

Senator Curtis S. Bramble proposes the following substitute bill:

CONTACT LENS CONSUMER PROTECTION

ACT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Jeff Alexander

LONG TITLE

General Description:

This bill enacts the Contact Lens Consumer Protection Act within the Utah Optometry Practice Act in relation to prescribing, marketing, selling, and certifying contact lenses.

Highlighted Provisions:

This bill:

- ▶ defines "alternative channels of distribution," "brand," and "prescriber" for purposes of the Contact Lens Consumer Protection Act;
- ▶ provides that a prescriber of contact lenses who prescribes a brand of contact lenses to a patient, which brand is not certified by affidavit as being available in a commercially reasonable and nondiscriminatory manner to prescribers and directly to, and generally within, all alternative channels of distribution, may not also sell that brand to the same patient unless it is certified at the time of sale;
- ▶ provides for exceptions to certification;
- ▶ provides for a listing of all brands of contact lenses that have been certified to be made available to all prescribers;
- ▶ provides prohibitions; and
- ▶ provides penalties for violations of the certification provisions.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **58-16a-901**, Utah Code Annotated 1953

33 **58-16a-902**, Utah Code Annotated 1953

34 **58-16a-903**, Utah Code Annotated 1953

35 **58-16a-904**, Utah Code Annotated 1953

36 **58-16a-905**, Utah Code Annotated 1953

37 **58-16a-906**, Utah Code Annotated 1953

38 **58-16a-907**, Utah Code Annotated 1953

39 **58-16a-908**, Utah Code Annotated 1953

40 **58-16a-909**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **58-16a-901** is enacted to read:

44 **Part 9. Contact Lens Consumer Protection Act**

45 **58-16a-901. Title.**

46 This part is known as the "Contact Lens Consumer Protection Act."

47 Section 2. Section **58-16a-902** is enacted to read:

48 **58-16a-902. Policy.**

49 It is the policy of the state that citizens who wear contact lenses pursuant to valid
50 prescriptions should not be denied the opportunity to purchase their contact lenses from their
51 retailer of choice.

52 Section 3. Section **58-16a-903** is enacted to read:

53 **58-16a-903. Definitions.**

54 As used in this part:

55 (1) "Alternative channels of distribution" means a mail order company, Internet
56 retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard

57 to whether it is associated with a prescriber.

58 (2) "Brand" means manufacturer's brand or equivalent brand of the same lens made by
59 the same manufacturer under federal law.

60 (3) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates,
61 successors, and assigns.

62 (4) "Prescriber" means an individual licensed or authorized to prescribe contact lenses
63 under this title.

64 Section 4. Section **58-16a-904** is enacted to read:

65 **58-16a-904. Prescribing contact lenses -- Branding.**

66 (1) A prescriber who prescribes to a patient a brand of contact lenses which is not
67 certified by affidavit under Section 58-16a-905, may not knowingly and intentionally then sell
68 that brand to the same patient or have a financial or legal relationship with any other person
69 who sells the brand to the same patient.

70 (2) For purposes of this chapter, Subsection (1) does not apply to:

71 (a) rigid gas permeable lenses;

72 (b) bitoric gas permeable lenses;

73 (c) bifocal gas permeable lenses; and

74 (d) keratoconus lenses.

75 (3) This section supercedes conflicting sections.

76 Section 5. Section **58-16a-905** is enacted to read:

77 **58-16a-905. Certification of availability of contact lenses.**

78 (1) Beginning June 1, 2006, a manufacturer of contact lenses doing business in the
79 state may certify by affidavit to the Attorney General those brands of contact lenses produced,
80 marketed, distributed, or sold by the manufacturer that are made available in a commercially
81 reasonable and nondiscriminatory manner to prescribers and entities associated with prescribers
82 and directly to, and generally within, all alternative channels of distribution.

83 (2) If a manufacturer certifies its lenses under Subsection (1), it shall also file a copy of
84 the affidavit required under Subsection (1) with the State Board of Optometry and the State
85 Board of Medical Examiners.

86 (3) Subsections (1) and (2) also apply any time a brand is made available.

87 (4) Any time a brand certified under Subsection (1) ceases to be made available after

88 June 1, 2006, the manufacturer shall immediately certify that fact by affidavit to:

- 89 (a) the Attorney General;
- 90 (b) the State Board of Optometry; and
- 91 (c) the State Board of Examiners.

92 Section 6. Section **58-16a-906** is enacted to read:

93 **58-16a-906. Publication of list of certified lenses.**

94 (1) In order for a prescriber to determine which brands of contact lenses may be
95 prescribed and sold to the same patient under this part, the State Board of Optometry and the
96 State Board of Medical Examiners shall make available to all prescribers a listing of all brands
97 of contact lenses certified under Section 58-16a-905.

98 (2) A prescriber shall determine whether a brand of contact lenses is certified under
99 Section 58-16a-905 prior to selling or facilitating the sale by another person with whom the
100 prescriber has a financial or legal relationship of the brand of lenses to a patient to whom he
101 prescribed that brand.

102 Section 7. Section **58-16a-907** is enacted to read:

103 **58-16a-907. Manufacturers' conduct.**

104 (1) A manufacturer may exercise its independent business judgment to open or
105 maintain an account with any seller of contact lenses as long as the manufacturer does not
106 discriminate based on whether the channel of trade is directly or indirectly affiliated with a
107 prescriber.

108 (2) Subject to the limitation of Subsection (1), nothing in Sections 58-16a-905 and
109 58-16a-906 is intended to require a manufacturer to:

110 (a) sell contact lenses to different contact lens distributors or customers at the same
111 price;

112 (b) open or maintain any account for a contact lens seller found to be in violation of
113 applicable state and federal laws regarding the sale of contact lenses;

114 (c) decide whether its account with a contact lens seller is a direct account or handled
115 through a distributor; or

116 (d) sell lenses that are being test marketed on a limited basis in one geographic area to
117 customers in all geographic areas.

118 Section 8. Section **58-16a-908** is enacted to read:

119 **58-16a-908. Prohibitions.**

120 (1) A person may not directly or indirectly provide or offer to provide to a prescriber as
121 an inducement to prescribe a brand of contact lenses a gift, gratuity, cash, or other item or
122 service of monetary value, including any action, commitment, or agreement, intended to have
123 or having the effect of prohibiting or otherwise inhibiting competition in the sale of contact
124 lenses.

125 (2) Subsection (1) does not apply to items or service of an educational nature or of de
126 minimus monetary value.

127 Section 9. Section **58-16a-909** is enacted to read:

128 **58-16a-909. Penalties for violations.**

129 (1) Knowingly and intentionally violating Section 58-16a-904 or Subsection
130 58-16a-906(2) is considered unprofessional conduct.

131 (2) (a) Making a wrongful certification under Section 58-16a-905 is a class A
132 misdemeanor.

133 (b) The attorney general may bring a civil action or seek an injunction and a civil
134 penalty against a person making a wrongful certification under Section 58-16a-905.

Fiscal Note
Bill Number SB0176S01

Contact Lens Consumer Protection Act

13-Feb-06

12:53 PM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Entities in violation of the bill's provisions may be subject to civil financial penalties.

Office of the Legislative Fiscal Analyst