

## HB0039S01 compared with HB0039

~~{deleted text}~~ shows text that was in HB0039 but was deleted in HB0039S01.

inserted text shows text that was not in HB0039 but was inserted into HB0039S01.

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Representative James A. Dunnigan proposes the following substitute bill:

### AMENDMENT TO UTAH OPTOMETRY PRACTICE ACT

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: \_\_\_\_\_

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#### 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 ~~{eyeglasses}~~ophthalmic lenses without being licensed under the chapter.

#### **Highlighted Provisions:**

This bill:

- ▶ allows a person in certain circumstances to sell, fit, adjust, and dispense ~~{eyeglasses or spectacles}~~ophthalmic lenses without being licensed under the chapter;
- ▶ requires a prescription for ~~{eyeglasses}~~an ophthalmic lens;
- ▶ authorizes an optometrist to designate the expiration date for an ophthalmic lens

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prescription;

- ▶ defines an unexpired prescription; and
- ▶ specifies the activities that the unlicensed person may engage in regarding the sale or dispensing of ~~{eyeglasses or spectacles}~~ ophthalmic lenses.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

58-16a-102, as last amended by Laws of Utah 2004, Chapters 48 and 280

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

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

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

Section 1. Section 58-16a-102 is amended to read:

#### **58-16a-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.
- (2) "Contact lens" means any lens that:
  - (a) has a spherical, cylindrical, or prismatic power or curvature;
  - (b) is made pursuant to a current prescription; or
  - (c) is intended to be worn on the surface of the eye.
- (3) (a) "Contact lens prescription" means a written or verbal order for contact lenses

that includes:

- (i) the commencement date of the prescription;
- (ii) the base curve, power, diameter, material or brand name, and expiration date;
- (iii) for a written order, the signature of the prescribing optometrist or physician; and
- (iv) for a verbal order, a record maintained by the recipient of:
  - (A) the name of the prescribing optometrist or physician; and

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(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

(c) When a provider prescribes a private label contact lens for a patient the prescription shall include:

(i) the name of the manufacturer;

(ii) the trade name of the private label brand; and

(iii) if applicable, the trade name of the equivalent national brand.

(4) "Contact lens prescription verification" means a written request from a person who sells or provides contact lenses that:

(a) is sent to the prescribing optometrist or physician; and

(b) seeks the confirmation of the accuracy of a patient's prescription.

(5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.

(6) "Fitting of a contact lens" means:

(a) the using of a keratometer to measure the human eye;

(b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and

(c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:

(i) has not worn contact lenses before; or

(ii) has changed to a different type or base curve.

(7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.

(8) "Ophthalmic lens" means any lens used to treat the eye and that:

(a) has a spherical, cylindrical, or prismatic power;

(b) is made pursuant to ~~[an unexpired]~~ a prescription which does not expire unless the prescribing optometrist or physician includes an expiration date on the prescription based on medical reasons that are documented in the patient's file; and

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(c) is intended to be used in eyeglasses or spectacles.

(9) "Optometric assistant" means an unlicensed individual:

(a) working under the direct and immediate supervision of a licensed optometrist; and

(b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.

(10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

(11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

(a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;

(b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;

(c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa;

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames;

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior 1/2 of the cornea;

(f) consultation regarding the eye and its adnexa with other appropriate health care providers, including referral to other appropriate health care providers; and

(g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.

(12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the eye and its adnexa.

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(13) "Physician" has the same meaning as defined in Subsection 58-67-102(7).

(14) "Prescription drug" has the same definition as in Section 58-17b-102.

(15) "Unexpired" means a prescription that was issued:

(a) not more than two years prior to presentation of the prescription for an ophthalmic lens; or

(b) in accordance with Subsection (3) for a contact lens.

Section ~~{1}~~2. Section **58-16a-305** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) he operates in the ordinary course of trade from a permanently located and established place of business;

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

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

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

(i) presents an unexpired contact lens prescription; or

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

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

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

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

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

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

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

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

Section ~~{2}~~3. Section **58-16a-501** is amended to read:

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

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

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

(2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry

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diploma, license, certificate, or registration;

(3) selling or providing contact lenses ~~{, eyeglasses, } or {spectacles}~~ ophthalmic lenses in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling or providing the lenses is a licensed optometrist or ophthalmologist; or

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

Section ~~{3}~~4. Section **58-16a-801** is amended to read:

### **Part 8. Contact Lenses and ~~{Eyeglasses}~~Ophthalmic Lenses**

#### **58-16a-801. Contact lens and ~~{eyeglass}~~ophthalmic lens seller or provider.**

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

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

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

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

(d) does not fit contact lenses;

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

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

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

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

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

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

(D) the person informs the patient that the prescription has expired or that there is a medical problem associated with the prescription if the information is communicated by the

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prescribing optometrist or physician to the person within 72 hours of the contact lens prescription verification being sent; and

(f) maintains patient information, including the method and date of any prescription verification, for no less than seven years.

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

(i) provides the ~~eyeglasses or spectacles~~ ophthalmic lenses consistent with and in accordance with ~~an eyeglass~~ a prescription from a licensed physician or optometrist that is unexpired as provided in Subsection 58-16a-102(8)(b);

(ii) dispenses the ~~eyeglasses or spectacles~~ ophthalmic lenses within or from the state;

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

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

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

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

(i) sell, reproduce, or dispense ~~eyeglasses or spectacles~~ ophthalmic lenses;

(ii) fit or adjust ~~eyeglasses, spectacles,~~ ophthalmic lenses or frames;

(iii) assist with the selection of frames for ~~eyeglasses or spectacles~~ ophthalmic lenses;

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

(v) measure or interpret the reading segment height in bifocal, tri-focal, progressive, or multi-focal lenses.

~~(2)~~ (3) Nothing in this section may be construed as requiring a person to be licensed or certified in any way under this or any another chapter of this title to sell contact lenses in accordance with Subsection (1), or to sell ~~eyeglasses or spectacles~~ ophthalmic lenses in accordance with Subsection (2).

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**Legislative Review Note**

~~as of 11-17-11 12:37 PM~~

~~Office of Legislative Research and General Counsel}~~