

114TH CONGRESS  
2D SESSION

# S. 2777

To modernize the prescription verification process for contact lenses, to clarify consumer protections regarding false advertising of contact lenses, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 11, 2016

Mr. CASSIDY (for himself and Mr. BOOZMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To modernize the prescription verification process for contact lenses, to clarify consumer protections regarding false advertising of contact lenses, 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 “Contact Lens Con-  
5 sumer Health Protection Act of 2016”.

6 **SEC. 2. IMPROVEMENT OF CONTACT LENS PRESCRIBER**  
7 **VERIFICATION PROCESS.**

8 (a) IN GENERAL.—Section 4 of the Fairness to Con-  
9 tact Lens Consumers Act (15 U.S.C. 7603) is amended—

1           (1) in subsection (c), by adding at the end the  
2 following:

3           “(7) A toll-free telephone number and email ad-  
4 dress for prescribers to call or email with questions  
5 relating to a verification request, as required under  
6 subsection (i).”;

7           (2) in subsection (d)(3)—

8           (A) by striking “, or a similar time as de-  
9 fined by the Federal Trade Commission,”;

10           (B) by inserting “(A)” before “The pre-  
11 scriber”; and

12           (C) by adding at the end the following:

13           “(B) If a prescriber communicates a question  
14 or concern about the accuracy of the prescription, or  
15 any other matter relating to the verification of the  
16 prescription, to a seller through the toll-free tele-  
17 phone service or dedicated email address required  
18 under subsection (i) before such 8-business-hour pe-  
19 riod has ended, the prescription shall be considered  
20 unverified until the seller obtains affirmative con-  
21 firmation of the accuracy of the prescription from  
22 the prescriber.”;

23           (3) by redesignating subsections (e) through (g)  
24 as subsections (f) through (h), respectively;

1           (4) by amending subsection (f), as redesignated  
2           by paragraph (3), to read as follows:

3           “(f) INVALID PRESCRIPTIONS AND QUESTIONS CON-  
4           CERNING ACCURACY.—

5           “(1) INVALID PRESCRIPTIONS.—If a prescriber  
6           informs a seller before the deadline set forth in sub-  
7           paragraph (A) of subsection (d)(3) that the contact  
8           lens prescription is inaccurate, expired, or otherwise  
9           invalid—

10                   “(A) the seller shall not fill the prescrip-  
11                   tion; and

12                   “(B) the prescriber shall specify the basis  
13                   for the inaccuracy or invalidity of the prescrip-  
14                   tion.

15           “(2) QUESTIONS CONCERNING ACCURACY.—If a  
16           prescriber communicates a question or concern  
17           about the accuracy of a prescription as described in  
18           subsection (d)(3)(B) before the deadline set forth in  
19           such subsection—

20                   “(A) the seller shall not fill the prescrip-  
21                   tion; and

22                   “(B) the prescriber shall provide the seller  
23                   with an accurate prescription.

1           “(3) CORRECTION.—In any case, if the pre-  
2           scription communicated by the seller to the pre-  
3           scriber is inaccurate, the prescriber shall correct it.”;

4           (5) by adding after subsection (d) the following:

5           “(e) PRESCRIBER PREFERRED METHOD OF COMMU-  
6           NICATION.—

7           “(1) IN GENERAL.—A prescriber may provide  
8           written notification to a seller requesting that all re-  
9           quests for verification from that seller be commu-  
10          nicated to that prescriber by that prescriber’s pre-  
11          ferred method or methods of communication, se-  
12          lected from among the methods of communication  
13          offered by the seller pursuant to paragraph (2).

14          “(2) METHODS OFFERED.—Each seller shall  
15          offer a prescriber methods for communication for se-  
16          lection as the prescriber’s preferred method or meth-  
17          ods of communication under paragraph (1). Such  
18          offer—

19                  “(A) shall include—

20                          “(i) live telephone;

21                          “(ii) facsimile; and

22                          “(iii) email; and

23                  “(B) may include such additional methods  
24          of communication as the seller considers appro-  
25          priate.

1           “(3) REQUIREMENT.—In a case in which a pre-  
2           scriber, pursuant to paragraph (1), provides written  
3           notification to a seller indicating a preferred method  
4           or methods of communication as described in such  
5           paragraph, the seller may only request verification  
6           from the prescriber through the method or methods  
7           indicated.”; and

8           (6) by inserting after subsection (h), as redesign-  
9           nated by paragraph (3), the following:

10          “(i) TELEPHONE SERVICE AND DEDICATED EMAIL  
11 ADDRESS.—

12           “(1) IN GENERAL.—A seller of contact lenses  
13           who requests verification of any contact lens pre-  
14           scription shall provide—

15                   “(A) a toll-free telephone service that is  
16                   operable during regular business hours and op-  
17                   erated by live persons; and

18                   “(B) a dedicated email address for the sole  
19                   purpose of responding to prescribers’ questions  
20                   and concerns regarding verification requests.

21           “(2) CAPACITY.—Such toll-free telephone serv-  
22           ice shall maintain a sufficient number of working  
23           telephone lines operated by live persons to enable  
24           ready access by prescribers to the service.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 subsection (a) shall take effect on the date that is 180  
3 days after the date of the enactment of this Act.

4 **SEC. 3. MODIFICATION OF PROHIBITION ON ALTERATION**  
5 **OF CONTACT LENS PRESCRIPTIONS.**

6 (a) IN GENERAL.—Subsection (f) of section 4 of the  
7 Fairness to Contact Lens Consumers Act (15 U.S.C.  
8 7603) is amended to read as follows:

9 “(f) NO ALTERATION.—

10 “(1) IN GENERAL.—A seller may not alter a  
11 contact lens prescription and when dispensing a con-  
12 tact lens prescription, may only dispense such pre-  
13 scription exactly as written by the prescriber.

14 “(2) PRIVATE LABELS.—In a case in which a  
15 private label contact lens is included on the contact  
16 lens prescription and the same contact lens is manu-  
17 factured by the same company and sold under mul-  
18 tiple labels to individual providers, the seller may fill  
19 the prescription with a contact lens of exactly the  
20 same material, design, and power as manufactured  
21 by that company under another label.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 subsection (a) shall take effect on the date that is 180  
24 days after the date of the enactment of this Act.

1 **SEC. 4. REQUIREMENTS FOR IMPROVED RECORDKEEPING**  
2 **BY SELLERS OF CONTACT LENSES.**

3 Section 4(b) of the Fairness to Contact Lens Con-  
4 sumers Act (15 U.S.C. 7603(b)) is amended—

5 (1) by striking “A seller” and inserting the fol-  
6 lowing:

7 “(1) COMMUNICATIONS GENERALLY.—A sell-  
8 er”; and

9 (2) by adding at the end the following:

10 “(2) PRESCRIPTIONS.—Each seller shall main-  
11 tain a database that includes, for each prescription  
12 received by a seller, the following:

13 “(A) The date on which the prescription  
14 was issued.

15 “(B) The specified expiration date of the  
16 prescription.

17 “(3) PREFERRED METHODS OF COMMUNICA-  
18 TION.—For each written notification that a seller re-  
19 ceives under subsection (e)(1), the seller shall keep  
20 a copy of such notification for a period of not less  
21 than 3 years.”.

1 **SEC. 5. PROHIBITION ON REPRESENTATION IN ADVER-**  
 2 **TISING THAT PRESCRIPTIONS FOR CONTACT**  
 3 **LENSES MAY BE FILLED AFTER EXPIRATION**  
 4 **DATE.**

5 Section 6 of the Fairness to Contact Lens Consumers  
 6 Act (15 U.S.C. 7605) is amended—

7 (1) by striking “that contact” and inserting the  
 8 following: “that—

9 “(1) contact”;

10 (2) in paragraph (1), as designated by para-  
 11 graph (1) of this section, by striking the period at  
 12 the end and inserting “; or”; and

13 (3) by adding at the end the following:

14 “(2) a prescription for a contact lens may be  
 15 filled after the expiration date of the prescription.”.

16 **SEC. 6. INCREASED PENALTIES FOR SELLERS OF CONTACT**  
 17 **LENSES WHO VIOLATE REQUIREMENTS RE-**  
 18 **LATING TO PRESCRIBER VERIFICATION.**

19 (a) IN GENERAL.—Subsection (b) of section 9 of the  
 20 Fairness to Contact Lens Consumers Act (15 U.S.C.  
 21 7608) is amended by striking the period at the end and  
 22 inserting “, except that fines imposed for a violation of  
 23 section 4 of this Act may be in an amount up to \$40,000  
 24 per violation.”.



1 (b) CLARIFICATION OF APPLICABILITY.—Such sec-  
2 tion is further amended by adding at the end the following  
3 new subsection:

4 “(c) APPLICABILITY.—This chapter shall apply to all  
5 sales of contact lenses in the United States and the sellers  
6 involved in such sales, notwithstanding where the seller  
7 is located.”.

8 **SEC. 7. CONTACT LENS CONSUMER COMPLIANCE AND**  
9 **SAFETY STUDY.**

10 (a) STUDY REQUIRED.—The Secretary of Health and  
11 Human Services, acting through the Director of the Cen-  
12 ters for Disease Control and Prevention, shall conduct a  
13 study to examine the adverse and potentially adverse ef-  
14 fects on consumers of violations by sellers of the Fairness  
15 to Contact Lens Consumers Act (15 U.S.C. 7601 et seq.),  
16 as amended by section 2, particularly with respect to mat-  
17 ters regarding prescription verification, business practices,  
18 and enforcement by the Federal Trade Commission of  
19 such Act.

20 (b) ELEMENTS.—The study required by subsection  
21 (a) shall specifically address the following:

22 (1) The overfilling of prescriptions with quan-  
23 tities of lenses such that the normal expiration dates  
24 of the prescriptions will be exceeded.

1           (2) The dispensing of prescriptions that have  
2 expired or are inaccurate.

3           (3) The failure by a seller to allow prescribers  
4 to contact the seller within 8 business hours to ad-  
5 vise that a prescription is inaccurate or expired.

6           (4) The health risks to the consumer of receiv-  
7 ing an incorrect prescription from a seller, or issues  
8 with patient access to the medically prescribed con-  
9 tact lenses.

10          (5) The economic risks to the consumer of re-  
11 ceiving an incorrect prescription from a seller.

12          (6) The improper advertising to consumers  
13 about what constitutes a valid prescription or valid  
14 prescription information, or advertising that no pre-  
15 scription is needed.

16          (7) Such other matters regarding the effects on  
17 the health of the consumers from violations of the  
18 verification or sales requirements of the Fairness to  
19 Contact Lens Consumers Act (15 U.S.C. 7601 et  
20 seq.) as the Secretary considers appropriate.

21          (c) REPORT.—Not later than 1 year after the date  
22 of the enactment of this Act, the Secretary shall submit  
23 to Congress and the Federal Trade Commission a report  
24 on the study required by subsection (a).

1 **SEC. 8. MODIFICATION OF DEFINITIONS.**

2 (a) IN GENERAL.—Section 11 of the Fairness to  
3 Contact Lens Consumers Act (15 U.S.C. 7610) is amend-  
4 ed—

5 (1) in paragraph (3), by amending subpara-  
6 graph (E) to read as follows:

7 “(E) Power, material, manufacturer, or de-  
8 vice name.”; and

9 (2) by adding at the end the following:

10 “(4) BUSINESS HOUR.—The term ‘business  
11 hour’ means, with respect to a prescriber, any hour  
12 during a business day within the period beginning at  
13 9:00 in the morning and ending at 5:00 in the  
14 evening in the time zone of the prescriber.

15 “(5) BUSINESS DAY.—The term ‘business day’  
16 means any day other than Saturday and Sunday and  
17 other than a legal holiday (within the meaning of  
18 section 7503 of the Internal Revenue Code of  
19 1986).”.

20 (b) EFFECTIVE DATE.—The amendments made by  
21 subsection (a) shall take effect on the date that is 180  
22 days after the date of the enactment of this Act.

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