

108TH CONGRESS  
1ST SESSION

# H. R. 3140

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

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## 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

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## 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  
5 Lens Consumers Act”.

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

8 (a) IN GENERAL.—When a prescriber completes a  
9 contact lens fitting, the prescriber—

1           (1) whether or not requested by the patient,  
2           shall provide to the patient a copy of the contact  
3           lens prescription; and

4           (2) shall, as directed by any person designated  
5           to act on behalf of the patient, provide or verify the  
6           contact lens prescription by electronic or other  
7           means.

8           (b) LIMITATIONS.—A prescriber may not—

9           (1) require purchase of contact lenses from the  
10          prescriber or from another person as a condition of  
11          providing a copy of a prescription under subsection  
12          (a)(1) or (a)(2) or verification of a prescription  
13          under subsection (a)(2);

14          (2) require payment in addition to, or as part  
15          of, the fee for an eye examination, fitting, and eval-  
16          uation as a condition of providing a copy of a pre-  
17          scription under subsection (a)(1) or (a)(2) or  
18          verification of a prescription under subsection (a)(2);  
19          or

20          (3) require the patient to sign a waiver or re-  
21          lease as a condition of verifying or releasing a pre-  
22          scription.

1 **SEC. 3. IMMEDIATE PAYMENT OF FEES IN LIMITED CIR-**  
2 **CUMSTANCES.**

3 A prescriber may require payment of fees for an eye  
4 examination, fitting, and evaluation before the release of  
5 a contact lens prescription, but only if the prescriber re-  
6 quires immediate payment in the case of an examination  
7 that reveals no requirement for ophthalmic goods. For  
8 purposes of the preceding sentence, presentation of proof  
9 of insurance coverage for that service shall be deemed to  
10 be a payment.

11 **SEC. 4. PRESCRIBER VERIFICATION.**

12 (a) **PRESCRIPTION REQUIREMENT.**—A seller may sell  
13 contact lenses only in accordance with a prescription for  
14 the patient that is verified by direct communication.

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

18 (c) **INFORMATION.**—When seeking verification of a  
19 contact lens prescription, a seller shall provide the pre-  
20 scriber with the following information:

21 (1) Patient's full name and address.

22 (2) Contact lens power, manufacturer, base  
23 curve or appropriate designation, and diameter when  
24 appropriate.

25 (3) Quantity of lenses ordered.

26 (4) Date of patient request.

1 (5) Date and time of verification request.

2 (6) Name of contact person at seller's company,  
3 including facsimile and telephone number.

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

6 (1) The prescriber confirms the prescription is  
7 accurate by direct communication with the seller.

8 (2) The prescriber informs the seller that the  
9 prescription is inaccurate and provides the accurate  
10 prescription.

11 (3) The prescriber fails to communicate with  
12 the seller within 8 business hours, or a similar time  
13 as defined by the Federal Trade Commission, after  
14 the seller achieves direct communication.

15 (e) INVALID PRESCRIPTION.—If a prescriber informs  
16 a seller before the deadline under subsection (d)(3) that  
17 the contact lens prescription is invalid, the seller shall not  
18 fill the prescription. The prescriber shall specify the basis  
19 for the invalidity of the prescription. If the prescription  
20 communicated by the seller to the prescriber is incorrect,  
21 the prescriber shall correct it.

22 (f) NO ALTERATION.—A seller may not alter a con-  
23 tact lens prescription. Notwithstanding the preceding sen-  
24 tence, if the same contact lens is manufactured by the  
25 same company and sold under multiple labels to individual

1 providers, the seller may fill the prescription with a con-  
2 tact lens manufactured by that company under another  
3 label.

4 (g) DIRECT COMMUNICATION.—As used in this sec-  
5 tion, the term “direct communication” includes successful  
6 communication by telephone, facsimile, or electronic mail.

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

8 (a) IN GENERAL.—A contact lens prescription shall  
9 expire—

10 (1) on the date specified by the law of the State  
11 involved, if that date is one year or more after the  
12 issue date of the prescription;

13 (2) not less than one year after the issue date  
14 of the prescription if such State law specifies no  
15 date or a date that is less than one year after the  
16 issue date of the prescription; or

17 (3) notwithstanding paragraphs (1) and (2), on  
18 the date specified by the prescriber, if that date is  
19 based on the medical judgment of the prescriber  
20 with respect to the ocular health of the patient.

21 (b) SPECIAL RULES FOR PRESCRIPTIONS OF LESS  
22 THAN 1 YEAR.—If a prescription expires in less than 1  
23 year, the reasons for the judgment referred to in sub-  
24 section (a)(3) shall be documented in the patient’s medical  
25 record. In no circumstance shall the prescription expira-

1 tion date be less than the period of time recommended  
2 by the prescriber for a reexamination of the patient that  
3 is medically necessary.

4 (c) DEFINITION.—As used in this section, the term  
5 “issue date” means the date on which the patient receives  
6 a copy of the prescription.

7 **SEC. 6. CONTENT OF ADVERTISEMENTS AND OTHER REP-**  
8 **RESENTATIONS.**

9 Any person that engages in the manufacture, proc-  
10 essing, assembly, sale, offering for sale, or distribution of  
11 contact lenses may not represent, by advertisement, sales  
12 presentation, or otherwise, that contact lenses may be ob-  
13 tained without a prescription.

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

15 A prescriber may not place on the prescription, or  
16 require the patient to sign, or deliver to the patient a form  
17 or notice waiving or disclaiming the liability or responsi-  
18 bility of the prescriber for the accuracy of the eye exam-  
19 ination. The preceding sentence does not impose liability  
20 on a prescriber for the ophthalmic goods and services dis-  
21 pensed by another seller pursuant to the prescriber’s cor-  
22 rectly verified prescription.

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

24 The Federal Trade Commission shall prescribe rules  
25 to carry out this Act. Rules so prescribed shall be exempt

1 from the requirements of the Magnuson-Moss Warranty-  
2 Federal Trade Commission Improvement Act (15 U.S.C.  
3 2301 et seq.). Any such regulations shall be issued in ac-  
4 cordance with section 553 of title 5, United States Code.  
5 The first rules under this section shall take effect not later  
6 than 180 days after the effective date of this Act.

7 **SEC. 9. VIOLATIONS.**

8 (a) **IN GENERAL.**—Any violation of this Act shall be  
9 treated as a violation of a rule under section 18 of the  
10 Federal Trade Commission Act (15 U.S.C. 57a) regarding  
11 unfair or deceptive acts or practices.

12 (b) **ACTIONS BY THE COMMISSION.**—The Federal  
13 Trade Commission shall enforce this Act in the same man-  
14 ner, by the same means, and with the same jurisdiction,  
15 powers, and duties as though all applicable terms and pro-  
16 visions of the Federal Trade Commission Act (15 U.S.C.  
17 41 et seq.) were incorporated into and made a part of this  
18 Act.

19 **SEC. 10. STUDY AND REPORT.**

20 (a) **STUDY.**—The Federal Trade Commission shall  
21 undertake a study to examine the strength of competition  
22 in the sale of prescription contact lenses. The study shall  
23 include an examination of the following issues:

1           (1) Incidence of exclusive relationships between  
2           prescribers or sellers and contact lens manufacturers  
3           and the impact of such relationships on competition.

4           (2) Difference between online and offline sellers  
5           of contact lenses, including price, access, and avail-  
6           ability.

7           (3) Incidence, if any, of contact lens prescrip-  
8           tions that specify brand name or custom labeled con-  
9           tact lenses, the reasons for the incidence, and the ef-  
10          fect on consumers and competition.

11          (4) The impact of the Federal Trade Commis-  
12          sion eyeglasses rule (16 C.F.R. 456 et seq.) on com-  
13          petition, the nature of the enforcement of the rule,  
14          and how such enforcement has impacted competi-  
15          tion.

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

18          (b) REPORT.—Not later than 12 months after the ef-  
19          fective date of this Act, the Chairman of the Federal  
20          Trade Commission shall submit to the Congress a report  
21          of the study required by subsection (a).

22          **SEC. 11. DEFINITIONS.**

23          As used in this Act:

24                  (1) CONTACT LENS FITTING.—The term “con-  
25          tact lens fitting” means the process that begins after

1 the initial eye examination and ends when a success-  
2 ful fit has been achieved or, in the case of a renewal  
3 prescription, ends when the prescriber determines  
4 that no change in prescription is required, and such  
5 term may include—

6 (A) an examination to determine lens spec-  
7 ifications;

8 (B) except in the case of a renewal of a  
9 prescription, an initial evaluation of the fit of  
10 the lens on the eye; and

11 (C) medically necessary follow up examina-  
12 tions.

13 (2) PRESCRIBER.—The term “prescriber”  
14 means, with respect to contact lens prescriptions, an  
15 ophthalmologist, optometrist, or other person per-  
16 mitted under State law to issue prescriptions for  
17 contact lenses in compliance with any applicable re-  
18 quirements established by the Food and Drug Ad-  
19 ministration.

20 (3) CONTACT LENS PRESCRIPTION.—The term  
21 “contact lens prescription” means a prescription,  
22 issued in accordance with State and Federal law,  
23 that contains sufficient information for the complete  
24 and accurate filling of a prescription, including the  
25 following:

1 (A) Name of the patient.

2 (B) Date of examination.

3 (C) Issue date and expiration date of pre-  
4 scription.

5 (D) Name, postal address, telephone num-  
6 ber, and facsimile telephone number of pre-  
7 scriber.

8 (E) Power, material or manufacturer or  
9 both.

10 (F) Base curve or appropriate designation.

11 (G) Diameter, when appropriate.

12 (H) In the case of a private label contact  
13 lens, name of manufacturer, trade name of pri-  
14 vate label brand, and, if applicable, trade name  
15 of equivalent brand name.

16 **SEC. 12. EFFECTIVE DATE.**

17 This Act shall take effect 60 days after the date of  
18 the enactment of this Act.

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