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**SUBSTITUTE SENATE BILL 5411**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Cleveland, Rivers, Warnick, Conway, and Keiser)

READ FIRST TIME 02/08/17.

1 AN ACT Relating to consumer protection in eye care; and adding a  
2 new chapter to Title 18 RCW.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that health  
5 care consumers, including eye health care consumers, can benefit from  
6 developments in technology that offer advantages such as increased  
7 convenience or increased speed in delivery of services. However, the  
8 legislature also recognizes that such consumers can be misled or  
9 harmed by the use of developments in technology that are not properly  
10 supervised by competent health care providers.

11 (2) The legislature recognizes that the use of technology which  
12 permits a consumer to submit data to an entity for the purposes of  
13 obtaining a prescription for corrective lenses or obtaining any other  
14 diagnosis or assistance, when the entity receiving the data is  
15 physically separated from the consumer and therefore is not able to  
16 monitor the collection of the data to assure that it is collected  
17 properly, may result in the presentation of inaccurate data to the  
18 entity.

19 (3) The legislature recognizes that the use of technology which  
20 permits a consumer to submit data to an entity for the purposes of  
21 obtaining a prescription for corrective lenses, when the entity

1 receiving the data is physically separated from the consumer and is  
2 therefore unable to provide the consumer with an actual eye  
3 examination, may lead the consumer to mistakenly believe he or she  
4 has received a comprehensive eye examination and may lead to the  
5 failure to detect serious eye health issues that would have been  
6 revealed if a comprehensive eye examination had been conducted.

7 (4) Therefore, the legislature has concluded it is imperative  
8 that consumers be protected from improper or unsupervised use of  
9 technology for purposes of obtaining a prescription for corrective  
10 lenses or obtaining any other diagnosis or assistance, without unduly  
11 restricting the development and implementation of technology that can  
12 provide genuine benefits to consumers.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires  
15 otherwise.

16 (1) "Comprehensive eye examination" means an assessment of the  
17 ocular health and visual status of a patient, in order to establish a  
18 medical diagnosis and in connection with the establishment of the  
19 patient's refractive error. Comprehensive eye examination does not  
20 include any form of examination or evaluation that consists solely of  
21 objective refractive data or information obtained through the use of  
22 remote technology without the involvement or supervision of a  
23 qualified vision care provider.

24 (2) "Contact lens" means any lens placed directly on the surface  
25 of the eye, regardless of whether or not it is intended to correct a  
26 visual defect. Contact lens includes, but is not limited to,  
27 cosmetic, therapeutic, and corrective lenses.

28 (3) "Corrective lenses" means any lenses, including lenses in  
29 spectacles and contact lenses, that are manufactured in accordance  
30 with the specific terms of a prescription for an individual patient  
31 written by a qualified vision care provider, after completion of a  
32 comprehensive eye examination and refraction of the patient and for  
33 the purpose of correcting the patient's refractive error.

34 (4) "Department" means the department of health.

35 (5) "Diagnostic information and data" means any and all  
36 information and data, including but not necessarily limited to  
37 photographs and scans, generated by or through the use of any remote  
38 technology.

1 (6) "Dispense" means the act of furnishing corrective lenses,  
2 either in spectacles or as contact lenses, to a patient pursuant to  
3 the patient's prescription.

4 (7) "Dispensing optician" has the same meaning as in RCW  
5 18.34.060.

6 (8) "Over-the-counter glasses" means eyeglasses or lenses that do  
7 not have any refractive or magnifying characteristics, and eyeglasses  
8 or lenses for the enhancement of vision solely through magnification.  
9 Over-the-counter glasses does not include eyeglasses with adjustable  
10 lenses, eyeglasses containing lenses with different magnifications,  
11 eyeglasses with magnification greater than +3.25 diopters in power,  
12 contact lenses, or corrective lenses of any sort.

13 (9) "Prescription" means the written or electronic directive from  
14 a qualified vision care provider for corrective lenses and consists  
15 of the refractive powers.

16 (10) "Qualified vision care provider" means an ophthalmologist or  
17 optometrist who performs eye examinations under chapter 18.53, 18.57,  
18 or 18.71 RCW.

19 (11) "Remote technology" means any automated equipment or testing  
20 device and any application designed to be used on or with a phone,  
21 computer, or internet-based device that can be used to generate data  
22 for purposes of determining an individual's apparent refractive error  
23 without the physical presence and actual participation of a qualified  
24 vision care provider.

25 (12) "Spectacles" means any device worn by an individual that has  
26 one or more lenses through which the wearer looks. Spectacles are  
27 commonly known and referred to as glasses, and may include cosmetic  
28 or corrective lenses.

29 NEW SECTION. **Sec. 3.** (1) It is unlawful for any person in this  
30 state to:

31 (a) Write or otherwise prepare a prescription for lenses intended  
32 to correct an individual's refractive error without the individual  
33 first having received a comprehensive eye examination and refraction  
34 from a qualified vision care provider writing the prescription; or

35 (b) Sell any contact lenses or spectacles, other than over-the-  
36 counter glasses, to any individual in the state unless the individual  
37 has a valid prescription from a qualified vision care provider and  
38 the person selling the contact lenses or spectacles is properly  
39 licensed to dispense corrective lenses.

1 (2) It is unlawful for any person to offer or otherwise make  
2 available to consumers in this state remote technology without fully  
3 complying with the following:

4 (a) The remote technology must be approved by the United States  
5 food and drug administration for the intended use;

6 (b) The remote technology must be designed and operated in a  
7 manner that provides any accommodation required by the federal  
8 Americans with disabilities act;

9 (c) The remote technology, when used for the collection and  
10 transmission of diagnostic information and data, must gather and  
11 transmit any protected health information in compliance with the  
12 federal health insurance portability and accountability act;

13 (d) The remote technology, when used for the collection and  
14 transmission of diagnostic information and data to be read and  
15 interpreted, may only transmit the diagnostic information and data to  
16 a qualified vision care provider;

17 (e) If the remote technology is intended to be used to transmit  
18 diagnostic information and data to be read and interpreted by a  
19 qualified vision care provider, the physical location of the remote  
20 technology, or the web site or other location where a patient can  
21 access the remote technology, must prominently display the name and  
22 state license number of the individual who will read and interpret  
23 the diagnostic information and data;

24 (f) If the remote technology is intended to be used as the basis  
25 for a qualified vision care provider to write a prescription or  
26 perform any other service or procedure, the service or procedure must  
27 have a recognized current procedural terminology (CPT) code; and

28 (g) The owner, lessee, or operator of the remote technology must  
29 maintain liability insurance to cover claims made by individuals  
30 diagnosed or treated based on information and data, including  
31 photographs and scans, generated by the automated equipment.

32 (3) Whenever remote technology is used as the basis for a  
33 qualified vision care provider to write a prescription or perform any  
34 other service or procedure, the provider shall be held to the same  
35 standards of practice as are applicable to qualified vision care  
36 providers practicing in traditional in-person clinical settings.

37 (4)(a) The department shall review any written complaint received  
38 by it from any person alleging that a violation of this chapter, or  
39 of rules and regulations adopted pursuant to this chapter, has  
40 occurred or been attempted.

1 (b) The department shall initiate an investigation if, based on  
2 its review of a written complaint, it obtains information forming a  
3 reasonable basis to believe a violation of this chapter or the rules  
4 and regulations adopted pursuant to this chapter has occurred or been  
5 attempted, whether or not any person is or is believed to have been  
6 harmed by such suspected violation.

7 (c) As part of the investigation under this section, the  
8 department may hold hearings, administer oaths, and take testimony in  
9 person or by deposition. Such hearings shall be conducted pursuant to  
10 the uniform disciplinary act, chapter 18.130 RCW.

11 (d) If, as a result of an investigation pursuant to this section,  
12 the department finds that a person has violated or attempted to  
13 violate this chapter, it may impose a civil penalty of not less than  
14 one thousand dollars and not more than ten thousand dollars for each  
15 violation, except that if the violation or attempted violation is the  
16 first violation by the subject of the investigation and the  
17 department finds that the violation or attempted violation did not  
18 result in significant harm to human health, the department may issue  
19 a warning instead of imposing a civil penalty.

20 (e) At the request of the department, the attorney general may  
21 file a civil action seeking an injunction or other appropriate relief  
22 to enforce this chapter and the rules and regulations adopted and  
23 promulgated under this chapter.

24 NEW SECTION. **Sec. 4.** This chapter may be known and cited as the  
25 consumer protection in eye care act.

26 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act  
27 constitute a new chapter in Title 18 RCW.

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