108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–318

FAIRNESS TO CONTACT LENS CONSUMERS ACT

OCTOBER 15, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3140]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3140) to provide for availability of contact lens prescriptions to patients, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

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.—When a prescriber completes a contact lens fitting, the prescriber—

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

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

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

(2) require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2); or

(3) require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

SEC. 3. IMMEDIATE PAYMENT OF FEES IN LIMITED CIRCUMSTANCES.

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

SEC. 4. PRESCRIBER VERIFICATION.

(a) PRESCRIPTION REQUIREMENT.—A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is—

(1) presented to the seller by the patient or prescriber directly or by facsimile; or

(2) verified by direct communication.

(b) RECORD REQUIREMENT.—A seller shall maintain a record of all direct communications referred to in subsection (a).

(c) INFORMATION.—When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information:

(1) Patient's full name and address.

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

(3) Quantity of lenses ordered.

(4) Date of patient request.

(5) Date and time of verification request.

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

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

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

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

(3) The prescriber fails to communicate with the seller within 8 business hours, or a similar time as defined by the Federal Trade Commission, after receiving from the seller the information described in subsection (c).

(e) INVALID PRESCRIPTION.—If a prescriber informs a seller before the deadline under subsection (d)(3) that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it.

(f) NO ALTERATION.—A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with a contact lens manufactured by that company under another label.

(g) DIRECT COMMUNICATION.—As used in this section, the term "direct communication" includes communication by telephone, facsimile, or electronic mail.

SEC. 5. EXPIRATION OF CONTACT LENS PRESCRIPTIONS.

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

(1) on the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

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

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

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

SEC. 6. 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 may be obtained without a prescription.

SEC. 7. 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. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

SEC. 8. RULEMAKING BY FEDERAL TRADE COMMISSION.

The Federal Trade Commission shall prescribe rules pursuant to section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) to carry out this Act. Rules so prescribed shall be exempt from the requirements of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.). Any such regulations shall be issued in accordance with section 553 of title 5, United States Code. The first rules under this section shall take effect not later than 180 days after the effective date of this Act.

SEC. 9. VIOLATIONS.

(a) IN GENERAL.—Any violation of this Act or the rules required under section 8 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.

(b) ACTIONS BY THE COMMISSION.—The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 10. 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) Incidence of exclusive relationships between prescribers or sellers and contact lens manufacturers and the impact of such relationships on competition.

(2) Difference between online and offline sellers of contact lenses, including price, access, and availability.

(3) 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.

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

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

(b) REPORT.—Not later than 12 months after the effective date 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. 11. 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 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 follow up 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 sufficient information for the complete and accurate filling of a prescription, including the following:

(A) Name of the patient.

(B) Date of examination.

(C) Issue date and expiration date of prescription.

(D) Name, postal address, telephone number, and facsimile telephone number of prescriber.

(E) Power, material or manufacturer or both.

(F) Base curve or appropriate designation.

(G) Diameter, when appropriate.

(H) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

SEC. 12. EFFECTIVE DATE.

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

PURPOSE AND SUMMARY

The purpose of H.R. 3140 is to provide for the availability of contact lens prescriptions to patients, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In the past ten years, there has been tremendous growth in the contact lens business. As the business of contact lenses has grown, so have the issues surrounding prescription release. The practice of optometrists withholding the prescription has limited the consumer's ability to shop for the best price and has impacted competition.

A consumer's right to his or her eyeglass prescription was mandated by a 1978 Federal Trade Commission (FTC) regulation. As a result of that regulation, there is significantly more competition, better service, and lower prices for eyeglasses. Contact lenses were not included in that regulation because, at that time, contact lenses were an emerging technology. Hard lenses were predominant and were custom made for each individual. Today, although 36 million Americans wear contact lenses, and approximately 85 percent of all contact lens wearers wear mass-produced soft contact lenses, consumers still do not have the right to their contact lens prescription under federal law. H.R. 3140 gives consumers that right.

The consumer's right to a copy of their contact lens prescription means nothing unless consumers can fill that prescription at the business of their choice. Consumers are now offered a myriad of competitive options to fill contact lens prescriptions from the optometrist's office, to third party sellers like pharmacies, department stores, and Internet or mail order outlets. However, despite the range of options, consumers continue to face a difficult time getting prescriptions filled by alternative third party sellers due to prescription verification obstacles.

Unlike medical doctors who are prohibited from selling the drugs they prescribe, eye doctors and optometrists ("doctors") are able to fill the contact lens prescriptions they write. This sets up an inherent conflict of interest because third party sellers are forced to compete for the sale of lenses with the individual who is writing the prescription.

A number of states have established laws dealing with release of contact lens prescriptions. Nearly all of these states have mandated the right of the consumer to their prescription, but states have taken different positions on how and when the prescription can be verified and filled.

There are two kinds of verification systems—active and passive. An active verification system requires a third party seller to receive actual verification of the contact lens prescription by the doctor before it can be filled. If a doctor fails, intentionally or not, to call the third party seller to verify, the prescription cannot be filled. This creates a system that requires third party sellers to ask permission of their competitor to make a sale. Third party sellers argue they do not receive the verification needed to fill a prescription, which effectively eliminates them from the market, and prevents consumers from shopping around for lower prices and the most convenient service.

The alternative system is passive verification, which allows the third party seller to call the doctor to verify a prescription and if the doctor does not call back within a certain period of time, the prescription can be filled. H.R. 3140 adopts a passive verification system in order to best serve the consumer. The Subcommittee on Commerce, Trade, and Consumer Protection heard testimony from consumers and businesses of the unusually high number of consumer complaints in states that rely on active verification schemes. A passive verification system ensures that consumers are not caught in the competitive tug-of-war between doctors and third party sellers for the sale of contact lenses.

H.R. 3140 will increase competition in the sale of contact lenses which will bring a substantial savings to America's contact lens wearers. Consumers spend an estimated $3.5 billion annually on replacement contact lenses. Consumers who order prescription refills from alternative sellers can save, on average, 20 percent per order.

A uniform national standard for prescription release and verification will best serve the consumer. H.R. 3140 promotes competition, consumer choice, and lower prices by extending to contact lens wearers the same automatic right to copies of their own prescriptions and allows consumers to purchase contact lenses from the provider of their choice.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on H.R. 2221 on September 9, 2003, the legislative precursor to H.R. 3140. The Subcommittee received testimony from Ms. Maria Martinez; Mr. J. Howard Beales, III, Director, Bureau of Consumer Protection, Federal Trade Commission; Mr. Jonathan C. Coon, Chief Executive Officer, 1–800 Contacts; Dr. J. Pat Cummings, O.D., Immediate Past President, American Optometric Association; Mr. Robert L. Hubbard, Director of Litigation, Anti-

trust Bureau, Office of the New York Attorney General; Ms. Ami Gadhia, Consumers Union; and, Ms. Peggy Venable, State Director, Citizens for a Sound Economy.

COMMITTEE CONSIDERATION

On Wednesday, September 24, 2003, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and approved H.R. 3140 for Full Committee consideration by a voice vote, a quorum being present. On Wednesday, October 1, 2003, the Full Committee met in open markup session and ordered H.R. 3140 favorably reported to the House, with amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3140 reported. A motion by Mr. Tauzin to order H.R. 3140 reported to the House was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of this legislation is to allow consumers access to their contact lens prescriptions and to provide for the verification of such prescriptions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3140, the "Fairness to Contact Lens Consumers Act," would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 2003.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3140, the Fairness to Contact Lens Consumers Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa E. Zimmerman (for federal costs), Sarah Puro (for the impact on state and local governments), and Jean Talarico (for the impact on the private sector).

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3140—Fairness to Contact Lens Consumers Act

H.R. 3140 would establish procedures for issuers of contact lens prescriptions to follow concerning patients' access to prescriptions. It would direct the Federal Trade Commission (FTC) to develop regulations to implement the bill and to complete a study on competition in the sale of prescription contact lenses. Based on information provided by the FTC, CBO estimates that implementing H.R. 3140 would have an insignificant effect on spending subject to the availability of appropriated funds. The bill would not affect direct spending or revenues.

H.R. 3140 contains two intergovernmental mandates as defined by the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs would not be significant and would not exceed the threshold established in UMRA ($59 million in 2003, adjusted annually for inflation).

First, the bill would preempt state law in the five states that have stricter requirements for prescription verification, but CBO estimates that the preemption would impose no costs on those states. Second, the bill would require prescribers of contact lenses—including some who may work for public entities—to provide the patient a copy of the prescription and to verify contact lens prescriptions to third-party manufacturers. Since the bill would simply require eye care professionals to return the call of a third-party manufacturer if the prescription the manufacturer has is wrong, CBO estimates that the bill would impose no significant costs on those entities. In total, the costs of the mandates in the bill would fall substantially below the threshold established in UMRA.

H.R. 3140 would also impose private-sector mandates as defined in UMRA on sellers and prescribers of contact lenses. Prescribers, as defined in the bill, include ophthalmologists, optometrists, or other persons permitted under state law to issue prescriptions for contact lenses. CBO expects that the incremental costs of those mandates would fall below the annual threshold for the private sec-

tor established by UMRA ($117 million in 2003, adjusted annually for inflation).

In order to sell contact lenses, sellers would have to obtain prescriptions from patients or prescribers directly or by facsimile; prescriptions received by other methods would require verification from the prescriber. The bill also would require sellers to maintain records for all prescription verifications that are communicated by telephone or electronic mail.

In addition, H.R. 3140 would require the prescriber, after a contact lens fitting, to provide a contact lens prescription to the patient or to provide or verify the prescription to any person designated to act on behalf of the patient. The bill also would require prescribers, when requested by sellers of contact lenses, to verify contact lens prescriptions.

According to the FTC, roughly two-thirds of states already require some form of prescription release. Currently, many of the larger sellers of contact lenses voluntarily comply with the verification and recordkeeping requirements of the bill. Furthermore, according to industry sources and the FTC, the additional costs for the sellers and prescribers not now in compliance with the requirements of the bill would be small. CBO, therefore, expects that the incremental cost of all the private-sector mandates in the bill would fall below UMRA's threshold.

The CBO staff contacts for this estimate are Melissa E. Zimmerman (for federal costs), Sarah Puro (for the impact on state and local governments), and Jean Talarico (for the impact on the private sector). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title as the "Fairness to Contact Lens Consumers Act."

Section 2. Availability of contact lens prescriptions to patients

Section 2(a) requires prescribers to provide patients with a copy of their contact lens prescription, whether or not requested by the patient. Additionally, prescribers are required to provide or verify a copy of the patients contact lens prescription to any person designated to act on behalf of the patient.

Section 2(b) mandates that prescribers do not, as a condition of providing or verifying the contact lens prescription, require purchase of contact lenses from the prescriber, require payment in addition to, or as part of, the fee for an eye examination, fitting and evaluation, or require the patient to sign a waiver or release.

Section 3. Immediate payment of fees in limited circumstances

Section 3 provides that a prescriber may require payment of fees for an eye examination, fitting or evaluation before the release of a contact lens prescription only if the prescriber would have required immediate payment if the examination had not revealed the need for ophthalmic goods. Presentation of proof of insurance coverage for that service is deemed to be payment.

Section 4. Prescriber verification

Section 4 established a passive verification program for the verification of contact lens prescriptions. Section 4(a) allows a seller to verify a contact lens prescription if it is (1) presented to the seller by the patient or prescriber directly or by facsimile, or (2) verified by direct communication. Section 4(b) requires the seller to maintain a record of all direct communications referred to in (a).

Section 4(c) details the information the seller must supply to the prescriber, in order for the prescriber to verify a contact lens prescription: (1) Patients full name; (2) contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate; (3) quantity of lenses ordered; (4) date of patient request; (5) date and time of verification request; and, (6) name of contact person at seller's company, including facsimile and telephone number.

Section 4(d) requires that a contact lens prescription be verified only in one of three ways. First, verification occurs when the prescriber confirms the prescription is accurate by direct communication with the seller. Second, verification occurs when a prescriber informs the seller that the prescription is inaccurate and then provides the accurate prescription. Finally, verification occurs if the prescriber fails to communicate with the seller within 8 business hours, or a similar time as defined by the FTC as part of its rulemaking, after receiving from the information described in subsection (c). The Committee believes that any state law with an active or positive contact lens prescription verification system would stand as an obstacle to the accomplishment of the full purposes and objectives of this Act. Practically, it would be impossible to comply with the terms of this Act and an active verification scheme. There-

fore, it is the intent of the Committee that the passive verification system in section 4(d) preempt any conflicting state laws that use active or positive contact lens prescription verification systems.

Section 4(e) does not allow the seller to fill a prescription if a prescriber informs a seller before the deadline in section 4(d)(3) that the contact lens prescription in inaccurate, expired, or otherwise invalid. The prescriber must specify the basis for invalidity or inaccuracy. Finally, if the prescription communicated by the seller to the prescriber is inaccurate, the prescriber must correct it. Under section 4(f), a seller may not alter a contact lens prescription. However, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with a contact lens manufactured by that company under another label. This paragraph is designed to prevent eye doctors from prescribing private label contact lenses that can only be filled by the eye doctor.

"Direct communication" is defined in section 4(g) as including communication by telephone, facsimile, or electronic mail. This list is not exclusive, and the Committee recognizes that possession by the seller of a copy of a valid prescription released pursuant to the consumer pursuant to section 2 shall also constitute "direct communication." It is the intent of the Committee that "direct communication" means a message has been both sent and received. Transmitting the request under 5(c) does not, in and of itself, constitute a direct communication. For instance, when a facsimile that is considered a "direct communication" is sent, the direct communication does not occur until a confirmation that the facsimile transmission was successful is sent. Similarly, if, for example, a prescriber is closed on Wednesday, has a phone recording stating that the office will be open at 9:00 a.m. on Thursday, and verification request information is left on the machine Tuesday evening after normal business hours, the direct communication would not occur, and the time period for verification of the prescription would not commence, until Thursday when the prescriber receives the request and his or her business hours resume. The Committee directs the FTC to set rules defining the time frame for verification and how it is calculated, and expects the FTC's rules to be crafted consistent with this intent.

Section 5. Expiration of contact lens prescriptions

Section 5(a) details when a contact lens prescription expires. A contact lens prescription will expire (1) on the date specified by the law of the state in which the prescription is written, if that date is at least one year after the issue of date of the prescription; or (2) not less than one year after the issue date of the prescription if there is no state law or if the prescription is for less than one year. Section 5(a)(3) allows an eye doctor to write a contact lens prescription for less than one year if based on the medical judgment of the prescriber with respect to the ocular health of the patient. Section 5(b) requires that if a prescriber determines that the ocular health of the patient necessitates a prescription for less than one year, the reasons for this judgment must be documented in the patient's medical record. Section 5(c) defines "issue date" as the date on which the patient receives a copy of the prescription.

Section 6. Content of advertisements and other representations

Section 6 prohibits any manufacturer, processer, seller or distributor of contact lenses to represent by advertisement, sales presentation or otherwise, that contact lenses may be obtained without a prescription.

Section 7. Prohibition of certain waivers

Section 7 prohibits a prescriber from placing on a contact lens prescription, or requiring a patient to sign or deliver to the patient, a form or notice waiving or disclaiming the liability of the prescriber for the accuracy of the eye examination. This does not impose liability on a prescriber for ophthalmic goods and services dispensed by another seller pursuant to the prescribers correctly verified prescription.

Section 8. Rulemaking by Federal Trade Commission

Section 8 requires the FTC to initiate a rulemaking pursuant to section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) to effectuate this Act. These rules are exempt from the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.) requirements. These rules shall become effective not less than 180 days after the effective date of the Act.

Section 9. Violations

Section 9(a) directs the FTC to treat any violation of the Act or the rules enacted pursuant to the Act like 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. Section 9(b) requires the FTC to enforce the Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

Section 10. Study and report

Section 10(a) requires the FTC to undertake a study to examine the strength of competition in the sale of prescription contact lenses. The study shall include a review of the following issues: (1) The incidence of exclusive relationships between prescribers or sellers and contact lens manufacturers and the impact of these relationships on competition; (2) the difference between online and offline sellers of contact lenses; (3) the incidence, if any, of contact lens prescriptions that specify brand name or custom labeled contact lenses, the reasons for the incidence, and the effects on consumers and competition; (4) the impact of the FTC eyeglasses rule on competition, the enforcement of the rule, and how enforcement has impacted competition; and, (5) any other issue that has an impact of competition in the sale of prescription contact lenses. Section 10(b) requires the report be completed and submitted to Congress not later than 12 months after the effective date of the Act.

Section 11. Definitions

Section 11 defines "contact lens fitting," "prescriber," and "contact lens prescription." These definitions are intended to be con-

sistent with state and federal law, including any Food and Drug Administration regulations.

Section 12. Effective date

Section 12 provides that the Act take effect 60 days after the date of enactment.

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