

Representative Jeff Alexander proposes the following substitute bill:

CONTACT LENS CONSUMER PROTECTION

ACT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines "alternative channels of distribution," "competitor," "manufacturer," and "prescriber" for purposes of the Contact Lens Consumer Protection Act;

- ▶ provides that a manufacturer of contact lenses who sells, markets, or distributes contact lenses in the state shall certify by affidavit to the attorney general that the brand of lenses are made available in a commercially reasonable and nondiscriminatory manner to prescribers, entities associated with prescribers, and alternative channels of distribution;

- ▶ provides for exceptions and limitations regarding the conduct of prescribers and manufacturers; and

- ▶ provides penalties for violations.

Monies Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **58-16a-901**, Utah Code Annotated 1953

32 **58-16a-902**, Utah Code Annotated 1953

33 **58-16a-903**, Utah Code Annotated 1953

34 **58-16a-904**, Utah Code Annotated 1953

35 **58-16a-905**, Utah Code Annotated 1953

36 **58-16a-906**, Utah Code Annotated 1953



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

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

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

41 **58-16a-901. Title.**

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

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

44 **58-16a-902. Policy.**

45 It is the policy of the state that citizens who wear contact lenses pursuant to valid
46 prescriptions should not be unreasonably denied the opportunity to purchase their contact
47 lenses from their retailer of choice.

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

49 **58-16a-903. Definitions.**

50 As used in this part:

51 (1) "Alternative channels of distribution" means any mail order company, Internet
52 retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard
53 to whether it is associated with a prescriber, unless the account meets the definition of a
54 competitor as provided for in this section.

55 (2) "Competitor" means an entity that manufactures contact lenses and sells those
56 lenses within the state in direct competition with any other manufacturer.

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

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

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

62 **58-16a-904. Certification of availability of contact lenses -- Exceptions.**

63 (1) Beginning July 1, 2006, a manufacturer of contact lenses doing business in the state
64 shall certify by affidavit to the Attorney General those brands of contact lenses produced,
65 marketed, distributed, or sold by the manufacturer in the state that are made available in a
66 commercially reasonable and nondiscriminatory manner to:

67 (a) prescribers;

68 (b) entities associated with prescribers; and

69 (c) alternatives channels of distribution.

70 (2) Notwithstanding any other provision of law, a manufacturer shall only sell, market,
71 or distribute lenses in Utah that have been certified under Subsection (1).

72 (3) Subsections (1) and (2) do not apply to:

73 (a) rigid gas permeable lenses;

74 (b) bitoric gas permeable lenses;

75 (c) bifocal gas permeable lenses;

76 (d) keratoconus lenses;

77 (e) custom soft toric lenses that are manufactured for an individual patient and are not
78 mass marketed or mass produced; and

79 (f) custom designed lenses that are manufactured for an individual patient and are not
80 mass marketed or mass produced.

81 (4) Any time a brand ceases to be made available after July 1, 2006, the manufacturer
82 shall immediately certify that fact by affidavit to the Attorney General.

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

84 **58-16a-905. Manufacturers' conduct.**

85 Nothing in Section 58-16a-904 is intended to require a manufacturer to:

86 (1) sell to a competitor;

87 (2) sell contact lenses to different contact lens distributors or customers at the same

88 price;

89 (3) open or maintain any account for a contact lens seller who is not in substantial
90 compliance with Utah and federal law regarding the sale of contact lenses;

91 (4) decide whether a low volume account with a contact lens seller is a direct account
92 or handled through a distributor; or

93 (5) sell to customers in all geographic areas lenses that are being test marketed on a
94 limited basis in one geographic area.

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

96 **58-16a-906. Penalties for violations.**

97 (1) Knowingly and intentionally violating Section 58-16a-904 is a class A
98 misdemeanor.

99 (2) The attorney general may bring a civil action or seek an injunction and a civil
100 penalty against a person, entity, or manufacturer who violates Section 58-16a-904.