

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 789**

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**Introduced by Assembly Member Calderon**

February 25, 2015

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An act to amend ~~Sections 2546.5 and~~ *Section 2546.10* of, *and to add Section 2543.5 to*, the Business and Professions Code, relating to contact lens sellers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 789, as amended, Calderon. ~~Nonresident contact lens~~ *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. *Under existing law only licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians have the right to dispense, sell, or furnish prescription ophthalmic devices at retail or to the person named in a prescription, except as provided in the act.*

This bill would raise the minimum fine *for a violation of the act* from \$1,000 to \$1,500. The bill would also specify that a *licensed physician and surgeon, licensed optometrist, registered dispensing optician, or 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 that kind of~~ 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 2543.5 is added to the Business and  
2     Professions Code, to read:

3     2543.5. A licensed physician and surgeon, licensed optometrist,  
4     registered dispensing optician, or nonresident contact lens seller  
5     shall not be subject to any manufacturer's unilateral pricing policy,  
6     or similar practice or agreement, that purports to establish a  
7     minimum advertised or selling price for contact lenses. Any attempt  
8     by a manufacturer or distributor of prescribed contact lenses to  
9     impose that kind of a policy or practice is contrary to public policy,  
10    unlawful, and unenforceable.

11    ~~SECTION 1. Section 2546.5 of the Business and Professions~~  
12    ~~Code is amended to read:~~

13    ~~2546.5. In order to obtain and maintain registration, a~~  
14    ~~nonresident contact lens seller shall:~~

15    ~~(a) Be in good standing and either registered or otherwise~~  
16    ~~authorized in the state in which the selling facility is located and~~  
17    ~~from which the contact lenses are sold.~~

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

20    ~~(c) Maintain records of contact lenses shipped, mailed, or~~  
21    ~~delivered to patients in California for a period of at least three~~  
22    ~~years.~~

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

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

3  
4 ~~WARNING: IF YOU ARE HAVING ANY UNEXPLAINED~~  
5 ~~EYE DISCOMFORT, WATERING, VISION CHANGE, OR~~  
6 ~~REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND~~  
7 ~~CONSULT YOUR EYE CARE PRACTITIONER BEFORE~~  
8 ~~WEARING YOUR LENSES AGAIN.~~

9  
10 ~~(f) Disclose in any price advertisement any required membership~~  
11 ~~fees, enrollment fees, and indicate that shipping costs may apply~~  
12 ~~unless the advertisement specifically and clearly states otherwise.~~

13 ~~(g) Provide a toll-free telephone number, facsimile line, and~~  
14 ~~electronic mail address that are dedicated to prescribers and their~~  
15 ~~authorized agents for the purposes of confirmation of contact lens~~  
16 ~~prescriptions. These numbers, along with an electronic mail~~  
17 ~~address, shall be included in any communication with the prescriber~~  
18 ~~when requesting confirmation of a contact lens prescription.~~

19 ~~(h) It shall be considered a deceptive marketing practice for any~~  
20 ~~nonresident contact lens seller to publish or cause to be published~~  
21 ~~any advertisement or sales presentation relating to contact lenses~~  
22 ~~representing that contact lenses may be obtained without~~  
23 ~~confirmation of a valid prescription.~~

24 ~~(i) A registered nonresident contact lens seller shall not be~~  
25 ~~subject to any manufacturer's unilateral pricing policy, or similar~~  
26 ~~practice or agreement, that purports to establish a minimum~~  
27 ~~advertised or selling price for contact lenses. Any attempt by a~~  
28 ~~manufacturer of prescribed contact lenses to impose such a policy~~  
29 ~~is contrary to public policy, unlawful, and unenforceable.~~

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

32 2546.10. (a) A person who violates any of the provisions of  
33 this chapter shall be subject to a fine of not less than one thousand  
34 five hundred dollars (\$1,500) nor more than two thousand five  
35 hundred dollars (\$2,500) per violation. The fines collected pursuant  
36 to this section shall be available upon appropriation to the Medical  
37 Board of California for the purposes of administration and  
38 enforcement.

39 (b) The Medical Board of California shall adopt regulations  
40 implementing this section and shall consider the following factors,

1 including, but not limited to, applicable enforcement penalties,  
2 prior conduct, gravity of the offense, and the manner in which  
3 complaints will be processed.

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

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