Eye care consumer protection.

Sponsored by: Senator(s) Barnard, Dockstader, Landen and Meier and Representative(s) Harvey and Kasperik

A BILL
for

1 AN ACT relating to consumer protection; creating the
2 Consumer Protection in Eye Care Act; providing definitions;
3 specifying prohibited acts; providing requirements to
4 operate a kiosk; establishing standards as specified;
5 providing for enforcement; providing for rulemaking; and
6 providing for an effective date.
7
8 Be It Enacted by the Legislature of the State of Wyoming:
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10 Section 1. W.S. 33-23-118 and 40-12-701 through
11 40-12-707 are created to read:
12
13 33-23-118. Enforcement.
The board shall enforce the provisions of the Consumer Protection in Eye Care Act, W.S. 40-12-701 through 40-12-707.

ARTICLE 7

CONSUMER PROTECTION IN EYE CARE ACT

40-12-701. Short title.

This act may be cited as the "Wyoming Consumer Protection in Eye Care Act."

40-12-702. Definitions.

(a) As used in this act:

(i) "Board" means the Wyoming state board of examiners in optometry, created by W.S. 33-23-104;

(ii) "Corrective optical aid" means any contact lens, eyeglasses or other optical device or instrument used to correct or enhance vision or for therapeutic purposes;
(iii) "Dispense" means to furnish a corrective optical aid to a person;

(iv) "Established treatment site" means a location where a person seeks care from a provider through a provider patient relationship and which maintains sufficient technology and equipment to permit an adequate physical evaluation as appropriate for the person’s presenting complaint;

(v) "Eye examination" means a physical assessment of the ocular health and visual status of a person to establish a medical diagnosis or to correct vision disorders but does not include examinations consisting solely of objective refractive data or information generated by an automated testing device, including an autorefractor;

(vi) "In-person evaluation" means an eye examination conducted by a provider who is at the same physical location as the person undergoing the eye examination;
(vii) "Kiosk" means automated equipment or an application designed to be used on a telephone, computer or Internet based device that can be used in person or remotely to conduct an eye examination;

(viii) "Over-the-counter optical aid" means any eyeglasses or other optical device or instrument excluding contact lenses that:

(A) Are worn solely for cosmetic, protective or other noncorrective, nonenhancement or nontherapeutic purposes;

(B) Have uniform focus power in each lens; and

(C) Are neither less than +1.00 diopter nor greater than +3.25 diopters in power.

(ix) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a provider based on the results of an eye examination;
(x) "Provider" means a person licensed as an optometrist under the provisions of W.S. 33-23-101 through 33-23-118 or licensed under the Medical Practice Act, W.S. 33-26-101 et seq.;

(xi) "This act" means W.S. 40-12-701 through 40-12-707.

40-12-703. Prohibited acts.

(a) No person in this state may dispense any corrective optical aid, other than an over-the-counter optical aid, to another person without a valid prescription from a provider. A valid prescription for a corrective optical aid shall:

(i) Contain an expiration date of not less than one (1) year from the date of the eye examination by the provider or a statement by the provider of the reasons why a shorter time is appropriate based on the medical needs of the person issued the prescription;
(ii) Take into consideration any medical findings and any refractive error discovered during the eye examination;

(iii) Not be made based solely on information about the human eye generated by a kiosk; and

(iv) Be released by a provider pursuant to W.S. 33-23-101(d).

**40-12-704. Kiosk operation; requirements.**

(a) No person shall operate a kiosk unless:

(i) The federal food and drug administration has approved the intended use of the kiosk;

(ii) The procedure for which the kiosk is used has a recognized current procedural terminology code maintained by the American Medical Association;

(iii) The kiosk is designed and operated in a manner that provides any accommodation required by the
federal Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as the act existed on January 1, 2015;

(iv) The kiosk and accompanying technology used to collect and transmit information and data, including photographs and scans, comply with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., and 42 U.S.C. 1320d et seq., as the act existed on January 1, 2015;

(v) Diagnostic information and data, including photographs and scans, gathered by the kiosk are read and interpreted by a provider who shall:

(A) Establish the identity of the person engaging kiosk services; and

(B) Ensure that the person engaging kiosk services has previously had at least one (1) in-person evaluation at an established treatment site, provided, however, that an in-person evaluation is not required for new conditions relating to a provider's existing patient...
unless the provider deems that an in-person evaluation is
necessary to provide adequate care for that patient.

(vi) The physical location of the kiosk
prominently displays the name and state license number of
the provider who will read and interpret the diagnostic
information and data, including photographs and scans,
produced by the kiosk; and

(vii) The owner, operator or lessee of the kiosk
maintains liability insurance in an amount established by
board rule to cover claims made by persons diagnosed or
treated based on information and data, including
photographs and scans, generated by the kiosk.

40-12-705. Standards.

Evaluation, treatment and consultation recommendations made
using a kiosk, including electronically generated
prescriptions, shall be held to the same standards of
appropriate practice as those who conduct in-person
evaluations.
40-12-706. Violations; enforcement.

(a) The board shall upon receiving a written sworn complaint, or may upon its own initiative, investigate alleged violations of this act or any rule or regulation of the board and may impose a civil penalty not to exceed ten thousand dollars ($10,000.00) for each separate violation.

(b) At the request of the board, the attorney general may file a civil action seeking an injunction or other appropriate relief to enforce the provisions of, or rules and regulations promulgated under, this act.

40-12-707. Rulemaking.

The board, in consultation with the board of medicine, shall adopt rules and regulations to administer this act pursuant to the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq.

Section 2. W.S. 33-23-101(a)(ix) and (e) is amended to read:

(a) As used in this act:

(ix) "This act" means W.S. 33-23-101 through 33-23-117-33-23-118.

(e) The provisions of this chapter do not prohibit the sale of goggles, sunglasses, colored glasses or occupational eye-protective devices if they do not have refractive values, nor do the provisions of this act prohibit the sale of complete ready-to-wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors. The provisions of this chapter do not prohibit the sale of over-the-counter optical aids, as provided in W.S. 40-12-701 through 40-12-707.

Section 3. This act is effective July 1, 2016.