

STATE OF NEW YORK

4337

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to establishing the contact lens consumer protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "contact lens consumer protection act".

§ 2. Legislative intent. The legislature hereby finds and declares it necessary and in good policy of the state to protect the health and safety of consumers while allowing consumers the opportunity and freedom to choose the retailer of his or her choice. This act ensures consumers are not unreasonably denied the opportunity to choose a retailer and consumers remain protected.

§ 3. The general business law is amended by adding a new article 27-B to read as follows:

ARTICLE 27-B

CONSUMER CONTACT LENS PROTECTION

Section 429-a. Definitions.

429-b. Certification of availability of contact lenses; exceptions.

429-c. Violations; penalties.

§ 429-a. Definitions. The following terms shall have the following meanings when used in this article:

1. The term "alternative channels of distribution" shall mean any mail order company, internet retailer, pharmacy, buying club, department store or mass merchandise outlet, without regard to whether it is associated with a prescriber, unless the account meets the definition of a competitor as provided for in this section.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD08936-01-7

1 2. The term "competitor" shall mean an entity that manufactures
2 contact lenses and sells those lenses within the state in direct compe-
3 tion with any other manufacturer.

4 3. The term "manufacturer" shall mean a manufacturer and its parent
5 companies, subsidiaries, affiliates, successors and assigns.

6 4. The term "prescriber" shall mean an individual licensed or author-
7 ized to prescribe contact lenses under this article.

8 § 429-b. Certification of availability of contact lenses; exceptions.

9 1. Beginning July first, two thousand seventeen, a manufacturer of
10 contact lenses doing business in the state shall certify by affidavit to
11 the attorney general those brands of contact lenses produced, marketed,
12 distributed or sold by the manufacturer in the state that are made
13 available in a commercially reasonable and nondiscriminatory manner to
14 (a) prescribers, (b) entities associated with prescribers and (c) alter-
15 native channels of distribution. Notwithstanding any other provision of
16 law, a manufacturer shall only sell, market or distribute lenses in the
17 state that have been certified under this section.

18 2. This section shall not apply to:

19 (a) rigid gas permeable lenses;

20 (b) bitoric gas permeable lenses;

21 (c) bifocal gas permeable lenses;

22 (d) keratoconus lenses;

23 (e) custom soft toric lenses that are manufactured for an individual
24 patient and are not mass marketed or mass produced; and

25 (f) custom designed lenses that are manufactured for an individual
26 patient and are not mass marketed or mass produced.

27 3. Any time a contact lens brand ceases to be made available after
28 July first, two thousand seventeen, the manufacturer shall immediately
29 certify that fact by affidavit to the attorney general.

30 4. Nothing in this section shall be intended or construed to require a
31 manufacturer to:

32 (a) sell to a competitor;

33 (b) sell contact lenses to different contact lens distributors or
34 customers at the same price;

35 (c) open or maintain any account for a contact lens seller who is not
36 in substantial compliance with applicable state and federal laws regard-
37 ing the sale of contact lenses;

38 (d) decide whether a low-volume account with a contact lens seller is
39 a direct account or handled through a distributor; or

40 (e) sell to customers in all geographic areas, lenses that are being
41 test marketed on a limited basis in restricted geographic areas.

42 § 429-c. Violations; penalties. 1. Any person who knowingly and
43 intentionally violates this section is guilty of a misdemeanor.

44 2. The attorney general may bring a civil action or seek an injunction
45 and a civil penalty against a person, entity or manufacturer who
46 violates this section.

47 § 4. This act shall take effect immediately.