
Business & Financial Services Committee

HB 1847

Brief Description: Concerning price agreements between contact lens manufacturers or distributors and retailers.

Sponsors: Representatives Rodne and Jenkins.

Brief Summary of Bill

- Prohibits the use of resale price management by manufacturers and distributors of contact lenses.
- Makes a violation of provisions of this bill a violation of the Consumer Protection Act.

Hearing Date: 2/11/15

Staff: Linda Merelle (786-7092).

Background:

Federal Statute.

In 2003, the United States Congress (Congress) passed the Fairness to Contact Lens Consumers Act (Act) and, in 2004, the Federal Trade Commission developed regulations to implement the legislation. The regulations are collectively referred to as the "Contact Lens Rule" (Rule). Two key requirements of the Rule are that contact lens prescribers must provide patients with a copy of their contact lens prescription at the completion of a fitting and that a contact lens seller cannot provide contact lenses to its customer unless the seller either obtains a copy of the prescription or verifies the prescription with the prescriber. The prescription includes the power of the lens, the material or manufacturer, or both.

State Statute.

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Before Congress passed the Act in 2003, the Washington Legislature enacted the Consumer Access to Vision Care Act in 1994. Among other things, the Washington statute prohibited a prescriber from withholding a copy of a patient's contact lens prescription until the patient has paid for the eye examination. However, the prescriber could demand immediate payment if the prescriber would have demanded such payment had the examination revealed that no purchase of goods from the prescriber was required. A patient's prescription for contact lenses must be provided at no charge to the patient. Prescribers may condition the availability of an eye examination or prescription to a patient on the requirement that the patient agree to purchase goods from the prescriber or a distributor approved by the prescriber.

Prescribers may not include a prescription expiration date of less than two years unless a shorter time period is warranted by the ocular health of the patient.

Resale Price Maintenance.

"Resale price maintenance" is a practice where manufacturers and distributors agree that distributors will sell a product at or above a price floor or below a price ceiling. In 2007, the United States Supreme Court held that a "rule of reason" analysis must be used to determine whether the practice of resale price maintenance in a given case is prohibited. Under such analysis, the practice would be prohibited if it imposed an unreasonable restraint of trade, based upon economic factors.

Recently, several major contact lens manufacturers have implemented a practice of resale price maintenance, also known as a "unilateral pricing policy," under which distributors may not sell certain lines of contact lenses below a minimum price set by the manufacturer. Some states, such as New York, Mississippi, and others, have considered legislation to prohibit the practice of resale price maintenance in the distribution of contact lenses.

Summary of Bill:

Manufacturers and distributors of prescription contact lenses may not prevent any retailer from selling or advertising contact lenses to consumers below any specified price. They also may not limit the ability of any retailer to determine prices at which contact lenses are offered or advertised to consumers. These prohibitions apply to any means used by either the manufacturer or the distributor, including a unilateral pricing policy. Further, manufacturers and distributors may not prohibit in a discriminatory manner the distribution of contact lenses by an otherwise authorized entity or by anyone associated with an entity.

A violation of the prohibited practices in this act is a violation of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.