

OPTOMETRY AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill amends the Utah Optometry Practice Act.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ amends provisions related to unlawful conduct; and
- ▶ amends provisions related to the sale of contact lenses by removing the prohibition

against offering contact lenses as premiums.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-16a-102, as last amended by Chapter 270, Laws of Utah 2003

58-16a-501, as last amended by Chapter 160, Laws of Utah 2000

58-16a-801, as enacted by Chapter 160, Laws of Utah 2000

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

Section 1. Section **58-16a-102** is amended to read:

58-16a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

(2) "Contact lens" means any lens that:

- (a) has a spherical, cylindrical, or prismatic power or curvature;
- (b) is made pursuant to a current prescription; or
- (c) is intended to be worn on the surface of the eye.

(3) (a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:

- (i) the commencement date of the prescription;
- (ii) the base curve, power, diameter, material or brand name, and expiration date;
- (iii) for a written order, the signature of the prescribing optometrist or physician; and
- (iv) for a verbal order, a record maintained by the recipient of:
 - (A) the name of the prescribing optometrist or physician; and
 - (B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

(c) When a provider prescribes a private label contact lens for a patient the prescription shall include:

- (i) the name of the manufacturer;
- (ii) the trade name of the private label brand; and
- (iii) if applicable, the trade name of the equivalent national brand.

(4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:

- (a) is sent to the prescribing optometrist or physician; and
- (b) seeks the confirmation of the accuracy of a patient's prescription.

(5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.

(6) "Fitting of a contact lens" means:

- (a) the using of a keratometer to measure the human eye;
- (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
- (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and

performance, to determine a tentative contact lens prescription for a patient if the patient:

- (i) has not worn contact lenses before; or
- (ii) has changed to a different type or base curve.

(7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.

(8) "Ophthalmic lens" means any lens used to treat the eye and that:

- (a) has a spherical, cylindrical, or prismatic power;
- (b) is made pursuant to an unexpired prescription; and
- (c) is intended to be used in eyeglasses or spectacles.

(9) "Optometric assistant" means an unlicensed individual:

- (a) working under the direct and immediate supervision of a licensed optometrist; and
- (b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.

(10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

(11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

- (a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;
- (b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;
- (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to

diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa;

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames;

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;

(f) consultation regarding the eye and its adnexa with other appropriate health care providers, including referral to other appropriate health care providers; and

(g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.

(12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the eye and its adnexa.

(13) "Physician" has the same meaning as defined in Subsection 58-67-102(7).

(14) "Prescription drug" has the same definition as in Section 58-17a-102.

(15) "Unexpired" means a prescription that was issued:

(a) not more than two years prior to presentation of the prescription for an ophthalmic lens; or

(b) in accordance with Subsection (3) for a contact lens.

Section 2. Section **58-16a-501** is amended to read:

58-16a-501. Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(1) buying, selling, or fraudulently obtaining, any optometry diploma, license, certificate, or registration;

(2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry diploma, license, certificate, or registration;

(3) selling or providing contact lenses in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling the lenses is a licensed optometrist or ophthalmologist; or

(4) representing oneself as or using the title of "optometrist," "optometric physician," "doctor of optometry," or "O.D.," unless currently licensed under this chapter.

Section 3. Section **58-16a-801** is amended to read:

58-16a-801. Contact lens seller.

(1) A person may sell or provide contact lenses if the person:

(a) does so in the ordinary course of trade from a permanently located and established place of business;

(b) does not perform refractions, over-refractions, or attempts to traffic upon assumed skill in testing the eye;

~~[(c) does not offer or give contact lenses as premiums, as defined in Section 13-26-2;]~~

(c) provides all contact lenses consistent with and in accordance with a valid contact lens prescription;

(d) does not fit contact lenses;

(e) provides a contact lens to a patient after:

(i) receiving an unexpired verbal or written prescription; or

(ii) sending a contact lens prescription verification to the prescribing optometrist or physician, regardless of whether the prescribing optometrist or physician responds to or confirms the verification, provided that:

(A) the person has all of the information necessary to fill the prescription;

(B) the prescribing optometrist or physician has not informed the person that the prescription has expired or is otherwise inaccurate prior to the person shipping or hand-delivering the contact lens to the patient;

(C) the person confirms a valid, unexpired contact lens prescription for the patient if the person is aware that the patient provided inaccurate prescription information in his last order; and

(D) the person informs the patient that the prescription has expired or that there is a

medical problem associated with the prescription if the information is communicated by the prescribing optometrist or physician to the person within 72 hours of the contact lens prescription verification being sent; and

(f) maintains patient information, including the method and date of any prescription verification, for no less than seven years.

(2) Nothing in this section may be construed as requiring a person to be licensed or certified in any way under this or any another chapter of this title to sell contact lenses in accordance with Subsection (1).