

1 AN ACT relating to consumer protection in eye care and making an appropriation
2 therefor.

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

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

5 As used in KRS 367.680 to 367.690:

6 (1) "Assessment mechanism":

7 (a) Means automated or virtual equipment, application, or technology designed
8 to be used on a telephone, a computer, or an Internet-based device that may
9 be used either in person or remotely to conduct an eye assessment; and

10 (b) Includes artificial intelligence devices and any equipment, electronic or
11 nonelectronic, that is used to perform an eye assessment;

12 (2) "Contact lens" means any lens placed directly on the surface of the eye,
13 regardless of whether or not it is intended to correct a visual defect, including any
14 cosmetic, therapeutic, or corrective lens;

15 (3) "Eye assessment" means an assessment of the ocular health and visual status of
16 a patient that may include but is not limited to objective refractive data or
17 information generated by an automated testing device, including an
18 autorefractor, in order to establish a medical diagnosis for the correction of
19 vision disorders;

20 (4) "Person" means an individual, corporation, trust, partnership, incorporated or
21 unincorporated association, and any other legal entity;

22 (5) "Prescription" means a handwritten or electronic order issued by a licensed
23 optometrist, osteopath, or physician, or an oral order issued directly by a licensed
24 optometrist, osteopath, or physician;

25 (6) "Seller" means an individual or entity that sells contact lenses or visual aid
26 glasses and dispenses them to Kentucky residents in any manner; and

27 (7) "Visual aid glasses":

1 (a) Means eyeglasses, spectacles, or lenses designed or used to correct visual
 2 defects, including spectacles that may be adjusted by the wearer to achieve
 3 different types or levels of visual correction or enhancement; and

4 (b) Does not include optical instrument or devices that are:

5 1. Not intended to correct or enhance vision;

6 2. Sold without consideration of the visual status of the individual who will
 7 use the optical instrument or device, including sunglasses that are designed
 8 and used solely to filter out light; or

9 3. Completely assembled eyeglasses or spectacles designed and used solely to
 10 magnify.

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

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

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

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

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

23 (a) The ophthalmic information necessary to accurately fabricate or dispense the
 24 lenses, including the lens manufacturer, lens series, and the lens material if
 25 applicable;

26 (b) Power and base curve;

27 (c) Name, license number, telephone number, and for written orders, the signature

- 1 of the prescribing optometrist, osteopath, or physician;
- 2 (d) Patient's name and address, expiration date of the prescription, and number of
- 3 refills or lenses permitted; and
- 4 (e) The date of issuance.
- 5 (2) A contact lens~~[The]~~ prescription may also include the diameter, axis, add power,
- 6 cylinder, peripheral curve, optical zone, and center thickness.

7 **(3) A prescription for visual aid glasses shall include the following:**

- 8 **(a) The name, license number, telephone number, and for written orders, the**
- 9 **signature of the prescribing optometrist, osteopath, or physician;**
- 10 **(b) The patient's name and address;**
- 11 **(c) The date of issuance; and**
- 12 **(d) The value of all parameters the licensed optometrist, osteopath, or physician**
- 13 **has deemed necessary to dispense corrective lenses appropriate for a**
- 14 **patient.**
- 15 **(4) A licensed optometrist, osteopath, or physician shall not refuse to release a**
- 16 **prescription for contact lenses or visual aid glasses to a patient.**

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

- 18 (1) All ~~[mail-order]~~ contact lens sellers and any person authorized in accordance with
- 19 KRS Chapters 320, 315, or 326 to dispense contact lenses in the Commonwealth
- 20 shall verify the contact lens prescription by the following:
- 21 (a) Receipt of a written or faxed valid contact lens prescription signed by the
- 22 prescribing optometrist, osteopath, or physician; or
- 23 (b) An electronic or oral affirmative communication of the complete contact lens
- 24 prescription from the prescribing optometrist, osteopath, or physician.
- 25 (2) If a ~~[mail-order]~~ contact lens seller or any person authorized to dispense contact
- 26 lenses in the Commonwealth finds it necessary to contact the prescribing
- 27 optometrist, osteopath, or physician via telephone in order to verify a contact lens

1 prescription, the following protocols shall be followed:

2 (a) Calls shall be made during regular business hours;

3 (b) Any verification requests shall include the name, address, and telephone
4 number of the patient;

5 (c) The toll-free telephone number as required by KRS 367.687(7) shall be
6 included in voice mail or messages left on answering machines;

7 (d) Contact lens prescriptions shall not be mailed, sent, delivered, or dispensed
8 before verification by the optometrist, osteopath, or physician;

9 (e) Touch-tone telephone options offered by a ~~mail-order~~ contact lens seller or
10 any person authorized to dispense contact lenses in the Commonwealth shall
11 not constitute verification; and

12 (f) Response-time options stated by a ~~mail-order~~ contact lens seller or any
13 person authorized to dispense contact lenses in the Commonwealth shall not
14 constitute verification.

15 (3) In the absence of a prescription as defined and described in KRS 367.680 and
16 367.681, it shall be a violation of KRS 367.680 to 367.690 to dispense contact
17 lenses through the mail or otherwise to a Kentucky resident.

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

19 (1) Any ~~mail-order contact lens~~ seller or any person authorized to dispense contact
20 lenses or visual aid glasses in the Commonwealth who fills a ~~contact lens~~
21 ~~prescription~~ bears the full responsibility for the accurate dispensing of the contact
22 lenses or visual aid glasses provided under the ~~contact lens~~ prescription. At no
23 time shall any changes or substitutions be made including brand, type of lenses, or
24 ophthalmic parameters without the direction of the optometrist, osteopath, or
25 physician who issued the contact lens or visual aid glasses prescription.

26 (2) The optometrist, osteopath, or physician shall not be liable for any damages for
27 injury resulting from the packaging, manufacturing, or dispensing of the contact

1 lenses or visual aid glasses unless the ~~contact lens~~ seller and the ~~contact lens~~
2 ~~prescriber~~ are the same person.

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

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

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

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

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

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

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

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

24 The Attorney General shall require and provide for the annual registration of all ~~mail~~
25 ~~order~~ contact lens and visual aid glasses sellers located outside of the Commonwealth
26 that dispense contact lenses or visual aid glasses to Kentucky residents, including those
27 providing contact lenses or visual aid glasses via the Internet. A ~~mail order~~ contact lens

1 or visual aid glasses seller's registration shall be granted upon the disclosure and
2 certification by the seller of all of the following:

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

1 UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR
2 REDNESS; and

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

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

10 *(1) A person shall not operate an assessment mechanism to conduct an eye*
11 *assessment or to generate a prescription for contact lenses or visual aid glasses to*
12 *a patient at a Kentucky residence, unless:*

13 *(a) Diagnostic information and data, including photographs and scans,*
14 *gathered by the assessment mechanism are read and interpreted by a*
15 *Kentucky-licensed optometrist, osteopath, or physician;*

16 *(b) The Kentucky-licensed optometrist, osteopath, or physician can verify the*
17 *identity of the patient requesting treatment via the assessment mechanism;*

18 *(c) The assessment mechanism is designed and operated in a manner that*
19 *provides any applicable accommodation required by the federal Americans*
20 *with Disabilities Act, 42 U.S.C. secs. 12101 et seq., as amended;*

21 *(d) The assessment mechanism and accompanying technology used for the*
22 *collection and transmission of information and data, including photographs*
23 *and scans, gathers and transmits protected health information in*
24 *compliance with the federal Health Insurance Portability and*
25 *Accountability Act of 1996 as amended;*

26 *(e) The procedure for which the assessment mechanism is used has a*
27 *recognized Current Procedural Terminology code maintained by the*

1 American Medical Association;

2 (f) The assessment mechanism prominently displays the name and Kentucky
3 state license number of the optometrist, osteopath, or physician who will
4 read and interpret the diagnostic information and data, including
5 photographs and scans;

6 (g) The owner or lessee of the assessment mechanism maintains liability
7 insurance in an amount adequate to cover claims made by individuals
8 diagnosed or treated based on information and data, including photographs
9 and scans, generated by the assessment mechanism;

10 (h) The assessment mechanism creates and maintains a medical record for
11 each patient, which is for use during the ongoing treatment of a patient,
12 and complies with all state and federal laws regarding maintenance and
13 accessibility;

14 (i) There is simultaneous interaction between the patient and the Kentucky-
15 licensed optometrist, osteopath, or physician; and

16 (j) The Kentucky-licensed optometrist, osteopath, or physician utilizing an
17 assessment mechanism provides a handwritten or electronic signature
18 certifying their evaluation, treatment, prescription, or consultation
19 recommendations of the patient.

20 (2) A person shall not operate an assessment mechanism to conduct an eye
21 assessment or to generate a prescription to a patient under the age of eighteen
22 (18) years old at a Kentucky residence.

23 (3) A person shall not operate an assessment mechanism to conduct an eye
24 assessment or to generate a prescription to a patient at a Kentucky residence
25 unless the patient has received an in-person comprehensive eye health
26 examination by an optometrist, osteopath, or physician within the previous
27 twenty-four (24) months.

1 (4) Prior to receiving an assessment, each Kentucky patient shall be provided with
2 and shall accept as a term of use a disclosure that includes the following
3 information:

4 (a) This assessment shall not be a replacement for an in-person comprehensive
5 eye health examination;

6 (b) This assessment shall only be used if the patient has had an in-person
7 comprehensive eye health examination within the previous twenty-four (24)
8 months;

9 (c) The United States Centers for Disease Control and Prevention (CDC)
10 advises contact lens wearers to visit an eye doctor one (1) time a year or
11 more often if needed; and

12 (d) Prior to receiving an assessment, the patient shall provide the month and
13 year that he or she received the most recent in-person comprehensive eye
14 health examination.

15 (5) Evaluation, treatment, and consultation recommendations by a Kentucky-
16 licensed optometrist, osteopath, or physician utilizing an assessment mechanism
17 as required in this section, including issuing a prescription via electronic means,
18 shall be held to the same standards of appropriate practice as those in traditional
19 in-person clinical settings.

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

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

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

24 (1) Any person who dispenses, offers to dispense, or attempts to dispense contact lenses
25 or visual aid glasses in violation of KRS 367.680 to 367.690 or the administrative
26 regulations promulgated by the Attorney General concerning the dispensing of
27 contact lenses or visual aid glasses shall, in addition to any other penalty provided

1 by law, pay a civil penalty to the office of the Attorney General in an amount not to
2 exceed **eleven thousand dollars (\$11,000)**~~five thousand dollars (\$5,000)~~ for each
3 violation.

4 (2) Any person charged in a complaint filed by the Attorney General with violating any
5 of the provisions of KRS 367.680 to 367.690 shall be entitled to an administrative
6 hearing conducted in accordance with ~~the provisions of~~ KRS Chapter 13B.

7 (3) Any person aggrieved by a final order issued under the authority of this section shall
8 have the right of an appeal by filing a petition with the Franklin Circuit Court in
9 accordance with KRS Chapter 13B.

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

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