

CHAPTER 1
CHAPTER 1
(SB 157)

AN ACT relating to commerce.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act:

- (1) *"Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity.*
- (2) *"Mail order contact lens seller" means an individual or entity that sells contact lenses and dispenses them to Kentucky residents through the United States Postal Service or other common carrier.*
- (3) *"Contact lens prescription" means a written order bearing the original signature of a licensed optometrist, osteopath, or physician, or an oral order issued directly by a licensed optometrist, osteopath, or physician that authorizes dispensing of contact lenses to a patient. A contact lens prescription includes contact lenses without power sold for cosmetic purposes.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A contact lens prescription shall include the following:*
 - (a) *The ophthalmic information necessary to accurately fabricate or dispense the lenses including the lens manufacturer, lens series, and the lens material if applicable;*
 - (b) *Power and base curve;*
 - (c) *Name, license number, telephone number, and for written orders, the signature of the prescribing optometrist, osteopath, or physician;*
 - (d) *Patient's name and address, expiration date of the prescription, and number of refills or lenses permitted; and*
 - (e) *The date of issuance.*
- (2) *The prescription may also include the diameter, axis, add power, cylinder, peripheral curve, optical zone, and center thickness.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

Unless a health-related reason for the limitation is noted in the patient's medical records, contact lens prescriptions shall not have an expiration date of less than twelve (12) months from the date the prescription is authorized or the last date of the contact lens evaluation by a licensed optometrist, osteopath, or physician, whichever date is later. In no event shall a contact lens prescription be valid twelve (12) months after the date of authorization by a licensed optometrist, osteopath, or physician.

SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *All mail order contact lens sellers and any person authorized in accordance with KRS Chapters 320, 315, or 326 to dispense contact lenses in the Commonwealth shall verify the contact lens prescription by the following:*
 - (a) *Receipt of a written or faxed valid contact lens prescription signed by the prescribing optometrist, osteopath, or physician; or*
 - (b) *An electronic or oral affirmative communication of the complete contact lens prescription from the prescribing optometrist, osteopath, or physician.*
- (2) *If a mail order contact lens seller or any person authorized to dispense contact lenses in the Commonwealth finds it necessary to contact the prescribing optometrist, osteopath, or physician via telephone in order to verify a contact lens prescription, the following protocols shall be followed:*
 - (a) *Calls shall be made during regular business hours;*
 - (b) *Any verification requests shall include the name, address, and telephone number of the patient;*
 - (c) *The toll-free telephone number as required by subsection (7) of Section 8 of this Act shall be included in voice mail or messages left on answering machines;*
 - (d) *Contact lens prescriptions shall not be mailed, sent, delivered, or dispensed before verification by the optometrist, osteopath, or physician;*
 - (e) *Touch-tone telephone options offered by a mail order contact lens seller or any person authorized to dispense contact lenses in the Commonwealth shall not constitute verification; and*
 - (f) *Response-time options stated by a mail order contact lens seller or any person authorized to dispense contact lenses in the Commonwealth shall not constitute verification.*
- (3) *In the absence of a prescription as defined and described in Sections 1 and 2 of this Act, it shall be a violation of Sections 1 to 11 of this Act to dispense contact lenses through the mail or otherwise to a Kentucky resident.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *Any mail order contact lens seller or any person authorized to dispense contact lenses in the Commonwealth who fills a contact lens prescription bears the full responsibility for the accurate dispensing of the contact lenses provided under the contact lens prescription. At no time shall any changes or substitutions be made including brand, type of lenses, or ophthalmic parameters without the direction of the optometrist, osteopath, or physician who issued the contact lens prescription.*
- (2) *The optometrist, osteopath, or physician shall not be liable for any damages for injury resulting from the packaging, manufacturing, or dispensing of the contact lenses unless the contact lens seller and the contact lens prescriber are the same person.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

A contact lens fitting shall be complete and a contact lens prescription may be written when:

- (1) *The optometrist, osteopath, or physician has completed all measurements, tests, and examinations necessary to satisfy his or her professional judgment that the patient is a viable candidate to wear contact lenses, recognizing that more than one (1) visit between the patient and the optometrist, osteopath, or physician may be required; and*
- (2) *Contact lenses suitable for the patient's eyes have been evaluated and fitted by the optometrist, osteopath, or physician to the patient's eyes and the optometrist, osteopath, or physician is satisfied with the fitting based on the visual needs of the patient.*

The patient shall be entitled to receive a copy of the contact lens prescription until its expiration date.

SECTION 7. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

No person located outside of Kentucky shall ship, mail, deliver, or sell contact lenses to a patient at a Kentucky address unless:

- (1) *Registered with the Attorney General of the Commonwealth of Kentucky; and*
- (2) *In possession of a valid contact lens prescription as defined and described in Sections 1 and 2 of this Act.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall require and provide for the annual registration of all mail order contact lens sellers located outside of the Commonwealth that dispense contact lenses to Kentucky residents, including those providing contact lenses via the Internet. A mail order contact lens seller's registration shall be granted upon the disclosure and certification by the seller of all of the following:

- (1) *The seller is licensed or registered to distribute contact lenses in the state in which the dispensing facility is located and from which the contact lenses are dispensed;*
- (2) *The location, names, and titles of all owners, partners, corporate officers, and the person who is responsible for overseeing the dispensing of contact lenses to residents of this state;*
- (3) *The seller has complied with and shall continue to comply with all lawful directives and appropriate requests for information from the appropriate agency of each state in which the seller is licensed or registered;*
- (4) *The seller shall respond to all requests for information from the Attorney General within thirty (30) days from receipt of the request;*
- (5) *The seller shall maintain records of contact lenses dispensed to residents of this state for a period of ten (10) years, and that the records shall be readily available for inspection by the Attorney General upon demand;*
- (6) *The seller shall provide a toll-free telephone service during its regular hours of operation for the sole purpose of responding to the patients in this state concerning questions and complaints. All questions relating to eye care shall be referred to the doctor prescribing the contact lenses;*
- (7) *The seller shall provide a toll-free telephone service during its regular hours of operation solely for optometrists, osteopaths, and physicians.*

- (8) *The seller shall provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied: **WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS REMOVE YOUR CONTACT LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS; and***
- (9) *The seller's license or registration, in the state in which the seller is licensed or registered, has not been suspended or revoked, but should the seller be the subject of any investigation undertaken by the licensing or registering state, or should the seller's license or registration be suspended or revoked, then the seller shall immediately notify the Attorney General of such actions.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall charge a fee for investigation and registration of nonresident dispensers of contact lenses.

SECTION 10. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall have the authority to promulgate administrative regulations to carry out the provisions of Sections 1 to 11 of this Act.

SECTION 11. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who dispenses, offers to dispense, or attempts to dispense contact lenses in violation of Sections 1 to 11 of this Act or the administrative regulations promulgated by the Attorney General concerning the dispensing of contact lenses shall, in addition to any other penalty provided by law, pay a civil penalty to the office of the Attorney General in an amount not to exceed five thousand dollars (\$5,000) for each violation.*
- (2) *Any person charged in a complaint filed by the Attorney General with violating any of the provisions of Sections 1 to 11 of this Act shall be entitled to an administrative hearing conducted in accordance with the provisions of KRS Chapter 13B.*
- (3) *Any person aggrieved by a final order issued under the authority of this section shall have the right of an appeal by filing a petition with the Franklin Circuit Court in accordance with KRS Chapter 13B.*

Approved March 6, 2003