

CHAPTER 44

(HB 191)

AN ACT relating to consumer protection in eye care.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 367.680 is amended to read as follows:

As used in KRS 367.680 to 367.690:

- (1) **"Assessment mechanism":**
 - (a) *Means automated or virtual equipment, application, or technology designed to be used on a telephone, a computer, or an Internet-based device that may be used either in person or remotely to conduct an eye assessment; and*
 - (b) *Includes artificial intelligence devices and any equipment, electronic or nonelectronic, that is used to perform an eye assessment;*
- (2) **"Contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic, or corrective lens;**
- (3) **"Eye assessment" means an assessment of the ocular health and visual status of a patient that may include but is not limited to objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis for the correction of vision disorders;**
- (4) **"Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity;**
- (5) **"Prescription" means a handwritten or electronic order issued by a licensed optometrist, osteopath, or physician, or an oral order issued directly by a licensed optometrist, osteopath, or physician;**
- (6) **"Seller" means an individual or entity that sells contact lenses or visual aid glasses and dispenses them to Kentucky residents in any manner; and**
- (7) **"Visual aid glasses":**
 - (a) *Means eyeglasses, spectacles, or lenses designed or used to correct visual defects, including spectacles that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement; and*
 - (b) *Does not include optical instrument or devices that are:*
 1. *Not intended to correct or enhance vision;*
 2. *Sold without consideration of the visual status of the individual who will use the optical instrument or device, including sunglasses that are designed and used solely to filter out light; or*
 3. *Completely assembled eyeglasses or spectacles designed and used solely to magnify.*

~~{(1) "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity.~~

~~(2) "Mail order contact lens seller" means an individual or entity that sells contact lenses and dispenses them to Kentucky residents through the United States Postal Service or other common carrier.~~

~~(3) "Contact lens prescription" means a written order bearing the original signature of a licensed optometrist, osteopath, or physician, or an oral order issued directly by a licensed optometrist, osteopath, or physician that authorizes dispensing of contact lenses to a patient. A contact lens prescription includes contact lenses without power sold for cosmetic purposes.}~~

➔Section 2. KRS 367.681 is amended to read as follows:

- (1) A contact lens prescription shall include the following:

- (a) The ophthalmic information necessary to accurately fabricate or dispense the lenses, including the lens manufacturer, lens series, and the lens material if applicable;
 - (b) Power and base curve;
 - (c) Name, license number, telephone number, and for written orders, the signature of the prescribing optometrist, osteopath, or physician;
 - (d) Patient's name and address, expiration date of the prescription, and number of refills or lenses permitted; and
 - (e) The date of issuance.
- (2) A *contact lens* ~~[The]~~ prescription may also include the diameter, axis, add power, cylinder, peripheral curve, optical zone, and center thickness.
- (3) *A prescription for visual aid glasses shall include the following:*
- (a) *The name, license number, telephone number, and for written orders, the signature of the prescribing optometrist, osteopath, or physician;*
 - (b) *The patient's name;*
 - (c) *The date of issuance; and*
 - (d) *The value of all parameters the licensed optometrist, osteopath, or physician has deemed necessary to dispense corrective lenses appropriate for a patient.*
- (4) *A licensed optometrist, osteopath, or physician shall not refuse to release a prescription for contact lenses or visual aid glasses to a patient.*

➔Section 3. KRS 367.683 is amended to read as follows:

- (1) All ~~[mail order]~~ contact lens sellers and any person authorized in accordance with KRS Chapters 320, 315, or 326 to dispense contact lenses in the Commonwealth shall verify the contact lens prescription by the following:
- (a) Receipt of a written or faxed valid contact lens prescription signed by the prescribing optometrist, osteopath, or physician; or
 - (b) An electronic or oral affirmative communication of the complete contact lens prescription from the prescribing optometrist, osteopath, or physician.
- (2) If a ~~[mail order]~~ contact lens seller or any person authorized to dispense contact lenses in the Commonwealth finds it necessary to contact the prescribing optometrist, osteopath, or physician via telephone in order to verify a contact lens prescription, the following protocols shall be followed:
- (a) Calls shall be made during regular business hours;
 - (b) Any verification requests shall include the name, address, and telephone number of the patient;
 - (c) The toll-free telephone number as required by KRS 367.687(7) shall be included in voice mail or messages left on answering machines;
 - (d) Contact lens prescriptions shall not be mailed, sent, delivered, or dispensed before verification by the optometrist, osteopath, or physician;
 - (e) Touch-tone telephone options offered by a ~~[mail order]~~ contact lens seller or any person authorized to dispense contact lenses in the Commonwealth shall not constitute verification; and
 - (f) Response-time options stated by a ~~[mail order]~~ contact lens seller or any person authorized to dispense contact lenses in the Commonwealth shall not constitute verification.
- (3) In the absence of a prescription as defined and described in KRS 367.680 and 367.681, it shall be a violation of KRS 367.680 to 367.690 to dispense contact lenses through the mail or otherwise to a Kentucky resident.

➔Section 4. KRS 367.684 is amended to read as follows:

- (1) Any ~~[mail order contact lens]~~ seller or any person authorized to dispense contact lenses *or visual aid glasses* in the Commonwealth who fills a ~~[contact lens]~~ prescription bears the full responsibility for the accurate dispensing of the contact lenses *or visual aid glasses* provided under the ~~[contact lens]~~ prescription. At no time

shall any changes or substitutions be made including brand, type of lenses, or ophthalmic parameters without the direction of the optometrist, osteopath, or physician who issued the contact lens *or visual aid glasses* prescription.

- (2) The optometrist, osteopath, or physician shall not be liable for any damages for injury resulting from the packaging, manufacturing, or dispensing of the contact lenses *or visual aid glasses* unless the ~~contact lens~~ seller and the ~~contact lens~~ prescriber are the same person.

➔Section 5. KRS 367.685 is amended to read as follows:

A contact lens fitting shall be complete and a contact lens prescription may be written when:

- (1) The optometrist, osteopath, or physician has completed all measurements, tests, and examinations necessary to satisfy his or her professional judgment that the patient is a viable candidate to wear contact lenses, recognizing that more than one (1) visit between the patient and the optometrist, osteopath, or physician may be required; and
- (2) Contact lenses suitable for the patient's eyes have been evaluated and fitted by the optometrist, osteopath, or physician to the patient's eyes and the optometrist, osteopath, or physician is satisfied with the fitting based on *ocular health and* the visual needs of the patient.

The patient shall be entitled to receive a copy of the contact lens prescription until its expiration date.

➔Section 6. KRS 367.686 is amended to read as follows:

No person located outside of Kentucky shall ship, mail, deliver, or sell contact lenses *or visual aid glasses* to a patient at a Kentucky address unless:

- (1) Registered with the Attorney General of the Commonwealth of Kentucky; and
- (2) In possession of a valid contact lens *or visual aid glasses* prescription as defined and described in KRS 367.680 and 367.681.

➔Section 7. KRS 367.687 is amended to read as follows:

The Attorney General shall require and provide for the annual registration of all ~~mail-order~~ contact lens sellers located outside of the Commonwealth that dispense contact lenses to Kentucky residents, including those providing contact lenses via the Internet. A ~~mail-order~~ contact lens seller's registration shall be granted upon the disclosure and certification by the seller of all of the following:

- (1) The seller is licensed or registered to distribute contact lenses in the state in which the dispensing facility is located and from which the contact lenses are dispensed;
- (2) The location, names, and titles of all owners, partners, corporate officers, and the person who is responsible for overseeing the dispensing of contact lenses to residents of this state;
- (3) The seller has complied with and shall continue to comply with all lawful directives and appropriate requests for information from the appropriate agency of each state in which the seller is licensed or registered;
- (4) The seller shall respond to all requests for information from the Attorney General within thirty (30) days from receipt of the request;
- (5) The seller shall maintain records of contact lenses dispensed to residents of this state for a period of ten (10) years, and that the records shall be readily available for inspection by the Attorney General upon demand;
- (6) The seller shall provide a toll-free telephone service during its regular hours of operation for the sole purpose of responding to the patients in this state concerning questions and complaints. All questions relating to eye care shall be referred to the doctor prescribing the contact lenses;
- (7) The seller shall provide a toll-free telephone service during its regular hours of operation solely for optometrists, osteopaths, and physicians.
- (8) The seller shall provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied: **WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS REMOVE YOUR CONTACT LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS;** and

- (9) The seller's license or registration, in the state in which the seller is licensed or registered, has not been suspended or revoked, but should the seller be the subject of any investigation undertaken by the licensing or registering state, or should the seller's license or registration be suspended or revoked, then the seller shall immediately notify the Attorney General of such actions.

➔SECTION 8. A NEW SECTION OF KRS 367.680 TO 367.690 IS CREATED TO READ AS FOLLOWS:

- (1) *An assessment mechanism to conduct an eye assessment or to generate a prescription for contact lenses or visual aid glasses to a patient in Kentucky shall:*
- (a) *Provide synchronous or asynchronous interaction between the patient and the Kentucky-licensed optometrist, osteopath, or physician;*
 - (b) *Collect the patient's medical history, previous prescription for corrective eyewear, and length of time since the patient's most recent in-person comprehensive eye health examination;*
 - (c) *Provide any applicable accommodation required by the federal Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq., as amended;*
 - (d) *Gather and transmit protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996 as amended;*
 - (e) *Be used to perform a procedure with a recognized Current Procedural Terminology code maintained by the American Medical Association, if applicable; and*
 - (f) *Maintain liability insurance, through its owner or lessee, in an amount adequate to cover claims made by individuals diagnosed or treated based on information and data, including any photographs and scans, generated by the assessment mechanism.*
- (2) *A Kentucky-licensed optometrist, osteopath, or physician shall:*
- (a) *Read and interpret the diagnostic information and data, including any photographs and scans, gathered by the assessment mechanism;*
 - (b) *Verify the identity of the patient requesting treatment via the assessment mechanism;*
 - (c) *Create and maintain a medical record for each patient, which is for use during the ongoing treatment of a patient, and complies with all state and federal laws regarding maintenance and accessibility;*
 - (d) *Provide a handwritten or electronic signature, along with their Kentucky state license number, certifying their diagnosis, evaluation, treatment, prescription, or consultation recommendations of the patient;*
 - (e) *Utilize an assessment mechanism for an eye assessment or to generate a prescription for visual aid glasses only if:*
 1. *The patient is at least eighteen (18) years of age; and*
 2. *The patient has received an in-person comprehensive eye health examination by an optometrist, osteopath, or physician within the previous twenty-four (24) months; and*
 - (f) *Utilize an assessment mechanism to generate a prescription for contact lenses only if:*
 1. *The patient is at least eighteen (18) years of age; and*
 2. *The patient has received an in-person comprehensive eye health examination by an optometrist, osteopath, or physician:*
 - a. *For the initial prescription and one (1) follow-up or first renewal of the initial prescription; or*
 - b. *Within twenty-four (24) months after the follow-up or first renewal of the initial prescription, and every twenty-four (24) months thereafter.*
- (3) *Prior to using an assessment mechanism, each Kentucky patient shall be provided with and shall accept as a term of use a disclosure that includes the following information:*
- (a) *This assessment is not a replacement for an in-person comprehensive eye health examination;*

- (b) *This assessment cannot be used to generate an initial prescription for contact lenses or a follow-up or first renewal of the initial prescription;*
 - (c) *This assessment may only be used if the patient has had an in-person comprehensive eye health examination within the previous twenty-four (24) months if the patient is conducting an eye assessment or receiving a prescription for visual aid glasses; and*
 - (d) *The United States Centers for Disease Control and Prevention (CDC) advises contact lens wearers to visit an eye doctor one (1) time a year or more often if needed.*
- (4) *Evaluation, treatment, and consultation recommendations by a Kentucky-licensed optometrist, osteopath, or physician utilizing an assessment mechanism as required in this section, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional in-person clinical settings.*
- (5) *This section shall not:*
- (a) *Limit the discretion of a Kentucky-licensed optometrist, osteopath, or physician to direct a patient to utilize any telehealth service deemed appropriate for any treatment and care of the patient;*
 - (b) *Limit the sharing of patient information, in whatever form, between an optometrist, osteopath, or physician; or*
 - (c) *Apply beyond ocular health and eye care.*

➔Section 9. KRS 367.688 is amended to read as follows:

The Attorney General shall charge a fee for investigation and registration of nonresident dispensers of contact lenses *and visual aid glasses*.

➔Section 10. KRS 367.690 is amended to read as follows:

- (1) Any person who dispenses, offers to dispense, or attempts to dispense contact lenses *or visual aid glasses* in violation of KRS 367.680 to 367.690 or the administrative regulations promulgated by the Attorney General concerning the dispensing of contact lenses *or visual aid glasses* shall, in addition to any other penalty provided by law, pay a civil penalty to the office of the Attorney General in an amount not to exceed *eleven thousand dollars (\$11,000)* ~~five thousand dollars (\$5,000)~~ for each violation.
- (2) Any person charged in a complaint filed by the Attorney General with violating any of the provisions of KRS 367.680 to 367.690 shall be entitled to an administrative hearing conducted in accordance with ~~the provisions of~~ KRS Chapter 13B.
- (3) Any person aggrieved by a final order issued under the authority of this section shall have the right of an appeal by filing a petition with the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔SECTION 11. A NEW SECTION OF KRS 367.680 TO 367.690 IS CREATED TO READ AS FOLLOWS:

KRS 367.680 to 367.690 may be cited as the Consumer Protection in Eye Care Act.

Signed by Governor March 30, 2018.