

1                                   **CONTACT LENS CONSUMER PROTECTION**

2   **ACT**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Curtis S. Bramble**

6   House Sponsor: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

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

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ provides that a licensed optometrist or ophthalmologist authorized to prescribe  
15 contact lenses may not include a brand of contact lenses on a contact lens  
16 prescription unless the lens is certified as being available in a commercially  
17 reasonable and nondiscriminatory manner directly to and generally within all  
18 alternative channels of distribution;
- 19                   ▶ provides for certification of contact lenses with the Utah attorney general;
- 20                   ▶ requires the attorney general to maintain a listing of all brands of contact lenses that  
21 have been certified with the attorney general; and
- 22                   ▶ provides penalties for violation of the certification provisions.

23                   **Monies Appropriated in this Bill:**

24                   None

25                   **Other Special Clauses:**

26                   None

27                   **Utah Code Sections Affected:**



28 ENACTS:

29 **58-16a-901**, Utah Code Annotated 1953

30 **58-16a-902**, Utah Code Annotated 1953

31 **58-16a-903**, Utah Code Annotated 1953

32 **58-16a-904**, Utah Code Annotated 1953

33 **58-16a-905**, Utah Code Annotated 1953



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

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

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

38 **58-16a-901. Title.**

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

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

41 **58-16a-902. Policy.**

42 It is the policy of the state that citizens who wear contact lenses pursuant to valid  
43 prescriptions should not be denied the opportunity to purchase their contact lenses from their  
44 vendor of choice.

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

46 **58-16a-903. Definitions.**

47 As used in this part:

48 (1) "Alternative channels of distribution" means a mail order company, Internet  
49 retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard  
50 to whether it is associated with an individual authorized to prescribe contact lenses under this  
51 chapter.

52 (2) "Contact lenses" does not apply to:

53 (a) rigid gas permeable lenses;

54 (b) bitoric gas permeable lenses;

55 (c) bifocal gas permeable lenses;

56 (d) keratoconus lenses;

57 (e) custom soft toric lenses that are manufactured for an individual patient and are not  
58 mass produced; and

59 (f) custom designed lenses that are manufactured for an individual patient and are not  
60 mass produced.

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

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

64 **58-16a-904. Prescribing contact lenses -- Branding.**

65 Notwithstanding any other provision of law, an optometrist or ophthalmologist licensed  
66 under this title and authorized to prescribe contact lenses under this chapter may not include on  
67 a contact lens prescription a brand of contact lenses, unless the lens is certified pursuant to  
68 Section 58-16a-905 as being available in a commercially reasonable and nondiscriminatory  
69 manner directly to and generally within all alternative channels of distribution.

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

71 **58-16a-905. Certification of availability of contact lenses.**

72 (1) A manufacturer of contact lenses that desires to have contact lenses it produces,  
73 markets, distributes, or sells prescribed by an individual authorized to do so under this chapter  
74 shall make a certification to the Utah attorney general.

75 (2) The certification shall identify those brands of contact lenses produced, marketed,  
76 distributed, or sold by the manufacturer that are made available in a commercially reasonable  
77 and nondiscriminatory manner directly to and generally within all alternative channels of  
78 distribution.

79 (3) A manufacturer of contact lenses shall:

80 (a) immediately amend its certification required under Subsection (1) to include any  
81 brand not in its original certification that the manufacturer subsequently makes available in a  
82 commercially reasonable and nondiscriminatory manner directly to and generally within all  
83 alternative channels of distribution; and

84 (b) immediately notify the Utah attorney general whenever a contact lens produced,  
85 marketed, distributed, or sold by the manufacturer in the state ceases to be made available in a  
86 commercially reasonable and nondiscriminatory manner directly to and generally within all  
87 alternative channels of distribution.

88 (4) The Utah attorney general shall make publicly available and maintain on the  
89 attorney general's website and such other place as the attorney general determines appropriate a

90 listing of all brands of contact lenses certified under this section.

91 (5) (a) An individual who violates Section 58-16a-904 is subject to suspension or  
92 revocation of that individual's license by the board.

93 (b) A manufacturer who knowingly makes a wrongful certification under Subsection  
94 (2) or fails to provide notification under Subsection (3)(b) is:

95 (i) guilty of a class A misdemeanor; and

96 (ii) subject to a civil penalty of \$1,000 for each violation.

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**Legislative Review Note**  
**as of 1-19-06 3:35 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0176**

**Contact Lens Consumer Protection Act**

*31-Jan-06*

*11:31 AM*

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**State Impact**

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

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**Individual and Business Impact**

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

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**Office of the Legislative Fiscal Analyst**