

Contact Lens Consumer Protection

This 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. The draft requires that only certified lenses may be sold in the state. It provides for exceptions and limitations regarding the conduct of manufacturers and provides penalties for violations.

Submitted as:

Utah

SB 176 (enrolled version)

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “The Contact Lens Consumer
2 Protection Act.”

3
4 Section 2. [*Availability of Purchase.*] It is the policy of the state that citizens who wear
5 contact lenses pursuant to valid prescriptions should not be unreasonably denied the opportunity
6 to purchase their contact lenses from their retailer of choice.

7
8 Section 3. [*Definitions.*] As used in this Act:

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

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

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

17 (4) "Prescriber" means an individual licensed or authorized to prescribe contact lenses
18 under this Act.

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20 Section 4. [*Certification of Availability of Contact Lenses -- Exceptions.*]

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

25 (a) prescribers;

26 (b) entities associated with prescribers; and

27 (c) alternative channels of distribution.

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

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

31 (a) rigid gas permeable lenses;

- 32 (b) bitoric gas permeable lenses;
33 (c) bifocal gas permeable lenses;
34 (d) keratoconus lenses;
35 (e) custom soft toric lenses that are manufactured for an individual patient and are
36 not mass marketed or mass produced; and
37 (f) custom designed lenses that are manufactured for an individual patient and are
38 not mass marketed or mass produced.

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

41
42 Section 5. [*Manufacturers' Conduct.*] Nothing in Section 4 is intended to require a
43 manufacturer to:

- 44 (1) sell to a competitor;
45 (2) sell contact lenses to different contact lens distributors or customers at the same price;
46 (3) open or maintain any account for a contact lens seller who is not in substantial
47 compliance with state and federal law regarding the sale of contact lenses;
48 (4) decide whether a low volume account with a contact lens seller is a direct account or
49 handled through a distributor; or
50 (5) sell to customers in all geographic areas lenses that are being test-marketed on a
51 limited basis in one geographic area.

52
53 Section 6. [*Penalties For Violations.*]
54 (1) Knowingly and intentionally violating this Act is a [class A misdemeanor].
55 (2) The [Attorney General] may bring a civil action or seek an injunction and a civil
56 penalty against a person, entity, or manufacturer who violates this Act.

57
58 Section 7. [*Severability.*] [Insert severability clause.]

59
60 Section 8. [*Repealer.*] [Insert repealer clause.]

61
62 Section 9. [*Effective Date.*] [Insert effective date.]