

**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 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 without being licensed under the chapter;
- ▶ requires a prescription for eyeglasses; and
- ▶ specifies the activities that the unlicensed person may engage in regarding the sale or dispensing of eyeglasses or spectacles.

**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, eyeglasses, or spectacles 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 Eyeglasses**

95 **58-16a-801. Contact lens and eyeglass 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 eyeglasses or spectacles consistent with and in accordance with an  
125 eyeglass prescription from a licensed physician or optometrist;

126 (ii) dispenses the eyeglasses or spectacles within or 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 eyeglasses or spectacles;

135 (ii) fit or adjust eyeglasses, spectacles, or frames;

136 (iii) assist with the selection of frames for eyeglasses or spectacles;

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 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 eyeglasses or spectacles in accordance with  
143 Subsection (2).

**Legislative Review Note**  
**as of 11-17-11 12:37 PM**

**Office of Legislative Research and General Counsel**