

Union Calendar No. 192

108TH CONGRESS
1ST SESSION

H. R. 3140

[Report No. 108-318]

To provide for availability of contact lens prescriptions to patients, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 2003

Mr. BURR (for himself, Mr. TOWNS, Mr. TAUZIN, Mr. DINGELL, Mr. WAXMAN, Mr. STARK, Ms. SCHAKOWSKY, Mr. MATHESON, Mr. ROGERS of Michigan, Mr. BISHOP of Utah, Mr. SENSENBRENNER, and Mr. GIBBONS) introduced the following bill; which was referred to the Committee on Energy and Commerce

OCTOBER 15, 2003

Additional sponsors: Mr. SHIMKUS, Mr. PITTS, Mrs. BONO, Mr. DAVIS of Florida, Mr. HENSARLING, and Mr. CARTER

OCTOBER 15, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 23, 2003]

A BILL

To provide for availability of contact lens prescriptions to patients, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the "Fairness to Contact Lens*
5 *Consumers Act".*

6 **SEC. 2. AVAILABILITY OF CONTACT LENS PRESCRIPTIONS**
7 **TO PATIENTS.**

8 *(a) IN GENERAL.—When a prescriber completes a con-*
9 *tact lens fitting, the prescriber—*

10 *(1) whether or not requested by the patient, shall*
11 *provide to the patient a copy of the contact lens pre-*
12 *scription; and*

13 *(2) shall, as directed by any person designated to*
14 *act on behalf of the patient, provide or verify the con-*
15 *tact lens prescription by electronic or other means.*

16 *(b) LIMITATIONS.—A prescriber may not—*

17 *(1) require purchase of contact lenses from the*
18 *prescriber or from another person as a condition of*
19 *providing a copy of a prescription under subsection*
20 *(a)(1) or (a)(2) or verification of a prescription*
21 *under subsection (a)(2);*

22 *(2) require payment in addition to, or as part*
23 *of, the fee for an eye examination, fitting, and evalua-*
24 *tion as a condition of providing a copy of a prescrip-*

1 *tion under subsection (a)(1) or (a)(2) or verification*
2 *of a prescription under subsection (a)(2); or*

3 *(3) require the patient to sign a waiver or re-*
4 *lease as a condition of verifying or releasing a pre-*
5 *scription.*

6 **SEC. 3. IMMEDIATE PAYMENT OF FEES IN LIMITED CIR-**
7 **CUMSTANCES.**

8 *A prescriber may require payment of fees for an eye*
9 *examination, fitting, and evaluation before the release of*
10 *a contact lens prescription, but only if the prescriber re-*
11 *quires immediate payment in the case of an examination*
12 *that reveals no requirement for ophthalmic goods. For pur-*
13 *poses of the preceding sentence, presentation of proof of in-*
14 *surance coverage for that service shall be deemed to be a*
15 *payment.*

16 **SEC. 4. PRESCRIBER VERIFICATION.**

17 *(a) PRESCRIPTION REQUIREMENT.—A seller may sell*
18 *contact lenses only in accordance with a contact lens pre-*
19 *scription for the patient that is—*

20 *(1) presented to the seller by the patient or pre-*
21 *scriber directly or by facsimile; or*

22 *(2) verified by direct communication.*

23 *(b) RECORD REQUIREMENT.—A seller shall maintain*
24 *a record of all direct communications referred to in sub-*
25 *section (a).*

1 (c) *INFORMATION.*—When seeking verification of a con-
2 tact lens prescription, a seller shall provide the prescriber
3 with the following information:

4 (1) *Patient's full name and address.*

5 (2) *Contact lens power, manufacturer, base curve*
6 *or appropriate designation, and diameter when ap-*
7 *propriate.*

8 (3) *Quantity of lenses ordered.*

9 (4) *Date of patient request.*

10 (5) *Date and time of verification request.*

11 (6) *Name of contact person at seller's company,*
12 *including facsimile and telephone number.*

13 (d) *VERIFICATION EVENTS.*—A prescription is verified
14 under this Act only if one of the following occurs:

15 (1) *The prescriber confirms the prescription is*
16 *accurate by direct communication with the seller.*

17 (2) *The prescriber informs the seller that the pre-*
18 *scription is inaccurate and provides the accurate pre-*
19 *scription.*

20 (3) *The prescriber fails to communicate with the*
21 *seller within 8 business hours, or a similar time as*
22 *defined by the Federal Trade Commission, after re-*
23 *ceiving from the seller the information described in*
24 *subsection (c).*

1 (e) *INVALID PRESCRIPTION.*—If a prescriber informs
2 a seller before the deadline under subsection (d)(3) that the
3 contact lens prescription is inaccurate, expired, or otherwise
4 invalid, the seller shall not fill the prescription. The pre-
5 scriber shall specify the basis for the inaccuracy or inva-
6 lidity of the prescription. If the prescription communicated
7 by the seller to the prescriber is inaccurate, the prescriber
8 shall correct it.

9 (f) *NO ALTERATION.*—A seller may not alter a contact
10 lens prescription. Notwithstanding the preceding sentence,
11 if the same contact lens is manufactured by the same com-
12 pany and sold under multiple labels to individual pro-
13 viders, the seller may fill the prescription with a contact
14 lens manufactured by that company under another label.

15 (g) *DIRECT COMMUNICATION.*—As used in this section,
16 the term “direct communication” includes communication
17 by telephone, facsimile, or electronic mail.

18 **SEC. 5. EXPIRATION OF CONTACT LENS PRESCRIPTIONS.**

19 (a) *IN GENERAL.*—A contact lens prescription shall
20 expire—

21 (1) on the date specified by the law of the State
22 in which the prescription was written, if that date is
23 one year or more after the issue date of the prescrip-
24 tion;

1 (2) *not less than one year after the issue date of*
2 *the prescription if such State law specifies no date or*
3 *a date that is less than one year after the issue date*
4 *of the prescription; or*

5 (3) *notwithstanding paragraphs (1) and (2), on*
6 *the date specified by the prescriber, if that date is*
7 *based on the medical judgment of the prescriber with*
8 *respect to the ocular health of the patient.*

9 (b) **SPECIAL RULES FOR PRESCRIPTIONS OF LESS**
10 **THAN 1 YEAR.**—*If a prescription expires in less than 1*
11 *year, the reasons for the judgment referred to in subsection*
12 *(a)(3) shall be documented in the patient's medical record.*
13 *In no circumstance shall the prescription expiration date*
14 *be less than the period of time recommended by the pre-*
15 *scriber for a reexamination of the patient that is medically*
16 *necessary.*

17 (c) **DEFINITION.**—*As used in this section, the term*
18 *“issue date” means the date on which the patient receives*
19 *a copy of the prescription.*

20 **SEC. 6. CONTENT OF ADVERTISEMENTS AND OTHER REP-**
21 **RESENTATIONS.**

22 *Any person that engages in the manufacture, proc-*
23 *essing, assembly, sale, offering for sale, or distribution of*
24 *contact lenses may not represent, by advertisement, sales*

1 *presentation, or otherwise, that contact lenses may be ob-*
2 *tained without a prescription.*

3 **SEC. 7. PROHIBITION OF CERTAIN WAIVERS.**

4 *A prescriber may not place on the prescription, or re-*
5 *quire the patient to sign, or deliver to the patient a form*
6 *or notice waiving or disclaiming the liability or responsi-*
7 *bility of the prescriber for the accuracy of the eye examina-*
8 *tion. The preceding sentence does not impose liability on*
9 *a prescriber for the ophthalmic goods and services dispensed*
10 *by another seller pursuant to the prescriber's correctly*
11 *verified prescription.*

12 **SEC. 8. RULEMAKING BY FEDERAL TRADE COMMISSION.**

13 *The Federal Trade Commission shall prescribe rules*
14 *pursuant to section 18 of the Federal Trade Commission*
15 *Act (15 U.S.C. 57a) to carry out this Act. Rules so pre-*
16 *scribed shall be exempt from the requirements of the Magnu-*
17 *son-Moss Warranty—Federal Trade Commission Improve-*
18 *ment Act (15 U.S.C. 2301 et seq.). Any such regulations*
19 *shall be issued in accordance with section 553 of title 5,*
20 *United States Code. The first rules under this section shall*
21 *take effect not later than 180 days after the effective date*
22 *of this Act.*

23 **SEC. 9. VIOLATIONS.**

24 *(a) IN GENERAL.—Any violation of this Act or the*
25 *rules required under section 8 shall be treated as a violation*

1 of a rule under section 18 of the Federal Trade Commission
2 Act (15 U.S.C. 57a) regarding unfair or deceptive acts or
3 practices.

4 (b) *ACTIONS BY THE COMMISSION.*—The Federal
5 Trade Commission shall enforce this Act in the same man-
6 ner, by the same means, and with the same jurisdiction,
7 powers, and duties as though all applicable terms and pro-
8 visions of the Federal Trade Commission Act (15 U.S.C.
9 41 et seq.) were incorporated into and made a part of this
10 Act.

11 **SEC. 10. STUDY AND REPORT.**

12 (a) *STUDY.*—The Federal Trade Commission shall un-
13 dertake a study to examine the strength of competition in
14 the sale of prescription contact lenses. The study shall in-
15 clude an examination of the following issues:

16 (1) *Incidence of exclusive relationships between*
17 *prescribers or sellers and contact lens manufacturers*
18 *and the impact of such relationships on competition.*

19 (2) *Difference between online and offline sellers*
20 *of contact lenses, including price, access, and avail-*
21 *ability.*

22 (3) *Incidence, if any, of contact lens prescrip-*
23 *tions that specify brand name or custom labeled con-*
24 *tact lenses, the reasons for the incidence, and the effect*
25 *on consumers and competition.*

1 (4) *The impact of the Federal Trade Commission*
2 *eyeglasses rule (16 C.F.R. 456 et seq.) on competition,*
3 *the nature of the enforcement of the rule, and how*
4 *such enforcement has impacted competition.*

5 (5) *Any other issue that has an impact on com-*
6 *petition in the sale of prescription contact lenses.*

7 (b) *REPORT.*—*Not later than 12 months after the effec-*
8 *tive date of this Act, the Chairman of the Federal Trade*
9 *Commission shall submit to the Congress a report of the*
10 *study required by subsection (a).*

11 **SEC. 11. DEFINITIONS.**

12 *As used in this Act:*

13 (1) *CONTACT LENS FITTING.*—*The term “contact*
14 *lens fitting” means the process that begins after the*
15 *initial eye examination and ends when a successful*
16 *fit has been achieved or, in the case of a renewal pre-*
17 *scription, ends when the prescriber determines that no*
18 *change in prescription is required, and such term*
19 *may include—*

20 (A) *an examination to determine lens speci-*
21 *fications;*

22 (B) *except in the case of a renewal of a pre-*
23 *scription, an initial evaluation of the fit of the*
24 *lens on the eye; and*

1 (C) *medically necessary follow up examina-*
2 *tions.*

3 (2) *PRESCRIBER.*—*The term “prescriber” means,*
4 *with respect to contact lens prescriptions, an ophthal-*
5 *mologist, optometrist, or other person permitted under*
6 *State law to issue prescriptions for contact lenses in*
7 *compliance with any applicable requirements estab-*
8 *lished by the Food and Drug Administration.*

9 (3) *CONTACT LENS PRESCRIPTION.*—*The term*
10 *“contact lens prescription” means a prescription,*
11 *issued in accordance with State and Federal law, that*
12 *contains sufficient information for the complete and*
13 *accurate filling of a prescription, including the fol-*
14 *lowing:*

15 (A) *Name of the patient.*

16 (B) *Date of examination.*

17 (C) *Issue date and expiration date of pre-*
18 *scription.*

19 (D) *Name, postal address, telephone num-*
20 *ber, and facsimile telephone number of pre-*
21 *scriber.*

22 (E) *Power, material or manufacturer or*
23 *both.*

24 (F) *Base curve or appropriate designation.*

25 (G) *Diameter, when appropriate.*

1 (H) In the case of a private label contact
2 lens, name of manufacturer, trade name of pri-
3 vate label brand, and, if applicable, trade name
4 of equivalent brand name.

5 **SEC. 12. EFFECTIVE DATE.**

6 This Act shall take effect 60 days after the date of the
7 enactment of this Act.

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