

116TH CONGRESS
2D SESSION

S. 4613

To amend the Fairness to Contact Lens Consumers Act to prevent certain automated calls and to require notice of the availability of contact lens prescriptions to patients, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2020

Mr. BOOZMAN (for himself, Mr. WICKER, Mr. INHOFE, and Mr. PAUL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Fairness to Contact Lens Consumers Act to prevent certain automated calls and to require notice of the availability of contact lens prescriptions to patients, and for other purposes.

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 Rule
5 Modernization Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Federal Trade Commission (FTC) has
2 received over 9,000 comments since 2016 related to
3 part 315 of title 16, Code of Federal Regulations
4 (commonly known as the “Contact Lens Rule”), in-
5 cluding letters from over 100 Members of Congress.
6 In addition, the Committee on Appropriations of the
7 Senate and the Committee on Appropriations of the
8 House of Representatives have included language 7
9 times since 2016 urging the FTC to consider patient
10 safety concerns or regulatory burdens in its rule-
11 making.

12 (2) The Food and Drug Administration (FDA)
13 recorded over 1,075 contact lens-related corneal in-
14 fections from 2005 to 2015, with 20 percent of those
15 patients having permanent vision loss.

16 (3) Over the last 20 years, the contact lens
17 marketplace has grown more competitive and diver-
18 sified, with many new and different types of sellers.
19 As a result, automated phone calls as a means of
20 passive verification of contact lens prescriptions have
21 significantly increased since Congress passed the
22 Fairness to Contact Lens Consumers Act (P.L.
23 108–164) in 2003, becoming the primary method of
24 verification used by online sellers.

1 (4) Outlining several concerns, the FTC in its
2 Final Notice of Rulemaking, published in the Fed-
3 eral Register on August 17, 2020, stated that “auto-
4 mated telephone calls are a commonly used method
5 of verification. Moreover, these calls impose a cost
6 on prescribers, and there are potential health risks
7 to patients from incomplete and incomprehensible
8 automated telephone requests.” The FTC also ac-
9 knowledged that it lacks enforcement capability re-
10 lated to automated calls, stating “the Commission
11 cannot reliably assess whether that call was compli-
12 ant and further whether the seller has a pattern of
13 non-compliant calls (and selling after such calls).”.

14 (5) The FTC has repeatedly acknowledged the
15 ambiguity created by the lack of an explicit statu-
16 tory ban on automated calls as a means of
17 verification.

18 (6) From 2011 to 2016, out of about
19 200,000,000 contact lens prescriptions written, the
20 FTC received only 309 complaints, resulting in 45
21 letters to prescribers warning of potential Contact
22 Lens Rule violations.

23 (7) The FTC’s 2020 Final Contact Lens Rule
24 addresses prescription release concerns by signifi-
25 cantly increasing the paperwork burden on optom-

1 etrists and ophthalmologists, requiring that eye care
 2 professionals keep a new record signed by the pa-
 3 tient (or digitally agreed to) confirming the receipt
 4 of each of the 45,000,000 contact lens prescriptions
 5 written each year.

6 (8) The vast majority of optometrists operate
 7 small businesses, with over 80 percent of practices
 8 having less than 10 employees. The paperwork bur-
 9 den in the FTC’s 2020 Final Contact Lens Rule is
 10 estimated to cost each practice between \$10,000 and
 11 \$18,000 a year.

12 (9) The State of California requires prescribers
 13 to post a sign informing patients of their right to re-
 14 ceive their prescription.

15 **SEC. 3. AMENDMENTS TO THE FAIRNESS TO CONTACT**
 16 **LENS CONSUMERS ACT.**

17 (a) PATIENT NOTIFICATION.—Section 2(a) of the
 18 Fairness to Contact Lens Consumers Act (15 U.S.C.
 19 7601(a)) is amended—

20 (1) in paragraph (1), by striking “and”;

21 (2) in paragraph (2), by striking the period at
 22 the end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(3) shall post a conspicuous notice that, upon
 25 the completion of a contact lens fitting, the pre-

1 scriber is required to provide a copy of the contact
2 lens prescription to the patient.”.

3 (b) PATIENT CONFIRMATION OF RECEIPT OF CON-
4 TACT LENS PRESCRIPTION.—Section 2(b) of the Fairness
5 to Contact Lens Consumers Act (15 U.S.C. 7601(b)) is
6 amended—

7 (1) in paragraph (2), by striking “or” after the
8 semicolon;

9 (2) in paragraph (3), by striking the period at
10 the end and inserting “; or”; and

11 (3) by adding at the end the following:

12 “(4) require the patient to acknowledge any
13 contact lens prescription release in writing or elec-
14 tronically.”.

15 (c) PROHIBITION ON AUTOMATED CALLS.—Section 4
16 of the Fairness to Contact Lens Consumers Act (15
17 U.S.C. 7603) is amended by striking subsection (g) and
18 inserting the following:

19 “(g) DIRECT COMMUNICATION.—

20 “(1) IN GENERAL.—As used in this section, the
21 term ‘direct communication’ includes communication
22 by telephone, facsimile, or electronic mail.

23 “(2) CLARIFICATION.—Such term shall not in-
24 clude a telephone call made using an artificial or
25 prerecorded voice message.”.

1 **SEC. 4. TECHNICAL AMENDMENTS.**

2 Section 4(c)(6) of the Fairness to Contact Lens Con-
3 sumers Act (15 U.S.C. 7603(c)(6)) is amended by insert-
4 ing “and electronic mail address” after “telephone num-
5 ber”.

○