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**SUBSTITUTE SENATE BILL 5226**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Hale, Deccio, Thibaudeau, Keiser, Oke and Franklin)

READ FIRST TIME 02/24/03.

1 AN ACT Relating to optometric care and practice; and amending RCW  
2 18.53.010, 18.53.140, 69.41.030, and 69.50.101.

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

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

6 (1) The practice of optometry is defined as the examination of the  
7 human eye, the examination and ascertaining any defects of the human  
8 vision system and the analysis of the process of vision. The practice  
9 of optometry may include, but not necessarily be limited to, the  
10 following:

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

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

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

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

10 (e) The adaptation of prosthetic eyes.

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

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

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

1 by the optometry board of Washington to administer, dispense, or  
2 prescribe oral drugs for diagnostic or therapeutic purposes.

3 (d) Those persons administering epinephrine by injection for  
4 treatment of anaphylactic shock in the practice of optometry must be  
5 certified under (b) of this subsection and must have an additional  
6 minimum of four hours of didactic and supervised clinical instruction,  
7 as established by the board, and certification from an institution of  
8 higher learning, accredited by those agencies recognized by the United  
9 States office of education or the council on postsecondary  
10 accreditation to qualify for certification by the optometry board to  
11 administer epinephrine by injection.

12 (e) Such course or courses shall be the fiscal responsibility of  
13 the participating and attending optometrist.

14 (3) The board shall establish a (~~schedule~~) list of topical drugs  
15 for diagnostic and treatment purposes limited to the practice of  
16 optometry, and no person licensed pursuant to this chapter shall  
17 prescribe, dispense, purchase, possess, or administer drugs except as  
18 authorized and to the extent permitted by the board.

19 (4) The board must establish a list of oral Schedule III through V  
20 controlled substances and any oral legend drugs, with the approval of  
21 and after consultation with the board of pharmacy. No person licensed  
22 under this chapter may use, prescribe, dispense, purchase, possess, or  
23 administer these drugs except as authorized and to the extent permitted  
24 by the board. No optometrist may use, prescribe, dispense, or  
25 administer oral corticosteroids.

26 (a) The board, with the approval of and in consultation with the  
27 board of pharmacy, must establish, by rule, specific guidelines for the  
28 prescription and administration of drugs by optometrists, so that  
29 licensed optometrists and persons filling their prescriptions have a  
30 clear understanding of which drugs and which dosages or forms are  
31 included in the authority granted by this section.

32 (b) An optometrist may not:

33 (i) Prescribe, dispense, or administer a controlled substance for  
34 more than seven days in treating a particular patient for a single  
35 trauma, episode, or condition or for pain associated with or related to  
36 the trauma, episode, or condition; or

37 (ii) Prescribe an oral drug within ninety days following ophthalmic

1 surgery unless the optometrist consults with the treating  
2 ophthalmologist.

3 (c) If treatment exceeding the limitation in (b)(i) of this  
4 subsection is indicated, the patient must be referred to a physician  
5 licensed under chapter 18.71 RCW.

6 (d) The prescription or administration of drugs as authorized in  
7 this section is specifically limited to those drugs appropriate to  
8 treatment of diseases or conditions of the human eye and the adnexa  
9 that are within the scope of practice of optometry. The prescription  
10 or administration of drugs for any other purpose is not authorized by  
11 this section.

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

15 (6) Nothing in this chapter may be construed to authorize the use,  
16 prescription, dispensing, purchase, possession, or administration of  
17 any Schedule I or II controlled substance. The provisions of this  
18 subsection must be strictly construed.

19 (7) With the exception of the administration of epinephrine by  
20 injection for the treatment of anaphylactic shock, no injections or  
21 infusions may be administered by an optometrist.

22 (8) Nothing in this chapter may be construed to authorize  
23 optometrists to perform ophthalmic surgery. Ophthalmic surgery is  
24 defined as any invasive procedure in which human tissue is cut,  
25 ablated, or otherwise penetrated by incision, injection, laser,  
26 ultrasound, or other means, in order to: Treat human eye diseases;  
27 alter or correct refractive error; or alter or enhance cosmetic  
28 appearance. Nothing in this chapter limits an optometrist's ability to  
29 use diagnostic instruments utilizing laser or ultrasound technology.  
30 Ophthalmic surgery, as defined in this subsection, does not include  
31 removal of superficial ocular foreign bodies, epilation of misaligned  
32 eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation  
33 and irrigation of the lacrimal system, orthokeratology, prescription  
34 and fitting of contact lenses with the purpose of altering refractive  
35 error, or other similar procedures within the scope of practice of  
36 optometry.

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 or her own account or as agent or representative for any other purpose,  
29 firm 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,

1 material, content, or preparation) or credit terms, values, policies,  
2 services, or the nature or form of the business conducted; or

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

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

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

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

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

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

32 It shall be unlawful for any person to sell, deliver, or possess  
33 any legend drug except upon the order or prescription of a physician  
34 under chapter 18.71 RCW, an osteopathic physician and surgeon under  
35 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who  
36 is certified by the optometry board under RCW 18.53.010, a dentist  
37 under chapter 18.32 RCW, a podiatric physician and surgeon under

1 chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a  
2 commissioned medical or dental officer in the United States armed  
3 forces or public health service in the discharge of his or her official  
4 duties, a duly licensed physician or dentist employed by the veterans  
5 administration in the discharge of his or her official duties, a  
6 registered nurse or advanced registered nurse practitioner under  
7 chapter 18.79 RCW when authorized by the nursing care quality assurance  
8 commission, an osteopathic physician assistant under chapter 18.57A RCW  
9 when authorized by the board of osteopathic medicine and surgery, a  
10 physician assistant under chapter 18.71A RCW when authorized by the  
11 medical quality assurance commission, a physician licensed to practice  
12 medicine and surgery or a physician licensed to practice osteopathic  
13 medicine and surgery, a dentist licensed to practice dentistry, a  
14 podiatric physician and surgeon licensed to practice podiatric medicine  
15 and surgery, or a veterinarian licensed to practice veterinary  
16 medicine, in any province of Canada which shares a common border with  
17 the state of Washington or in any state of the United States:  
18 PROVIDED, HOWEVER, That the above provisions shall not apply to sale,  
19 delivery, or possession by drug wholesalers or drug manufacturers, or  
20 their agents or employees, or to any practitioner acting within the  
21 scope of his or her license, or to a common or contract carrier or  
22 warehouseman, or any employee thereof, whose possession of any legend  
23 drug is in the usual course of business or employment: PROVIDED  
24 FURTHER, That nothing in this chapter or chapter 18.64 RCW shall  
25 prevent a family planning clinic that is under contract with the  
26 department of social and health services from selling, delivering,  
27 possessing, and dispensing commercially prepackaged oral contraceptives  
28 prescribed by authorized, licensed health care practitioners.

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

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

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

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

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

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

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

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

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

14 (i) that has a stimulant, depressant, or hallucinogenic effect on  
15 the central nervous system substantially similar to the stimulant,  
16 depressant, or hallucinogenic effect on the central nervous system of  
17 a controlled substance included in Schedule I or II; or

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

24 (2) The term does not include:

25 (i) a controlled substance;

26 (ii) a substance for which there is an approved new drug  
27 application;

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

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

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

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



1 (h) "Dispense" means the interpretation of a prescription or order  
2 for a controlled substance and, pursuant to that prescription or order,  
3 the proper selection, measuring, compounding, labeling, or packaging  
4 necessary to prepare that prescription or order for delivery.

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

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

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

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

20 (m) "Drug enforcement administration" means the drug enforcement  
21 administration in the United States Department of Justice, or its  
22 successor agency.

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

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

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

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

31 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),  
32 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any  
33 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)  
34 the term includes any positional isomer; and in RCW 69.50.204(a)(35),  
35 69.50.204(c), and 69.50.208(a) the term includes any positional or  
36 geometric isomer.

37 (p) "Manufacture" means the production, preparation, propagation,  
38 compounding, conversion, or processing of a controlled substance,

1 either directly or indirectly or by extraction from substances of  
2 natural origin, or independently by means of chemical synthesis, or by  
3 a combination of extraction and chemical synthesis, and includes any  
4 packaging or repackaging of the substance or labeling or relabeling of  
5 its container. The term does not include the preparation, compounding,  
6 packaging, repackaging, labeling, or relabeling of a controlled  
7 substance:

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

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

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

24 (r) "Narcotic drug" means any of the following, whether produced  
25 directly or indirectly by extraction from substances of vegetable  
26 origin, or independently by means of chemical synthesis, or by a  
27 combination of extraction and chemical synthesis:

28 (1) Opium, opium derivative, and any derivative of opium or opium  
29 derivative, including their salts, isomers, and salts of isomers,  
30 whenever the existence of the salts, isomers, and salts of isomers is  
31 possible within the specific chemical designation. The term does not  
32 include the isoquinoline alkaloids of opium.

33 (2) Synthetic opiate and any derivative of synthetic opiate,  
34 including their isomers, esters, ethers, salts, and salts of isomers,  
35 esters, and ethers, whenever the existence of the isomers, esters,  
36 ethers, and salts is possible within the specific chemical designation.

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

1 (4) Coca leaves, except coca leaves and extracts of coca leaves  
2 from which cocaine, ecgonine, and derivatives or ecgonine or their  
3 salts have been removed.

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

5 (6) Cocaine base.

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

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

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

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

21 (u) "Person" means individual, corporation, business trust, estate,  
22 trust, partnership, association, joint venture, government,  
23 governmental subdivision or agency, or any other legal or commercial  
24 entity.

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

27 (w) "Practitioner" means:

28 (1) A physician under chapter 18.71 RCW, a physician assistant  
29 under chapter 18.71A RCW, an osteopathic physician and surgeon under  
30 chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who  
31 is certified by the optometry board under RCW 18.53.010 subject to any  
32 limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a  
33 podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian  
34 under chapter 18.92 RCW, a registered nurse, advanced registered nurse  
35 practitioner, or licensed practical nurse under chapter 18.79 RCW, a  
36 pharmacist under chapter 18.64 RCW or a scientific investigator under  
37 this chapter, licensed, registered or otherwise permitted insofar as is

1 consistent with those licensing laws to distribute, dispense, conduct  
2 research with respect to or administer a controlled substance in the  
3 course of their professional practice or research in this state.

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

8 (3) A physician licensed to practice medicine and surgery, a  
9 physician licensed to practice osteopathic medicine and surgery, a  
10 dentist licensed to practice dentistry, a podiatric physician and  
11 surgeon licensed to practice podiatric medicine and surgery, or a  
12 veterinarian licensed to practice veterinary medicine in any state of  
13 the United States.

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

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

20 (z) "Secretary" means the secretary of health or the secretary's  
21 designee.

22 (aa) "State," unless the context otherwise requires, means a state  
23 of the United States, the District of Columbia, the Commonwealth of  
24 Puerto Rico, or a territory or insular possession subject to the  
25 jurisdiction of the United States.

26 (bb) "Ultimate user" means an individual who lawfully possesses a  
27 controlled substance for the individual's own use or for the use of a  
28 member of the individual's household or for administering to an animal  
29 owned by the individual or by a member of the individual's household.

30 (cc) "Electronic communication of prescription information" means  
31 the communication of prescription information by computer, or the  
32 transmission of an exact visual image of a prescription by facsimile,  
33 or other electronic means for original prescription information or  
34 prescription refill information for a Schedule III-V controlled  
35 substance between an authorized practitioner and a pharmacy or the  
36 transfer of prescription information for a controlled substance from  
37 one pharmacy to another pharmacy.

1        NEW SECTION.   **Sec. 5.**  If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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