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**SENATE BILL 5672**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senators Wojahn, Sellar, Franklin, Moyer and Hargrove

Read first time 02/08/93. Referred to Committee on Health & Human Services.

1 AN ACT Relating to the vision care consumer assistance act;  
2 amending RCW 18.53.140; adding a new section to chapter 34.05 RCW;  
3 adding a new chapter to Title 18 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. The legislature finds  
6 that at least one-half of the state's population need corrective lenses  
7 in order to maintain good eyesight. It further finds that maintaining  
8 a proper balance between public protection and overregulation of health  
9 care professions is critical if Washington state is to ensure access to  
10 affordable vision services and goods for consumers. It is important  
11 for patients to engage in price and quality comparison shopping among  
12 licensed practitioners.

13 The legislature finds that boards regulating health care  
14 professions can lose sight of this balance and adopt rules that unduly  
15 restrict competition, given the public health issues confronted. This  
16 risk has been acknowledged to be particularly high in the prescription  
17 and sale of corrective lenses. The presence of four professional  
18 regulatory authorities with four separate practice acts causes  
19 confusion in this area of health care.

1       The federal trade commission has twice entered the field. Its last  
2 effort was ruled unlawful as violating the prerogatives of state  
3 government. The purpose of this chapter is to enact into law the best  
4 features of that federal effort, supplementing it with additional  
5 protection of consumers needing contact lenses.

6       NEW SECTION.   **Sec. 2.**  DEFINITIONS.  For purposes of this chapter,  
7 the following definitions apply:

8       (1) "Patient" means a person who has had an eye examination.

9       (2) "Eye examination" means an encounter with a prescriber that  
10 includes the process of determining the refractive condition of a  
11 person's eyes or the appropriateness of contact lenses, if requested by  
12 the patient.

13       (3) "Ophthalmic goods" means eyeglasses or a component or  
14 components of eyeglasses, and contact lenses.

15       (4) "Ophthalmic services" means the measuring, fitting, adjusting,  
16 and fabricating of ophthalmic goods subsequent to an eye examination.

17       (5) "Prescriber" means an ophthalmologist or optometrist who  
18 performs eye examinations under chapter 18.53, 18.57, or 18.71 RCW.

19       (6) "Optician" means a person licensed under chapter 18.34 RCW.

20       (7) "Person" means an individual, partnership, corporation,  
21 association, or other entity.

22       (8) "Practitioner" includes prescribers and opticians.

23       (9) "Prescription" means the written direction from a prescriber  
24 for corrective lenses and consists of the refractive powers. If  
25 contact lenses are requested by the patient the prescription must in  
26 addition contain a notation that the patient is "okay for contacts" or  
27 similar language confirming there are no contraindications for  
28 contacts.

29       (10) "Secretary" means the secretary of the department of health.

30       NEW SECTION.   **Sec. 3.**  SEPARATION OF EXAMINATION AND DISPENSING.

31       (1) No prescriber shall:

32       (a) Fail to provide to the patient one copy of the patient's  
33 prescription immediately after the eye examination is completed. A  
34 prescriber may refuse to give the patient a copy of the patient's  
35 prescription until the patient has paid for the eye examination, but  
36 only if that prescriber would have required immediate payment from that

1 patient had the examination revealed that no ophthalmic goods were  
2 required;

3 (b) Condition the availability of an eye examination or  
4 prescription, or both, to a person on a requirement that the patient  
5 agree to purchase ophthalmic goods from the prescriber or a dispenser  
6 approved by the prescriber;

7 (c) Where the patient requested an evaluation for contact lenses at  
8 the time of the eye examination, fail to include a notation of "okay  
9 for contacts" or similar language on the prescription or fail to give  
10 oral approval for contacts to a practitioner licensed by the state to  
11 fit contact lenses if there are no contraindications for contacts  
12 unless the prescriber's practice excludes the evaluation of the eye for  
13 contact lenses in all cases. However, a prescriber may exclude  
14 categories of contact lenses where clinically indicated for a patient,  
15 but may not restrict patients to a particular brand;

16 (d) Charge the patient a fee in addition to the prescriber's  
17 examination fee as a condition to releasing the prescription to the  
18 patient. However, a prescriber may charge a reasonable, additional fee  
19 for verifying ophthalmic goods dispensed by another practitioner if  
20 that fee is imposed at the time the verification is performed; or

21 (e) Place on the prescription, or require the patient to place on  
22 the prescription, sign, or deliver to the patient a form or notice  
23 waiving or disclaiming the liability or responsibility of the  
24 prescriber for the accuracy of the eye examination or the accuracy of  
25 the ophthalmic goods and services dispensed by another practitioner.

26 (2) Nothing contained in this title shall prevent a prescriber or  
27 optician from measuring the refractive power of eyeglass lenses and  
28 duplicating the lenses upon the request of a patient. No prescriber or  
29 optician is liable for harm caused by eyeglasses or contact lenses  
30 dispensed under this subsection.

31 NEW SECTION. **Sec. 4.** MAXIMIZING COMPETITION IN THE OPTICAL  
32 INDUSTRY. (1) If the patient chooses to purchase contact lenses from  
33 an optician and the prescription is silent regarding contact lenses,  
34 the optician shall call the prescriber for permission to fit contact  
35 lenses and, if given, chart the permission. If the prescriber  
36 concludes the ocular health of the eye presents a contraindication for  
37 contact lenses, a verbal explanation of that contraindication must be  
38 given to the patient at the time of the eye examination and

1 documentation maintained in the patient's record. However, if no  
2 evaluation for contact lenses had been done during the eye examination,  
3 the prescriber may decline to give oral approval for contact lenses.

4 (2) If a patient chooses to purchase contact lenses from an  
5 optician, the optician shall advise the patient to have a prescriber  
6 monitor the performance of the initial set of contact lenses on the eye  
7 and chart the advice.

8 (3) The prescriber may not include a prescription expiration date  
9 of less than two years if the patient is being fitted with contact  
10 lenses, unless warranted by the ocular health of the eye. If a  
11 prescription is to expire in less than two years, an explanatory  
12 notation must be made in the patient's record and a verbal explanation  
13 given to the patient at the time of the eye examination.

14 (4) No practitioner may dispense contact lenses based on a  
15 prescription that is over two years old.

16 NEW SECTION. **Sec. 5.** BANS ON COMMERCIAL PRACTICE. As to the  
17 provision of eye examinations, ophthalmic services, and ophthalmic  
18 goods only, no provision of Washington law may be construed to:

19 (1) Prevent or restrict prescribers or opticians from entering into  
20 associations with each other, laypersons, or corporations by:

21 (a) Prohibiting the employing of prescribers or opticians to  
22 provide such services or goods to the public;

23 (b) Prohibiting prescribers or opticians from entering into  
24 partnership agreements, joint ownership or equity participation  
25 agreements, or profit-sharing agreements for the purpose of forming  
26 entities to provide such services or goods to the public;

27 (c) Prohibiting prescribers or opticians from entering into  
28 franchise agreements, including those that provide for the sharing of  
29 revenues, for the purpose of forming entities to provide such services  
30 or goods to the public;

31 (d) Prohibiting the leasing of space from persons other than  
32 prescribers or opticians to provide such services or goods to the  
33 public or prohibiting prescribers or opticians from entering into  
34 leases for such space where rental payments under such leases are based  
35 on a percentage of revenues; or

36 (e) Prohibiting lay control over the business aspects of a  
37 prescriber or optician practice or an entity formed to provide the  
38 services or goods to the public;

1 (2) Limit the number of offices that may be owned or operated by  
2 prescribers or opticians or by entities formed by an agreement covered  
3 by this section; or require that an owner of branch offices remain in  
4 personal attendance at each branch office for a specific percentage of  
5 time;

6 (3) Prohibit prescribers or opticians or any entities formed by any  
7 of the agreements covered by this section from practicing in a  
8 pharmacy, department store, shopping center, retail optical dispensary,  
9 or other mercantile location;

10 (4) Prohibit prescribers or opticians or entities formed by an  
11 agreement covered by this section from practicing or holding themselves  
12 out to the public, by advertising or otherwise, under a nondeceptive  
13 trade name, including a name other than the name shown on their  
14 licenses or certificate of registration; or require the disclosure in  
15 advertising of the names of all prescribers or opticians practicing at  
16 a given advertised location or practicing under a trade name.

17 NEW SECTION. **Sec. 6.** ADVERTISING OF EYE EXAMINATIONS, OPHTHALMIC  
18 GOODS, AND SERVICES. (1) All advertising of eye examinations,  
19 ophthalmic goods, and services shall comply with RCW 18.130.180 and be  
20 regulated by the secretary as the disciplinary and rule-making  
21 authority. The secretary is admonished to carry out these  
22 responsibilities in a way that encourages vigorous competition in the  
23 market for such goods and services.

24 (2) The secretary may issue cease and desist orders against a  
25 person responsible for placing advertising that violates RCW  
26 18.130.180. Hearings challenging such orders shall be promptly held  
27 under chapter 34.05 RCW.

28 NEW SECTION. **Sec. 7.** RULE MAKING. (1) The secretary shall adopt  
29 rules necessary to implement the purposes of this chapter. The  
30 secretary is specifically directed to adopt rules that maximize  
31 competition in the delivery of vision care limited only by the existing  
32 scope of practice of the impacted professions and by provisions  
33 preventing demonstrated and substantial threats to the public's vision  
34 health.

35 (2) This chapter and the rules adopted by the secretary pursuant to  
36 this section shall supersede rules adopted by professions regulated  
37 pursuant to chapter 18.34, 18.53, 18.57, or 18.71 RCW that conflict

1 with this chapter. To the extent that, in the secretary's opinion,  
2 rules adopted by these professions conflict with the purposes of this  
3 chapter, the secretary may declare them null and void.

4 NEW SECTION. **Sec. 8.** SHORT TITLE. This chapter may be cited as  
5 the vision care consumer assistance act.

6 NEW SECTION. **Sec. 9.** CODIFICATION DIRECTION. Sections 1 through  
7 8 of this act shall constitute a new chapter in Title 18 RCW.

8 NEW SECTION. **Sec. 10.** A new section is added to Part IV of  
9 chapter 34.05 RCW to read as follows:

10 JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE JURISDICTION. Unless  
11 the context clearly indicates otherwise, for purposes of this part of  
12 chapter 34.05 RCW, "rule" includes guidelines, interpretive statements,  
13 policy statements, declaratory judgments whether binding or nonbinding,  
14 advisory opinions, or any other orders of a board of medical examiners,  
15 medical disciplinary board, board of osteopathic medicine and surgery,  
16 board of optometry, and the secretary of health if addressing the  
17 delivery of any vision care or goods.

18 NEW SECTION. **Sec. 11.** CAPTIONS NOT LAW. Section captions as used  
19 in this act constitute no part of the law.

20 NEW SECTION. **Sec. 12.** SEVERABILITY. If any provision of this act  
21 or its application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 **Sec. 13.** RCW 18.53.140 and 1991 c 3 s 138 are each amended to read  
25 as follows:

26 It shall be unlawful for any person:

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

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

32 (3) To alter with fraudulent intent in any material regard such  
33 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  
18 his own account or as agent or representative for any other purpose,  
19 firm or corporation, any eyeglasses, spectacles, lenses or frames; or~~

20 ~~(8))~~ (6) To use drugs in the practice of optometry, except those  
21 topically applied for diagnostic or therapeutic purposes(~~; or~~

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

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

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

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

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

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

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

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