
⁵16 C.F.R. Part 456.

¹⁷69 Fed. Reg. at 40506.

¹⁸In addition, Section 3 of the Act requires that “presentation of proof of insurance coverage for the service” be deemed a payment. 15 U.S.C. § 7602. HB 2286 does not expressly

freedom in their choice of sellers from whom they purchase their contact lenses.”²¹ Accordingly, the Commission added Section 315.11 to the Contact Lens Rule to clarify that state laws and regulations that “require active verification are preempted.” Consequently, the active verification standard imposed by Section 1(a)(2)(B) of HB 2286, which requires out-of-state sellers to possess a “positively verified” prescription, appears to be preempted because it conflicts with the Act and the Contact Lens Rule.

III. State Registration and Licensing Issues

Section 2 of HB 2286 includes provisions for the registration of mail order, Internet, and other alternative providers of contact lenses to Arkansas residents. Your letter of June 23, 2004 indicates that the Board interprets existing law to mean that contact lenses can be legally sold to Arkansas residents only by Arkansas licensed optometrists and ophthalmologists.²² Thus, it appears that mail order, Internet, and other alternative providers must be licensed in Arkansas to provide contact lenses to Arkansas residents.

The Contact Lens Report considered the benefits and costs associated with licensing and concluded that “although there are significant health issues concerning the use and sale of contact lenses, requiring a professional license to sell replacement contact lenses over the Internet is likely to raise prices and/or reduce convenience to consumers without substantially increasing health protections.”²³ Accordingly, FTC staff recommended that policymakers and other officials “[r]escind, or refrain from adopting, requirements that an Internet seller have a

²¹69 Fed. Reg. at 40505, noting that legislative history supports the same conclusion: “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. Therefore, 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.” H. Rep. No. 108-318, at 9-10 (2003).

As prescribed by the Act, the Contact Lens Rule imposes requirements on sellers in connection with prescription verification: “the seller shall provide a reasonable opportunity for the prescriber to communication with the seller concerning the verification request” and a seller shall maintain a record of all direct communications. 16 C.F.R. § 315.5 (c)(3), (f). When seeking verification of a contact lens prescription, a seller shall also provide the prescriber with certain required information as set forth in the Contact Lens Rule. *Id.* at § 315.5 (b).

²²Existing Arkansas law specifies that “[t]he practice of optometry shall include but not be limited to: the prescribing and sale of eyeglasses and contact lenses. . . .” Ark. Code 17-90-101.

²³Contact Lens Report at 3.

²⁴*Id.* at 31.

²⁵*See id.* at 8. *See, e.g.,* FDA Center for Devices and Radiological Health, *Buying Contact Lenses on the Internet, by Phone, or by Mail: Questions and Answers*

³⁴*See* Report of Douglas F. Greer on Behalf of

³⁸. ~~at 22~~ For example, the Contact Lens Report notes that California requires anon-resident contact lens sel

Maureen K. Ohlhausen, Acting Director
Christopher M. Grengs, Attorney Advisor
Office of Policy Planning

Lydia B. Parnes, Acting Director
Thomas B. Pahl, Assistant Director, Division of Advertising Practices
Char Pagar, Attorney
Bureau of Consumer Protection

Luke M. Froeb, Director
Joseph Mulholland, Economist
Bureau of Economics