MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Representative White

To: Public Health and Human Services

HOUSE BILL NO. 511

AN ACT ENTITLED THE "MISSISSIPPI CONSUMER PROTECTION IN EYE CARE ACT OF 2016"; TO PROVIDE DEFINITIONS; TO PROVIDE THAT NO PERSON MAY DISPENSE CONTACT LENSES OR EYEGLASSES TO A PATIENT WITHOUT A PRESCRIPTION FROM A LICENSED PHYSICIAN OR LICENSED OPTOMETRIST; TO PROVIDE THAT NO PERSON SHALL OPERATE A KIOSK TO CONDUCT AN EYE ASSESSMENT OR TO GENERATE A PRESCRIPTION FOR CONTACT LENSES OR EYEGLASSES UNLESS THE DIAGNOSTIC INFORMATION IS READ AND INTERPRETED BY A LICENSED PHYSICIAN OR LICENSED OPTOMETRIST; TO PROVIDE CERTAIN STANDARDS FOR THE OPERATION OF A KIOSK FOR AN EYE ASSESSMENT; TO PROVIDE A COMPLAINT PROCEDURE FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO ISSUE RULES AND REGULATIONS IN CONSULTATION WITH THE STATE BOARD OF MEDICAL LICENSURE AND THE STATE BOARD OF OPTOMETRY TO IMPLEMENT THE PROVISIONS OF THIS ACT; TO AMEND SECTION 73-19-61, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Mississippi Consumer Protection in Eye Care Act of 2016."

SECTION 2. For purposes of this act:

(a) "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. The term "contact lens"

includes, but is not limited to, any cosmetic, therapeutic, or corrective lens.

(b) "Department" means the State Department of Health.

(c) "Dispense" means the act of furnishing eyeglasses or contact lenses to a patient.

(d) "Eye examination" means a physical assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the correction of vision disorders.

(e) "Kiosk" means automated equipment or application designed to be used on a telephone, a computer, or an Internet-based device that can be used either in person or remotely to conduct an eye assessment.

(f) "Over-the-counter" eyeglasses means eyeglasses or lenses in a frame for the correction of vision that may be sold by any person, firm or corporation at retail without a prescription.

(g) "Prescription" means a provider's handwritten or electronic order based on an eye examination.

(h) "Provider" means an individual licensed under the Medical Practice Act, Section 73-25-1 et seq., or the Optometry Practice Act, Section 73-19-1 et seq.

(i) "Established treatment site" means a location where a patient seeks care where there is a provider present and

sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. The term requires a provider-patient relationship.

(j) "In-person evaluation" means a patient evaluation conducted by a provider who is at the same physical location as the location of the patient.

(k) "Eyeglasses" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as glasses, eyeglasses or spectacles, including eyeglasses that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement. The term "eyeglasses" does not include an optical instrument or device that is not intended to correct or enhance vision or sold without consideration of the visual status of the individual who will use the optical instrument or device.

SECTION 3. No person in this state may dispense contact lenses or eyeglasses, other than over-the-counter eyeglasses, to a patient without a valid prescription from a provider. A valid prescription for eyeglasses or contact lenses:

(a) Shall contain an expiration date of not less than one (1) year from the date of the eye examination by the provider or a statement by the provider of the reasons why a shorter time is appropriate based on the medical needs of the patient; and

(b) May not be made based solely on information about the human eye generated by a kiosk. The prescription shall take into consideration any medical findings and any refractive error discovered during the eye examination. A provider may not refuse to release a prescription for eyeglasses or contact lenses to a patient.

SECTION 4. No person shall operate a kiosk to conduct an eye assessment or to generate a prescription for contact lenses or eyeglasses, unless:

(a) Diagnostic information and data, including photographs and scans, gathered by the kiosk are read and interpreted by a provider;

(b) The provider who reads and interprets the diagnostic information and data, including photographs and scans, gathered by the kiosk has an established doctor-patient relationship with patient, and has performed at least one (1) in-person evaluation of the patient that includes the state mandated required elements for an eye examination at an established treatment site;

(c) The provider can verify the identity of the patient requesting treatment via the kiosk;

(d) The kiosk is approved by the federal Food and Drug Administration for the intended use;

(e) The kiosk is designed and operated in a manner that provides any applicable accommodation required by the federal

Americans with Disabilities Act of 1990, 42 USC 12101 et seq., as amended;

(f) The kiosk and accompanying technology used for the collection and transmission of information and data, including photographs and scans, gathers and transmits protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2016;

(g) The procedure for which the kiosk is used has a recognized Current Procedural Terminology code maintained by the American Medical Association;

(h) The kiosk prominently displays the name and state license number of the provider who will read and interpret the diagnostic information and data, including photographs and scans; and

(i) The owner or lessee of the kiosk maintains liability insurance in an amount adequate to cover claims made by individuals diagnosed or treated based on information and data, including photographs and scans, generated by the kiosk.

SECTION 5. No person shall operate a kiosk to conduct an eye assessment or to generate a prescription for anyone under the age of eighteen (18) years.

SECTION 6. The lenses in over-the-counter eyeglasses shall be of uniform focus power in each eye and shall not be less than +1.00 diopter and shall not exceed +3.25 diopters in power.

SECTION 7. Evaluation, treatment and consultation recommendations made by a provider using a kiosk, 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.

SECTION 8. (1) Any person who believes that a violation of this act or the rules and regulations adopted under this act has occurred or been attempted may file a complaint with the department in writing. If, upon reviewing the complaint, the department determines that there is a reasonable basis to believe a violation or attempted violation has occurred, the department shall investigate the complaint. The department on its own initiative may initiate an investigation if it has a reasonable basis to believe a violation of this act or the rules and regulations has occurred or been attempted. This act does not require the department to wait until human harm has occurred to initiate an investigation.

(2) As part of the investigation under this section, the department may hold hearings, administer oaths, and take testimony in person or by deposition. Such hearings shall be conducted in accordance with the Administrative Procedure Act. The findings of the investigation and any hearings held as part of the investigation shall be in writing.

(3) If, as a result of an investigation under this section, the department finds that a person has violated or attempted to

violate this act or the rules and regulations adopted under this act, it may impose a civil penalty of not more than Ten Thousand Dollars ($10,000.00) for each violation. If the department finds that a violation or attempted violation occurred and did not result in significant harm to human health, the department may issue a warning instead of imposing a civil penalty.

(4) 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 and the rules and regulations adopted under this act.

SECTION 9. In addition to any remedies under this act or the rules and regulations adopted under this act or other provisions of state or federal law, a person adversely affected by a violation of this act may bring action for injunctive relief and, upon prevailing, in addition to the injunctive relief, shall recover monetary damages of no more than One Thousand Dollars ($1,000.00) for each day found to be in violation plus attorney's fees and costs.

SECTION 10. The department, in consultation with the State Board of Optometry and the State Board of Medical Licensure, may adopt and promulgate rules and regulations to implement the provisions of this act.

SECTION 11. Section 73-19-61, Mississippi Code of 1972, is amended as follows:

73-19-61. It shall be unlawful for any person, persons, corporation, proprietorship, partnership, or any entity other than a licensed optometrist or licensed ophthalmologist to dispense, fit, or prescribe to the public contact lenses, including FDA-approved medicated contact lenses, or any medical appliance having direct contact with the cornea of the eye. An optical dispenser may, however, fill the written contact lens prescription of a licensed optometrist or licensed ophthalmologist, provided that the optical dispenser directs the wearer of the lenses back to the prescribing optometrist or ophthalmologist for verification of the proper fit of the lenses. This section does not authorize a licensed optometrist to prescribe, fit, sell or dispense contact lenses medicated with a drug that is outside of the licensed optometrist's scope of practice. This section and Section 73-19-63 shall be in addition to the requirements and penalties prescribed in the Mississippi Consumer Protection in Eye Care Act, Sections 1 through 10 of this act.

SECTION 12. This act shall take effect and be in force from and after July 1, 2016.