

Representative Jeff Alexander proposes the following substitute bill:

1 **CONTACT LENS CONSUMER PROTECTION**

2 **ACT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: Jeff Alexander

7
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 ▶ defines "alternative channels of distribution," "brand," and "prescriber" for purposes
15 of the Contact Lens Consumer Protection Act;

16 ▶ provides that a prescriber of contact lenses who prescribes a brand of contact lenses
17 to a patient, which brand is not certified by affidavit as being available in a
18 commercially reasonable and nondiscriminatory manner to prescribers and entities
19 associated with prescribers and to alternative channels of distribution, may not also
20 sell that brand to the same patient unless it is certified at the time of sale;

21 ▶ provides for exceptions to certification;

22 ▶ provides for a listing of all brands of contact lenses that have been certified to be
23 made available to all prescribers;

24 ▶ provides for manufacturer's conduct;

25 ▶ provides prohibitions; and



26 ▶ provides penalties for violations of the certification provisions.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **58-16a-901**, Utah Code Annotated 1953

34 **58-16a-902**, Utah Code Annotated 1953

35 **58-16a-903**, Utah Code Annotated 1953

36 **58-16a-904**, Utah Code Annotated 1953

37 **58-16a-905**, Utah Code Annotated 1953

38 **58-16a-906**, Utah Code Annotated 1953

39 **58-16a-907**, Utah Code Annotated 1953

40 **58-16a-908**, Utah Code Annotated 1953

41 **58-16a-909**, Utah Code Annotated 1953



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

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

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

46 **58-16a-901. Title.**

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

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

49 **58-16a-902. Policy.**

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

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

54 **58-16a-903. Definitions.**

55 As used in this part:

56 (1) "Alternative channels of distribution" means any mail order company, Internet

57 retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard
58 to whether it is associated with a prescriber, unless the account meets the definition of a
59 competitor as provided for in this section.

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

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

64 (4) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates,
65 successors, and assigns.

66 (5) "Prescriber" means an individual licensed or authorized to prescribe contact lenses
67 under this title.

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

69 **58-16a-904. Prescribing contact lenses -- Branding.**

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

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

75 (a) rigid gas permeable lenses;

76 (b) bitoric gas permeable lenses;

77 (c) bifocal gas permeable lenses;

78 (d) keratoconus lenses;

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

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

83 (3) Nothing in this section is intended to interfere with an eye doctor's medical
84 judgment or in any way restrict an eye doctor's ability to prescribe any lens to any patient.

85 (4) This section supercedes conflicting sections.

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

87 **58-16a-905. Certification of availability of contact lenses.**

88 (1) Beginning June 1, 2006, a manufacturer of contact lenses doing business in the
89 state may certify by affidavit to the Attorney General those brands of contact lenses produced,
90 marketed, distributed, or sold by the manufacturer that are made available in a commercially
91 reasonable and nondiscriminatory manner to prescribers and entities associated with prescribers
92 and to alternative channels of distribution.

93 (2) If a manufacturer certifies its lenses under Subsection (1), it shall also file a copy of
94 the affidavit required under Subsection (1) with the Optometrist Licensing Board and the
95 Physicians Licensing Board.

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

97 (4) Any time a brand certified under Subsection (1) ceases to be made available after
98 June 1, 2006, the manufacturer shall immediately certify that fact by affidavit to:

99 (a) the Attorney General;

100 (b) the Optometrist Licensing Board; and

101 (c) the Physicians Licensing Board.

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

103 **58-16a-906. Publication of list of certified lenses.**

104 (1) In order for a prescriber to determine which brands of contact lenses may be
105 prescribed and sold to the same patient under this part, the Optometrist Licensing Board and
106 the Physicians Licensing Board shall make available to all prescribers a listing of all brands of
107 contact lenses certified under Section 58-16a-905.

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

112 (3) Nothing in this section prohibits a prescriber from selling to the prescriber's patient
113 non-certified lenses for the duration of a valid prescription written prior to May 1, 2006.

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

115 **58-16a-907. Manufacturers' conduct.**

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

119 (2) Subject to the limitation of Subsection (1), nothing in Sections 58-16a-905 and
120 58-16a-906 is intended to require a manufacturer to:

121

122 (a) sell to a competitor;

123 (b) sell contact lenses to different contact lens distributors or customers at the same
124 price;

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

127 (d) decide whether a low volume account with a contact lens seller is a direct account
128 or handled through a distributor; or

129 (e) sell lenses that are being test marketed on a limited basis in one geographic area to
130 customers in all geographic areas.

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

132 **58-16a-908. Prohibitions.**

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

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

140 (3) Nothing in this section prohibits a manufacturer from offering rebates to consumers
141 in Utah so long as those rebates do not discriminate based on whether the retailer of the contact
142 lenses is directly or indirectly affiliated with a prescriber.

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

144 **58-16a-909. Penalties for violations.**

145 (1) Knowingly and intentionally violating Section 58-16a-904 or Subsection
146 58-16a-906(2) is considered unprofessional conduct.

147 (2) (a) Knowingly and intentionally making a wrongful certification under Section
148 58-16a-905 is a class A misdemeanor.

149 (b) The attorney general may bring a civil action or seek an injunction and a civil

150 penalty against a person making a wrongful certification under Section 58-16a-905.