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107TH CONGRESS
2D SESSION

H. R. 5657

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2002

Mr. BURR of North Carolina (for himself, Mr. TOWNS, Mr. TAUZIN, Mr. DINGELL, Mr. NORWOOD, Mr. WAXMAN, and Mr. STARK) introduced the following bill; which was referred to 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fairness to Contact Lens Consumers Act''.

SEC. 2. AVAILABILITY OF CONTACT LENS PRESCRIPTIONS TO PATIENTS.

(a) IN GENERAL.—Upon completion of a contact lens fitting, a prescriber—

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

(2) shall provide the contact lens prescription or verify the contact lens prescription to any person designated to act on behalf of the patient.

(b) LIMITATIONS.—A prescriber may not—

(1) require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription or verification of a prescription under subsection (a); and

(2) require payment in addition to the examination fee as a condition of providing a copy of a prescription or verification of a prescription under subsection (a).

SEC. 3. EXPIRATION OF CONTACT LENS PRESCRIPTIONS.

A contact lens prescription shall expire—

(1) on the date specified by the law of the State involved, if that date is one year or more after the date of completion of the contact lens fitting;

(2) one year after the date of completion of the contact lens fitting, if the law of the State involved has no specified date or if such State law specifies a date that is less than one year after the date of completion of the contact lens fitting; or

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

SEC. 4. CONTENT OF ADVERTISEMENTS AND OTHER REPRESENTATIONS.

Any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses for which a prescription is required by law may be obtained without a prescription.

SEC. 5. PROHIBITION OF CERTAIN WAIVERS.

A prescriber may not place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination or the accuracy of the contact lenses dispensed by another seller.

SEC. 6. VIOLATIONS.

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

SEC. 7. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by a violation of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.— Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Federal Trade Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall be construed to prevent an attorney general of a

State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for a violation of this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(1) is an inhabitant; or

(2) may be found.

SEC. 8. STUDY AND REPORT.

(a) STUDY.—The Federal Trade Commission shall undertake a study to examine the strength of competition

in the sale of prescription contact lenses. The study shall include an examination of the following issues:

(1) The States that have laws that require active or passive verification for the sale of contact lenses.

(2) With respect to the States that require active verification, the practices of prescribers in complying with State law, the effect of noncompliance, and the harm to competition and consumers that results from noncompliance.

(3) With respect to the States that require active verification, the level of enforcement and any problems relating to enforcement.

(4) The impact on competition of verification standards adopted by retail sellers of prescription contact lenses.

(5) With respect to States that require passive verification or have no applicable verification laws, the possible effect of such laws or lack thereof on the ocular health of patients. In addition, the effect of such laws or lack thereof on compliance by sellers in confirming valid contact lens prescriptions, including expiration dates. The Commission shall consult the Food and Drug Administration on this particular issue.

(6) The incidence, if any, of contact lens prescriptions that specify brand name or custom labeled contact lenses, the reasons for the incidence, and the effect on consumers and competition.

(7) Any other issue that has an impact on competition in the sale of prescription contact lenses.

(b) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Chairman of the Federal Trade Commission shall submit to the Congress a report of the study required by subsection (a).

SEC. 9. EFFECT ON OTHER LAW.

Except as provided in section 3, this Act does not affect any rule or requirement administered by the Food and Drug Administration, any State law that regulates the practice of medicine, persons authorized to fit contact lenses, or the requirements of any contact lens prescription.

SEC. 10. DEFINITIONS.

As used in this Act:

(1) CONTACT LENS FITTING.—The term ''contact lens fitting'' means the process that begins after the initial eye examination and ends when the prescriber is satisfied that a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change

in prescription is required, and such term may include—

(A) an examination to determine lens specifications;

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

(C) medically necessary followup examinations.

(2) PRESCRIBER.—The term ''prescriber'' means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.

(3) CONTACT LENS PRESCRIPTION.—The term ''contact lens prescription'' means a prescription, issued in accordance with State and Federal law, that contains the specifications necessary for a patient to obtain contact lenses and may include such items as the following:

(A) The name of the patient.

(B) The date of the examination.

(C) The issue date and the expiration date of the prescription.

(D) A clear notation contact lenses are suitable for the patient.

(E) The parameters and instructions that are necessary for manufacture and duplication of the lenses.

(F) The name, postal address, telephone number, and facsimile telephone number of the prescriber.

(G) The expiration date of the prescription.

SEC. 11. EFFECTIVE DATE.

This Act shall take effect 30 days after the date of the enactment of this Act.

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