

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 789

Introduced by Assembly Member Calderon

February 25, 2015

An act to amend ~~Section~~ *Sections 2546.5 and 2546.10* of the Business and Professions Code, relating to contact lens sellers.

LEGISLATIVE COUNSEL'S DIGEST

AB 789, as amended, Calderon. ~~Contact-Nonresident contact~~ lens sellers: *prohibited practices*: fines.

The Nonresident Contact Lens Seller Registration Act prohibits a person located outside California from shipping, mailing, or delivering, in any manner, contact lenses at retail to a patient at a California address unless registered with the Division of Licensing of the Medical Board of California. A violation of the act results in a fine of not less than \$1,000 or more than \$2,500 for each violation.

This bill would raise the minimum fine from \$1,000 to \$1,500. *The bill would also specify that a registered nonresident contact lens seller is not subject to any manufacturer's unilateral pricing policy, or similar practice or agreement, that purports to establish a minimum advertised or selling price for contact lenses, and would specify that any attempt by a manufacturer of prescribed contact lenses to impose such a policy or practice is contrary to public policy, unlawful, and unenforceable.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 2546.5 of the Business and Professions*
2 *Code is amended to read:*

3 2546.5. In order to obtain and maintain registration, a
4 nonresident contact lens seller shall:

5 (a) Be in good standing and either registered or otherwise
6 authorized in the state in which the selling facility is located and
7 from which the contact lenses are sold.

8 (b) Comply with all directions and requests for information
9 made by the board as authorized under this chapter.

10 (c) Maintain records of contact lenses shipped, mailed, or
11 delivered to patients in California for a period of at least three
12 years.

13 (d) Provide a toll-free telephone service for responding to patient
14 questions and complaints during the applicant's regular hours of
15 operation, but in no event less than six days per week and 40 hours
16 per week. The toll-free number shall be included in literature
17 provided with each mailed contact lens prescription. All questions
18 relating to eye care for the lens prescribed shall be referred back
19 to the contact lens prescriber.

20 (e) Provide the following or a substantially equivalent written
21 notification to the patient whenever contact lenses are supplied:

22
23 **WARNING: IF YOU ARE HAVING ANY UNEXPLAINED**
24 **EYE DISCOMFORT, WATERING, VISION CHANGE, OR**
25 **REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND**
26 **CONSULT YOUR EYE CARE PRACTITIONER BEFORE**
27 **WEARING YOUR LENSES AGAIN.**
28

29 (f) Disclose in any price advertisement any required membership
30 fees, enrollment fees, and indicate that shipping costs may apply
31 unless the advertisement specifically and clearly states otherwise.

32 (g) Provide a toll-free telephone number, facsimile line, and
33 electronic mail address that are dedicated to prescribers and their
34 authorized agents for the purposes of confirmation of contact lens
35 prescriptions. These numbers, along with an electronic mail
36 address, shall be included in any communication with the prescriber
37 when requesting confirmation of a contact lens prescription.

1 (h) It shall be considered a deceptive marketing practice for any
2 nonresident contact lens seller to publish or cause to be published
3 any advertisement or sales presentation relating to contact lenses
4 representing that contact lenses may be obtained without
5 confirmation of a valid prescription.

6 (i) *A registered nonresident contact lens seller shall not be*
7 *subject to any manufacturer's unilateral pricing policy, or similar*
8 *practice or agreement, that purports to establish a minimum*
9 *advertised or selling price for contact lenses. Any attempt by a*
10 *manufacturer of prescribed contact lenses to impose such a policy*
11 *is contrary to public policy, unlawful, and unenforceable.*

12 ~~SECTION 1.~~

13 SEC. 2. Section 2546.10 of the Business and Professions Code
14 is amended to read:

15 2546.10. (a) A person who violates any of the provisions of
16 this chapter shall be subject to a fine of not less than one thousand
17 five hundred dollars (\$1,500) nor more than two thousand five
18 hundred dollars (\$2,500) per violation. The fines collected pursuant
19 to this section shall be available upon appropriation to the Medical
20 Board of California for the purposes of administration and
21 enforcement.

22 (b) The Medical Board of California shall adopt regulations
23 implementing this section and shall consider the following factors,
24 including, but not limited to, applicable enforcement penalties,
25 prior conduct, gravity of the offense, and the manner in which
26 complaints will be processed.

27 (c) The proceedings under this section shall be conducted in
28 accordance with the provisions of Chapter 5 (commencing with
29 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
30 Code.