

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5762

To amend the Fairness to Contact Lens Consumers Act with respect to the availability of contact lenses.

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IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2006

Mr. TERRY introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Fairness to Contact Lens Consumers Act with respect to the availability of contact lenses.

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 Protection Act”.

6       **SEC. 2. CONTACT LENS CONSUMER PROTECTION.**

7       The Fairness to Contact Lens Consumers Act (15  
8       U.S.C. 7601 et seq.) is amended by inserting after section  
9       7, the following new section:

1 **“SEC. 7A. POLICY REGARDING THE AVAILABILITY OF CON-**  
2 **TACT LENSES.**

3 “(a) IN GENERAL.—A manufacturer shall make any  
4 contact lens the manufacturer produces, markets, distrib-  
5 utes, or sells available in a commercially reasonable and  
6 nondiscriminatory manner to—

7 “(1) prescribers;

8 “(2) entities associated with prescribers; and

9 “(3) alternative channels of distribution.

10 “(b) EXCLUSION.—

11 “(1) IN GENERAL.—For purposes of this sec-  
12 tion, the term ‘contact lens’ does not include lenses  
13 that are described in paragraph (2).

14 “(2) LENSES DESCRIBED.—The lenses de-  
15 scribed in this paragraph include—

16 “(A) rigid gas permeable lenses;

17 “(B) bitoric gas permeable lenses;

18 “(C) bifocal gas permeable lenses;

19 “(D) keratoconus lenses;

20 “(E) custom soft toric lenses; and

21 “(F) any other custom designed lenses  
22 that are manufactured for an individual patient  
23 and are not mass marketed or mass produced.

24 “(c) DEFINITIONS.—In this section:

25 “(1) ALTERNATIVE CHANNELS OF DISTRIBUTION.—The term ‘alternative channels of distribu-  
26 tion.—The term ‘alternative channels of distribu-

1       tion’ means any mail order company, Internet re-  
2       tailer, pharmacy, buying club, department store, or  
3       mass merchandise outlet, without regard to whether  
4       the entity is associated with a prescriber, unless the  
5       entity is a competitor as defined in paragraph (2).

6               “(2) COMPETITOR.—The term ‘competitor’  
7       means an entity that manufactures contact lenses  
8       and sells the lenses in direct competition with an-  
9       other manufacturer.

10              “(3) MANUFACTURER.—The term ‘manufac-  
11       turer’ includes the manufacturer and the parent  
12       company of the manufacturer, and any subsidiaries,  
13       affiliates, successors, and assigns of the manufac-  
14       turer.

15              “(d) SAFE HARBOR FOR MANUFACTURERS.—Noth-  
16       ing in this section shall be deemed to impose on a manu-  
17       facturer an obligation to—

18                   “(1) sell to a competitor;

19                   “(2) sell contact lenses to different contact lens  
20       distributors or customers at the same price, con-  
21       sistent with applicable Federal law;

22                   “(3) open or maintain any account for a seller  
23       who is not in substantial compliance with this Act;

24                   “(4) decide whether to sell to a low volume ac-  
25       count directly or through a distributor; or

1           “(5) make available to sellers in all geographic  
2           areas lenses that are being test marketed on a lim-  
3           ited basis in one geographic area.

4           “(e) RULEMAKING.—The Federal Trade Commission  
5           shall prescribe rules to carry out this section in the same  
6           manner as set forth under section 8 of this Act and any  
7           rule prescribed under this section shall take effect not  
8           later than 60 days after the date of the enactment of this  
9           Act.

10          “(f) VIOLATIONS.—Any violation of this section or  
11          the rules required under subsection (e) shall be treated  
12          in the same manner as provided for under section 9 of  
13          this Act.”.

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