

AMENDMENT TO UTAH OPTOMETRY PRACTICE ACT

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill amends the Utah Optometry Practice Act to permit certain people in limited circumstances to sell ~~H→~~ [eyeglasses] an ophthalmic lens ~~←H~~ without being licensed under the chapter.

Highlighted Provisions:

This bill:

- ▶ allows a person in certain circumstances to sell, fit, adjust, and dispense ~~H→~~ [eyeglasses or spectacles] an ophthalmic lens ~~←H~~ without being licensed under the chapter;
- ▶ requires a prescription for ~~H→~~ [eyeglasses] an ophthalmic lens ~~←H~~ ; and
- ▶ specifies the activities that the unlicensed person may engage in regarding the sale or dispensing of ~~H→~~ [eyeglasses or spectacles] an ophthalmic lens ~~←H~~ .

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-16a-305, as last amended by Laws of Utah 2000, Chapter 160

58-16a-501, as last amended by Laws of Utah 2005, Chapter 71



28 **58-16a-801**, as last amended by Laws of Utah 2004, Chapter 48



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

31 Section 1. Section **58-16a-305** is amended to read:

32 **58-16a-305. License -- Exemptions.**

33 In addition to the exemptions from licensure in Section 58-1-307, the following persons
34 may engage in acts included in the definition of the practice of optometry subject to the stated
35 circumstances and limitations without being licensed under this chapter:

36 (1) a person who sells contact lenses on prescription provided by a person authorized
37 under state law to practice either optometry or medicine and surgery if the person complies
38 with Section 58-16a-801;

39 (2) a person who sells eyeglasses or spectacles as articles of merchandise or who
40 fabricates them from a prescription if the person complies with Subsection 58-16a-801(2), and
41 if the person:

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

44 (b) does not traffic or attempt to traffic upon assumed skill in testing the eye and
45 adapting lenses according to the test;

46 (c) does not duplicate, replace, or accept for replacement any ophthalmic lens, except
47 in the case of an emergency;

48 (d) does not use in the testing of the eyes any lenses or instruments other than the
49 lenses actually sold; and

50 (e) does not give or offer eyeglasses or spectacles as premiums as defined in Section
51 13-26-2; and

52 (3) a person who fits contact lenses under the following conditions:

53 (a) he has a current certification from both the American Board of Opticianry and the
54 National Contact Lens Examiners;

55 (b) he does not give or offer contact lenses as premiums;

56 (c) he does not perform a refraction, over-refraction, or attempt to traffic upon assumed
57 skill in testing the eye;

58 (d) he operates in the ordinary course of trade from a permanently located and

59 established place of business;

60 (e) he performs the work involved in fitting contact lenses himself and does not
61 delegate the contact lens fitting to any other individual who is not qualified under this
62 Subsection (3);

63 (f) he does not use in the testing of the eye any lenses or instruments other than the
64 lenses he actually will sell;

65 (g) he provides services only to a patient who:

66 (i) presents an unexpired contact lens prescription; or

67 (ii) has had an eye examination within the prior six months by an optometrist or
68 ophthalmologist meeting the requirements under Section 58-16a-306;

69 (h) he maintains a copy of the patient's contact lens prescription for not less than seven
70 years;

71 (i) he enters into a written agreement with an optometrist or an ophthalmologist before
72 July 1, 2000, to fit contact lenses prescribed by that optometrist or ophthalmologist;

73 (j) he fits contact lenses for at least two years under the direct supervision of the
74 optometrist or ophthalmologist identified in Subsection (3)(i) before July 1, 2000, as
75 documented in the written agreement; and

76 (k) the optometrist or ophthalmologist described in Subsection (3)(i):

77 (i) ensures that the final contact lens is accurate;

78 (ii) presents a written copy of the prescription to the person fitting the contact lens; and

79 (iii) ensures that a copy of the prescription is provided to the patient, except as
80 provided in Section 58-16a-306.

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

82 **58-16a-501. Unlawful conduct.**

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

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

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

88 (3) selling or providing contact lenses ~~Ĥ~~→ [eyeglasses, or spectacles]

88a or an ophthalmic lens ←Ĥ in a manner

89 inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person

90 selling or providing the lenses is a licensed optometrist or ophthalmologist; or

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

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

94 **Part 8. Contact Lenses and ~~H~~→ [Eyeglasses] Ophthalmic Lenses ←~~H~~**

95 **58-16a-801. Contact lens and ~~H~~→ [eyeglass] ophthalmic lens ←~~H~~ seller or provider.**

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

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

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

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

103 (d) does not fit contact lenses;

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

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

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

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

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

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

116 (D) the person informs the patient that the prescription has expired or that there is a
117 medical problem associated with the prescription if the information is communicated by the
118 prescribing optometrist or physician to the person within 72 hours of the contact lens
119 prescription verification being sent; and

120 (f) maintains patient information, including the method and date of any prescription

121 verification, for no less than seven years.

122 (2) (a) A person may engage in the activities described in Subsection (2)(b), without a
 123 license under this title, if the person:

124 (i) provides the ~~H→~~ [eyeglasses or spectacles] ophthalmic lens ~~←H~~ consistent with and in
 124a accordance with ~~H→~~ [an
 125 eyeglass] an unexpired ~~←H~~ prescription from a licensed physician or optometrist;

126 (ii) dispenses the ~~H→~~ [eyeglasses or spectacles] ophthalmic lenses ~~←H~~ within or
 126a from the state;

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

129 (iv) does not perform refractions, over-refractions, or attempt to traffic upon assumed
 130 skill in licensed physician or optometrist testing of the eye; and

131 (v) complies with impact tolerance standards based on ANSI Z80.1-2010, American
 132 National Standard for Ophthalmics - Prescription spectacle lenses.

133 (b) In accordance with Subsection (2)(a), a person may:

134 (i) sell, reproduce, or dispense ~~H→~~ [eyeglasses or spectacles] ophthalmic lenses ~~←H~~ ;

135 (ii) fit or adjust ~~H→~~ [eyeglasses, spectacles,] ophthalmic lenses ~~←H~~ or frames;

136 (iii) assist with the selection of frames for ~~H→~~ [eyeglasses or spectacles]

136a ophthalmic lenses ~~←H~~ ;

137 (iv) measure pupillary distance and interpret pupillary distance measurements; or

138 (v) measure or interpret the reading segment height in bifocal, tri-focal, progressive, or
 139 multi-focal ~~H→~~ ophthalmic ~~←H~~ lenses.

140 [(2)] (3) Nothing in this section may be construed as requiring a person to be licensed

141 or certified in any way under this or any another chapter of this title to sell contact lenses in

142 accordance with Subsection (1), or to sell ~~H→~~ [eyeglasses or spectacles] ophthalmic lenses ~~←H~~ in
 142a accordance with

143 Subsection (2).

Legislative Review Note

as of 11-17-11 12:37 PM

Office of Legislative Research and General Counsel