited by those agencies recognized by the United States office of  
29 education or the council on postsecondary accreditation to qualify for  
30 certification by the optometry board of Washington to use drugs for  
31 therapeutic purposes.

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

1 by the optometry board of Washington to use drugs administered orally,  
2 by injection, or by any other recognized method of delivery for  
3 therapeutic purposes.

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

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

11 (a) The board shall establish, by rule, specific guidelines for the  
12 prescription and administration of drugs by optometric physicians, so  
13 that licensed optometric physicians and persons filling their  
14 prescriptions have a clear understanding of which drugs and which  
15 dosages or forms are included in the authority granted by this section.

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

19 (c) The prescription or administration of drugs as authorized in  
20 this section is specifically limited to those drugs appropriate to  
21 treatment of diseases or conditions of the vision system that are  
22 within the scope of practice of optometry. The prescription or  
23 administration of drugs for any other purpose is not authorized by this  
24 section.

25 (4) The board shall develop a means of identification and  
26 verification of optometrists certified to use therapeutic drugs for the  
27 purpose of issuing prescriptions as authorized by this section.

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

30 It shall be unlawful for any person:

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

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

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

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

4 (5) To practice optometry under a false or assumed name, or as a  
5 representative or agent of any person, firm or corporation with which  
6 the licensee has no connection: PROVIDED, Nothing in this chapter nor  
7 in the optometry law shall make it unlawful for any lawfully licensed  
8 optometrist or association of lawfully licensed optometrists to  
9 practice optometry under the name of any lawfully licensed optometrist  
10 who may transfer by inheritance or otherwise the right to use such  
11 name; or

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

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

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

23 (9) To use advertising whether printed, radio, display, or of any  
24 other nature, which is misleading or inaccurate in any material  
25 particular, nor shall any such person in any way misrepresent any goods  
26 or services (including but without limitation, its use, trademark,  
27 grade, quality, size, origin, substance, character, nature, finish,  
28 material, content, or preparation) or credit terms, values, policies,  
29 services, or the nature or form of the business conducted; or

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

35 (11) To use an advertisement of a frame or mounting which is not  
36 truthful in describing the frame or mounting and all its component  
37 parts. Or advertise a frame or mounting at a price, unless it shall be  
38 depicted in the advertisement without lenses inserted, and in addition  
39 the advertisement must contain a statement immediately following, or

1 adjacent to the advertised price, that the price is for frame or  
2 mounting only, and does not include lenses, eye examination and  
3 professional services, which statement shall appear in type as large as  
4 that used for the price, or advertise lenses or complete glasses, viz.:  
5 frame or mounting with lenses included, at a price either alone or in  
6 conjunction with professional services; or

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

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

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

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

20 It shall be unlawful for any person to sell, deliver, or possess  
21 any legend drug except upon the order or prescription of a physician  
22 under chapter 18.71 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, a dentist  
25 under chapter 18.32 RCW, a podiatric physician and surgeon under  
26 chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a  
27 commissioned medical or dental officer in the United States armed  
28 forces or public health service in the discharge of his or her official  
29 duties, a duly licensed physician or dentist employed by the veterans  
30 administration in the discharge of his or her official duties, a  
31 registered nurse or advanced registered nurse practitioner under  
32 chapter 18.79 RCW when authorized by the nursing care quality assurance  
33 commission, an osteopathic physician assistant under chapter 18.57A RCW  
34 when authorized by the board of osteopathic medicine and surgery, a  
35 physician assistant under chapter 18.71A RCW when authorized by the  
36 medical quality assurance commission, a physician licensed to practice  
37 medicine and surgery or a physician licensed to practice osteopathic  
38 medicine and surgery, a dentist licensed to practice dentistry, a

1 podiatric physician and surgeon licensed to practice podiatric medicine  
2 and surgery, or a veterinarian licensed to practice veterinary  
3 medicine, in any province of Canada which shares a common border with  
4 the state of Washington or in any state of the United States:  
5 PROVIDED, HOWEVER, That the above provisions shall not apply to sale,  
6 delivery, or possession by drug wholesalers or drug manufacturers, or  
7 their agents or employees, or to any practitioner acting within the  
8 scope of his or her license, or to a common or contract carrier or  
9 warehouseman, or any employee thereof, whose possession of any legend  
10 drug is in the usual course of business or employment: PROVIDED  
11 FURTHER, That nothing in this chapter or chapter 18.64 RCW shall  
12 prevent a family planning clinic that is under contract with the  
13 department of social and health services from selling, delivering,  
14 possessing, and dispensing commercially prepackaged oral contraceptives  
15 prescribed by authorized, licensed health care practitioners.

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

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

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

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

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

27 (b) "Agent" means an authorized person who acts on behalf of or at  
28 the direction of a manufacturer, distributor, or dispenser. It does  
29 not include a common or contract carrier, public warehouseperson, or  
30 employee of the carrier or warehouseperson.

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

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

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

1 (i) that has a stimulant, depressant, or hallucinogenic effect on  
2 the central nervous system substantially similar to the stimulant,  
3 depressant, or hallucinogenic effect on the central nervous system of  
4 a controlled substance included in Schedule I or II; or

5 (ii) with respect to a particular individual, that the individual  
6 represents or intends to have a stimulant, depressant, or  
7 hallucinogenic effect on the central nervous system substantially  
8 similar to the stimulant, depressant, or hallucinogenic effect on the  
9 central nervous system of a controlled substance included in Schedule  
10 I or II.

11 (2) The term does not include:

12 (i) a controlled substance;

13 (ii) a substance for which there is an approved new drug  
14 application;

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

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

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

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

25 (h) "Dispense" means the interpretation of a prescription or order  
26 for a controlled substance and, pursuant to that prescription or order,  
27 the proper selection, measuring, compounding, labeling, or packaging  
28 necessary to prepare that prescription or order for delivery.

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

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

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

33 (l) "Drug" means (1) a controlled substance recognized as a drug in  
34 the official United States pharmacopoeia/national formulary or the  
35 official homeopathic pharmacopoeia of the United States, or any  
36 supplement to them; (2) controlled substances intended for use in the  
37 diagnosis, cure, mitigation, treatment, or prevention of disease in  
38 individuals or animals; (3) controlled substances (other than food)  
39 intended to affect the structure or any function of the body of

1 individuals or animals; and (4) controlled substances intended for use  
2 as a component of any article specified in (1), (2), or (3) of this  
3 subsection. The term does not include devices or their components,  
4 parts, or accessories.

5 (m) "Drug enforcement administration" means the drug enforcement  
6 administration in the United States Department of Justice, or its  
7 successor agency.

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

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

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

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

16 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),  
17 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any  
18 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)  
19 the term includes any positional isomer; and in RCW 69.50.204(a)(35),  
20 69.50.204(c), and 69.50.208(a) the term includes any positional or  
21 geometric isomer.

22 (p) "Manufacture" means the production, preparation, propagation,  
23 compounding, conversion, or processing of a controlled substance,  
24 either directly or indirectly or by extraction from substances of  
25 natural origin, or independently by means of chemical synthesis, or by  
26 a combination of extraction and chemical synthesis, and includes any  
27 packaging or repackaging of the substance or labeling or relabeling of  
28 its container. The term does not include the preparation, compounding,  
29 packaging, repackaging, labeling, or relabeling of a controlled  
30 substance:

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

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

37 (q) "Marijuana" or "marihuana" means all parts of the plant  
38 Cannabis, whether growing or not; the seeds thereof; the resin  
39 extracted from any part of the plant; and every compound, manufacture,



1 salt, derivative, mixture, or preparation of the plant, its seeds or  
2 resin. The term does not include the mature stalks of the plant, fiber  
3 produced from the stalks, oil or cake made from the seeds of the plant,  
4 any other compound, manufacture, salt, derivative, mixture, or  
5 preparation of the mature stalks (except the resin extracted  
6 therefrom), fiber, oil, or cake, or the sterilized seed of the plant  
7 which is incapable of germination.

8 (r) "Narcotic drug" means any of the following, whether produced  
9 directly or indirectly by extraction from substances of vegetable  
10 origin, or independently by means of chemical synthesis, or by a  
11 combination of extraction and chemical synthesis:

12 (1) Opium, opium derivative, and any derivative of opium or opium  
13 derivative, including their salts, isomers, and salts of isomers,  
14 whenever the existence of the salts, isomers, and salts of isomers is  
15 possible within the specific chemical designation. The term does not  
16 include the isoquinoline alkaloids of opium.

17 (2) Synthetic opiate and any derivative of synthetic opiate,  
18 including their isomers, esters, ethers, salts, and salts of isomers,  
19 esters, and ethers, whenever the existence of the isomers, esters,  
20 ethers, and salts is possible within the specific chemical designation.

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

22 (4) Coca leaves, except coca leaves and extracts of coca leaves  
23 from which cocaine, ecgonine, and derivatives or ecgonine or their  
24 salts have been removed.

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

26 (6) Cocaine base.

27 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer  
28 thereof.

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

31 (s) "Opiate" means any substance having an addiction-forming or  
32 addiction-sustaining liability similar to morphine or being capable of  
33 conversion into a drug having addiction-forming or addiction-sustaining  
34 liability. The term includes opium, substances derived from opium  
35 (opium derivatives), and synthetic opiates. The term does not include,  
36 unless specifically designated as controlled under RCW 69.50.201, the  
37 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts  
38 (dextromethorphan). The term includes the racemic and levorotatory  
39 forms of dextromethorphan.

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

3 (u) "Person" means individual, corporation, business trust, estate,  
4 trust, partnership, association, joint venture, government,  
5 governmental subdivision or agency, or any other legal or commercial  
6 entity.

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

9 (w) "Practitioner" means:

10 (1) A physician under chapter 18.71 RCW, a physician assistant  
11 under chapter 18.71A RCW, an osteopathic physician and surgeon under  
12 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who  
13 is certified by the optometry board under RCW 18.53.010 subject to any  
14 limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a  
15 podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian  
16 under chapter 18.92 RCW, a registered nurse, advanced registered nurse  
17 practitioner, or licensed practical nurse under chapter 18.79 RCW, a  
18 pharmacist under chapter 18.64 RCW or a scientific investigator under  
19 this chapter, licensed, registered or otherwise permitted insofar as is  
20 consistent with those licensing laws to distribute, dispense, conduct  
21 research with respect to or administer a controlled substance in the  
22 course of their professional practice or research in this state.

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

27 (3) A physician licensed to practice medicine and surgery, a  
28 physician licensed to practice osteopathic medicine and surgery, a  
29 dentist licensed to practice dentistry, a podiatric physician and  
30 surgeon licensed to practice podiatric medicine and surgery, or a  
31 veterinarian licensed to practice veterinary medicine in any state of  
32 the United States.

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

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

1 (z) "Secretary" means the secretary of health or the secretary's  
2 designee.

3 (aa) "State," unless the context otherwise requires, means a state  
4 of the United States, the District of Columbia, the Commonwealth of  
5 Puerto Rico, or a territory or insular possession subject to the  
6 jurisdiction of the United States.

7 (bb) "Ultimate user" means an individual who lawfully possesses a  
8 controlled substance for the individual's own use or for the use of a  
9 member of the individual's household or for administering to an animal  
10 owned by the individual or by a member of the individual's household.

11 (cc) "Electronic communication of prescription information" means  
12 the communication of prescription information by computer, or the  
13 transmission of an exact visual image of a prescription by facsimile,  
14 or other electronic means for original prescription information or  
15 prescription refill information for a Schedule III-V controlled  
16 substance between an authorized practitioner and a pharmacy or the  
17 transfer of prescription information for a controlled substance from  
18 one pharmacy to another pharmacy.

19 NEW SECTION. **Sec. 5.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

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