

**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**

**19 to, and generally within, all] entities associated with prescribers and to ←§** 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;

**23a §→ provides for manufacturer's conduct; ←§**

- ▶ 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] any ←~~§~~ mail order company,

55a Internet

56 retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard

57 to whether it is associated with a prescriber ~~§~~ → , unless the account meets the definition of a  
 57a competitor as provided for in this section ← ~~§~~ .

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

59a ~~§~~ → (3) "Competitor " means an entity that manufactures contact lenses and wholesales  
 59b those lenses in direct competition with any other manufacturer within the state.

60 [~~(3)~~] (4) ← ~~§~~ "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates,  
 61 successors, and assigns.

62 ~~§~~ → [~~(4)~~] (5) ← ~~§~~ "Prescriber" means an individual licensed or authorized to prescribe contact  
 62a 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 ~~§~~ → or  
 68a entity ← ~~§~~  
 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

74a ~~§~~ → (e) custom soft toric lenses that are manufactured for an individual patient and are not  
 74b mass marketed or mass produced; and

74c (f) custom designed lenses that are manufactured for an individual patient and are not  
 74d mass marketed or mass produced ← ~~§~~ .

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**] **Optometrist**

84a Licensing Board ←§ and the §→ [State

85 Board of Medical Examiners] Physicians Licensing Board ←§ .

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~~ **Optometrist Licensing Board** ; and

91 (c) the ~~State Board of Examiners~~ **Physicians Licensing Board** .

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~~  
 95a **Optometrist Licensing Board** and the  
 96 ~~State Board of Medical Examiners~~ **Physicians Licensing Board** shall make available to  
 96a 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~~ account is directly or indirectly  
 106a 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 to a competitor;~~

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

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

114 ~~decide whether a low volume account with a contact lens~~  
 114a seller is a direct account or handled  
 115 through a distributor; or

116 ~~sell lenses that are being test marketed on a limited basis in one geographic~~  
 116a 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**

