

SENATE FILE NO. SF0067

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.**

1 The board shall enforce the provisions of the Consumer
 2 Protection in Eye Care Act, W.S. 40-12-701 through
 3 40-12-707.

4

5

ARTICLE 7

6

CONSUMER PROTECTION IN EYE CARE ACT

7

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40-12-701. Short title.

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

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40-12-702. Definitions.

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(a) As used in this act:

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

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(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;

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1 (iii) "Dispense" means to furnish a corrective
2 optical aid to a person;

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

10

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

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19 (vi) "In-person evaluation" means an eye
20 examination conducted by a provider who is at the same
21 physical location as the person undergoing the eye
22 examination;

23

1 (vii) "Kiosk" means automated equipment or an
2 application designed to be used on a telephone, computer or
3 Internet based device that can be used in person or
4 remotely to conduct an eye examination;

5

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

9

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

13

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

16

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

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20 (ix) "Prescription" means an order, formula or
21 recipe issued in any form of oral, written, electronic or
22 other means of transmission by a provider based on the
23 results of an eye examination;

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2 (x) "Provider" means a person licensed as an
3 optometrist under the provisions of W.S. 33-23-101 through
4 33-23-118 or licensed under the Medical Practice Act, W.S.
5 33-26-101 et seq.;

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7 (xi) "This act" means W.S. 40-12-701 through
8 40-12-707.

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10 **40-12-703. Prohibited acts.**

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

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18 (i) Contain an expiration date of not less than
19 one (1) year from the date of the eye examination by the
20 provider or a statement by the provider of the reasons why
21 a shorter time is appropriate based on the medical needs of
22 the person issued the prescription;

23

1 (ii) Take into consideration any medical
2 findings and any refractive error discovered during the eye
3 examination;

4
5 (iii) Not be made based solely on information
6 about the human eye generated by a kiosk; and

7
8 (iv) Be released by a provider pursuant to W.S.
9 33-23-101(d).

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11 **40-12-704. Kiosk operation; requirements.**

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13 (a) No person shall operate a kiosk unless:

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

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

21
22 (iii) The kiosk is designed and operated in a
23 manner that provides any accommodation required by the

1 federal Americans with Disabilities Act of 1990, 42 U.S.C.
2 § 12101 et seq., as the act existed on January 1, 2015;

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4 (iv) The kiosk and accompanying technology used
5 to collect and transmit information and data, including
6 photographs and scans, comply with the federal Health
7 Insurance Portability and Accountability Act of 1996, 42
8 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., and 42 U.S.C.
9 1320d et seq., as the act existed on January 1, 2015;

10

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

14

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

17

18 (B) Ensure that the person engaging kiosk
19 services has previously had at least one (1) in-person
20 evaluation at an established treatment site, provided,
21 however, that an in-person evaluation is not required for
22 new conditions relating to a provider's existing patient

1 unless the provider deems that an in-person evaluation is
2 necessary to provide adequate care for that patient.

3

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

9

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

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16 **40-12-705. Standards.**

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18 Evaluation, treatment and consultation recommendations made
19 using a kiosk, including electronically generated
20 prescriptions, shall be held to the same standards of
21 appropriate practice as those who conduct in-person
22 evaluations.

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1 **40-12-706. Violations; enforcement.**

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

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

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14 **40-12-707. Rulemaking.**

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16 The board, in consultation with the board of medicine,
17 shall adopt rules and regulations to administer this act
18 pursuant to the Wyoming Administrative Procedure Act, W.S.
19 16-3-101 et seq.

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

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1 **33-23-101. Definitions and exceptions.**

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3 (a) As used in this act:

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

6 ~~33-23-117~~ 33-23-118.

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

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

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(END)