

SENATE BILL REPORT

SB 5411

As Reported by Senate Committee On:
Health Care, February 7, 2017
Ways & Means, January 31, 2018

Title: An act relating to consumer protection in eye care.

Brief Description: Concerning eye care.

Sponsors: Senators Cleveland, Rivers, Warnick, Conway and Keiser.

Brief History:

Committee Activity: Health Care: 2/02/17, 2/07/17 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/15/17, 1/31/18 [w/oRec].

Brief Summary of Bill

- Establishes requirements for the use of remote technology for eye care, and provides for penalties.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 5411 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rivers, Chair; Cleveland, Ranking Minority Member; Kuderer, Assistant Ranking Minority Member; Conway, Keiser, Miloscia and Walsh.

Minority Report: Do not pass.

Signed by Senators Becker, Vice Chair; Fain and Mullet.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban.

Staff: Greg Attanasio (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Honeyford, Assistant Ranking Member; Bailey, Becker, Billig, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: James Kettel (786-7459)

Background: A number of online services allow consumers to order glasses and contacts through web-based services. Some services also advertise online eye exams to issue a prescription for corrective eyewear. The online services indicate they use licensed ophthalmologists to evaluate visual acuity, diagnose refractive error, and issue a prescription, where clinically appropriate.

An eye care provider must be a licensed ophthalmologist or optometrist under state law to prescribe corrective lenses. A licensed ophthalmologist, licensed optometrist, or a licensed optician may dispense prescribed corrective lenses.

Summary of Bill: It is unlawful for any person in this state to:

- write or otherwise prepare a prescription for corrective lenses without the individual first having received a comprehensive eye examination and refraction from a qualified vision care provider writing the prescription; or
- sell any corrective lenses, other than over-the-counter glasses, to any individual in the state unless the individual has a valid prescription from a qualified vision care provider and the person selling the lenses is properly licensed to dispense corrective lenses.

It is unlawful for any person to offer remote technology to consumers without fully complying with the following:

- the remote technology must be approved by the United States Food and Drug Administration for the intended use;
- the remote technology must be designed and operated in a manner that provides any accommodation required by the Federal Americans With Disabilities Act;
- the remote technology must gather and transmit any protected health information in compliance with the Federal Health Insurance Portability and Accountability Act;
- the remote technology may only transmit the diagnostic information and data to a qualified vision care provider;
- the remote technology must display the physical location of the service, and the name and state license number of the individual who will read and interpret the diagnostic information and data;
- if the remote technology is used as the basis for a qualified vision care provider to write a prescription or perform any other service or procedure, the service or procedure must have a recognized current procedural terminology code; and
- the owner or operator of the remote technology must maintain liability insurance to cover claims made by individuals diagnosed or treated based on information and data generated by the automated equipment.

The Department of Health (Department) must review any written complaint alleging a violation of the act. The Department must investigate if it believes there has been a violation,

whether or not any person has been harmed by the suspected violation. If the Department finds there has been a violation, it may impose a civil penalty of between \$1,000 and \$10,000 for each violation. If the violation is the first violation and there was not significant harm to human health, the Department may issue a warning instead.

At the request of the Department, the Attorney General may file a civil action seeking an injunction or other appropriate relief to enforce this act.

Qualified vision care provider means an ophthalmologist or optometrist licensed in Washington. Remote technology means any automated equipment or testing device to be used with a phone, computer, or internet-based device that can generate data without the physical presence of a qualified vision care provider.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (First Substitute):

- Removed a reference to dispensing lenses without a prescription and removed a reference to the Administrative Procedure Act and replaced it with the Uniform Disciplinary Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Health Care): *Testimony from 2017 Regular Session. The committee recommended a different version of the bill than what was heard.* PRO: The quality of eye care is important and it is unclear how we can ensure the quality of online eye care. We have been working on some amendments with the Department of Health to clarify that the provider must be licensed in the state but not reside in the state. We support telemedicine but believe care provided through technology and in person should be held to the same standard of care. It is not appropriate to get an initial prescription for contact lenses online since they cannot be properly fitted and there is not a thorough exam. An in-person exam involves a more thorough exam and a review of systemic issues. The refraction alone is not a comprehensive exam.

CON: We have had no complaints about our business and no lawsuits. This bill is in search of a problem. Technology does increase access to care and the technology is advancing rapidly with new innovations. We should trust licensed providers to make appropriate use of technology and innovation. This bill is the opposite of a free market approach and just protects retail establishments. Technology is more convenient for many than taking time off work to visit a provider in-person. There is an existing CPT code for the refractions. Many regulations on this business already exist at the federal level. We have no claims of harm and the National Academy of Ophthalmologists is not opposed to the use of technology. This option allows consumers the option of purchasing new lenses between exams. I provide eye

care for the neonatal intensive care unit (NICUs) and there are not enough rural providers to ensure infants get the necessary screening in-person. We need to retain access to care with technology. The eye surgeons are not in agreement on this bill. We are working to see if we can find an agreement but there is a long way to go. We offer designer eyewear directly to the consumers for significant reductions in cost. Telemedicine can transform our industry but this bill slaps down technology and closes off options for consumers.

Persons Testifying (Health Care): PRO: Senator Annette Cleveland, Prime Sponsor; Bill Hinkle, Optometric Physicians of Washington; Linda Madeski, Optometric Physicians of Washington; Mark Maramen, citizen.

CON: James Stroh, Washington Academy of Eye Physicians and Surgeons; David Epley, Washington Academy of Eye Physicians and Surgeons; Susie Tracy, Washington Academy of Eye Physicians and Surgeons; Brent Ludeman, 1-800-Contacts; Chase Everton, 1-800-Contacts; Pete Horkan, Opternative; Adam Greenberg, Warby Parker.

Persons Signed In To Testify But Not Testifying (Health Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *Testimony from 2017 Regular Session.* PRO: This bill is about patient safety and a different standard-of-care. Your doctor is responsible for refractive correction and also the care of the eye. Going off one exam is not enough. A doctor needs to review the eye in person to catch problems early. An in-person examination with a physician can lead to the early diagnosis of hypertension, glaucoma, cardiovascular risk, or specific ocular diseases or conditions. This bill in no way conflicts with telemedicine. This bill meets all quality assurance guidelines established by the Medical Quality Assurance Commission related to telemedicine. Actually, the sections of the bill related to telemedicine are some of the best aspects of this bill. Some parts of the bill need to be cleaned up, but the goal is not to conflict with current standard-of-care. Misleading technology companies want to sell glasses and contacts online without any regard for patient safety. This technology does not have FDA approval. The patient is taking the risk by using these services.

CON: We do not have concerns about the technology contained in this bill. The technology requires information about a person's age and healthcare status. We do care about quality eye care. An ophthalmologist must review the person's healthcare information. The ophthalmologist must operate under the standard-of-care, must have liability insurance, and meet other criteria expected of a physician. After the review, the ophthalmologist will reject approximately 40 percent of patients. Patients may be rejected because more information is needed, or because the information provided is not sufficient to meet the standard-of-care. Patients use an online form to provide healthcare information. The ophthalmologist then has access to information from prior comprehensive health examinations. The comprehensive health examination comes from a prior ophthalmologist or optometrist. The state of South Carolina recently passed a very similar law. Immediately after passage, the Institute for Justice sued the state of South Carolina. The taxpayers of South Carolina are currently paying to defend this law. There are cost savings for residents because of this new technology. One service has found a way to offer an online exam for as low as \$10. That is a significant amount of savings for citizens. States should encourage innovation to lower healthcare costs. Regarding fiscal impact, it is not worth a cost of \$80,000 every biennium to

achieve this policy. This bill takes away the ability to utilize telemedicine. This bill is a huge setback for telemedicine in the eye care area. Other areas of telemedicine, or online technologies, will be impacted in the future. This bill sets a policy that is in the opposite direction of what is needed. Medical doctors oppose this bill. It is not time for this bill to move forward. Residents of the state of Washington want to use these technologies.

Persons Testifying (Ways & Means): PRO: Ken White OD, Optometric Physicians of Washington; Bill Hinkle, Optometric Physicians of Washington; Dr. Ken White, Optometric Physicians of Washington.

CON: Chase Everton, 1-800-Contacts; Bill Clarke, 1-800-Contacts; Susie Tracy, Washington Academy of Eye Physicians and Surgeons.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.