

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3140
OFFERED BY MR. TAUZIN

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Fairness to Contact
3 Lense Consumers Act”.

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

6 (a) IN GENERAL.—When a prescriber completes a
7 contact lens fitting, the prescriber—

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

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

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

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



1 (2) require payment in addition to, or as part
2 of, the fee for an eye examination, fitting, and eval-
3 uation as a condition of providing a copy of a pre-
4 scription under subsection (a)(1) or (a)(2) or ver-
5 ification of a prescription under subsection (a)(2); or

6 (3) require the patient to sign a waiver or re-
7 lease as a condition of verifying or releasing a pre-
8 scription.

9 **SEC. 3. IMMEDIATE PAYMENT OF FEES IN LIMITED CIR-**
10 **CUMSTANCES.**

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

19 **SEC. 4. PRESCRIBER VERIFICATION.**

20 (a) **PRESCRIPTION REQUIREMENT.**—A seller may sell
21 contact lenses only in accordance with a contact lense pre-
22 scription for the patient that is—

23 (1) presented to the seller by the patient or pre-
24 scriber directly or by facsimile; or

25 (2) verified by direct communication.



1 (b) RECORD REQUIREMENT.—A seller shall maintain
2 a record of all direct communications referred to in sub-
3 section (a).

4 (c) INFORMATION.—When seeking verification of a
5 contact lens prescription, a seller shall provide the pre-
6 scriber with the following information:

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

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

11 (3) Quantity of lenses ordered.

12 (4) Date of patient request.

13 (5) Date and time of verification request.

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

16 (d) VERIFICATION EVENTS.—A prescription is veri-
17 fied under this Act only if one of the following occurs:

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

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

23 (3) The prescriber fails to communicate with
24 the seller within 8 business hours, or a similar time
25 as defined by the Federal Trade Commission, after



1 receiving from the seller the information described in
2 subsection (c).

3 (e) INVALID PRESCRIPTION.—If a prescriber informs
4 a seller before the deadline under subsection (d)(3) that
5 the contact lens prescription is inaccurate, expired, or oth-
6 erwise invalid, the seller shall not fill the prescription. The
7 prescriber shall specify the basis for the inaccuracy or in-
8 validity of the prescription. If the prescription commu-
9 nicated by the seller to the prescriber is inaccurate, the
10 prescriber shall correct it.

11 (f) NO ALTERATION.—A seller may not alter a con-
12 tact lens prescription. Notwithstanding the preceding sen-
13 tence, if the same contact lens is manufactured by the
14 same company and sold under multiple labels to individual
15 providers, the seller may fill the prescription with a con-
16 tact lens manufactured by that company under another
17 label.

18 (g) DIRECT COMMUNICATION.—As used in this sec-
19 tion, the term “direct communication” includes commu-
20 nication by telephone, facsimile, or electronic mail.

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

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

24 (1) on the date specified by the law of the State
25 in which the prescription was written, if that date is



1 one year or more after the issue date of the prescrip-
2 tion;

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

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

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

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

22 **SEC. 6. CONTENT OF ADVERTISEMENTS AND OTHER REP-**
23 **RESENTATIONS.**

24 Any person that engages in the manufacture, proc-
25 essing, assembly, sale, offering for sale, or distribution of



1 contact lenses may not represent, by advertisement, sales
2 presentation, or otherwise, that contact lenses may be ob-
3 tained without a prescription.

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

5 A prescriber may not place on the prescription, or
6 require the patient to sign, or deliver to the patient a form
7 or notice waiving or disclaiming the liability or responsi-
8 bility of the prescriber for the accuracy of the eye exam-
9 ination. The preceding sentence does not impose liability
10 on a prescriber for the ophthalmic goods and services dis-
11 pensed by another seller pursuant to the prescriber's cor-
12 rectly verified prescription.

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

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



1 **SEC. 9. VIOLATIONS.**

2 (a) IN GENERAL.—Any violation of this Act or the
3 rules required under section 8 shall be treated as a viola-
4 tion of a rule under section 18 of the Federal Trade Com-
5 mission Act (15 U.S.C. 57a) regarding unfair or deceptive
6 acts or practices.

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

14 **SEC. 10. STUDY AND REPORT.**

15 (a) STUDY.—The Federal Trade Commission shall
16 undertake a study to examine the strength of competition
17 in the sale of prescription contact lenses. The study shall
18 include an examination of the following issues:

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

22 (2) Difference between online and offline sellers
23 of contact lenses, including price, access, and avail-
24 ability.

25 (3) Incidence, if any, of contact lens prescrip-
26 tions that specify brand name or custom labeled con-



1 tact lenses, the reasons for the incidence, and the ef-
2 fect on consumers and competition.

3 (4) The impact of the Federal Trade Commis-
4 sion eyeglasses rule (16 C.F.R. 456 et seq.) on com-
5 petition, the nature of the enforcement of the rule,
6 and how such enforcement has impacted competi-
7 tion.

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

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

14 **SEC. 11. DEFINITIONS.**

15 As used in this Act:

16 (1) CONTACT LENS FITTING.—The term “con-
17 tact lens fitting” means the process that begins after
18 the initial eye examination and ends when a success-
19 ful fit has been achieved or, in the case of a renewal
20 prescription, ends when the prescriber determines
21 that no change in prescription is required, and such
22 term may include—

23 (A) an examination to determine lens spec-
24 ifications;



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

4 (C) medically necessary follow up examina-
5 tions.

6 (2) PRESCRIBER.—The term “prescriber”
7 means, with respect to contact lens prescriptions, an
8 ophthalmologist, optometrist, or other person per-
9 mitted under State law to issue prescriptions for
10 contact lenses in compliance with any applicable re-
11 quirements established by the Food and Drug Ad-
12 ministration.

13 (3) CONTACT LENS PRESCRIPTION.—The term
14 “contact lens prescription” means a prescription,
15 issued in accordance with State and Federal law,
16 that contains sufficient information for the complete
17 and accurate filling of a prescription, including the
18 following:

19 (A) Name of the patient.

20 (B) Date of examination.

21 (C) Issue date and expiration date of pre-
22 scription.

23 (D) Name, postal address, telephone num-
24 ber, and facsimile telephone number of pre-
25 scriber.



1 (E) Power, material or manufacturer or
2 both.

3 (F) Base curve or appropriate designation.

4 (G) Diameter, when appropriate.

5 (H) In the case of a private label contact
6 lens, name of manufacturer, trade name of pri-
7 vate label brand, and, if applicable, trade name
8 of equivalent brand name.

9 **SEC. 12. EFFECTIVE DATE.**

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

