

Part 9

Contact Lens Consumer Protection Act

58-16a-901 Title.

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

Enacted by Chapter 245, 2006 General Session

58-16a-902 Policy.

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

Enacted by Chapter 245, 2006 General Session

58-16a-903 Definitions.

As used in this part:

- (1) "Alternative channels of distribution" means any mail order company, Internet retailer, pharmacy, buying club, department store, or mass merchandise outlet, without regard to whether it is associated with a prescriber, unless the account meets the definition of a competitor as provided for in this section.
- (2) "Competitor" means an entity that manufactures contact lenses and sells those lenses within the state in direct competition with any other manufacturer.
- (3) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates, successors, and assigns.
- (4) "Prescriber" means an individual licensed or authorized to prescribe contact lenses under this title.

Enacted by Chapter 245, 2006 General Session

58-16a-904 Certification of availability of contact lenses -- Exceptions.

- (1) Beginning July 1, 2006, a manufacturer of contact lenses doing business in the state shall certify by affidavit to the Attorney General those brands of contact lenses produced, marketed, distributed, or sold by the manufacturer in the state that are made available in a commercially reasonable and nondiscriminatory manner to:
 - (a) prescribers;
 - (b) entities associated with prescribers; and
 - (c) alternative channels of distribution.
- (2) Notwithstanding any other provision of law, a manufacturer shall only sell, market, or distribute lenses in Utah that have been certified under Subsection (1).
- (3) Subsections (1) and (2) do not apply to:
 - (a) rigid gas permeable lenses;
 - (b) bitoric gas permeable lenses;
 - (c) bifocal gas permeable lenses;
 - (d) keratoconus lenses;
 - (e) custom soft toric lenses that are manufactured for an individual patient and are not mass marketed or mass produced; and

- (f) custom designed lenses that are manufactured for an individual patient and are not mass marketed or mass produced.
- (4) Any time a brand ceases to be made available after July 1, 2006, the manufacturer shall immediately certify that fact by affidavit to the Attorney General.

Enacted by Chapter 245, 2006 General Session

58-16a-905 Manufacturers' conduct.

Nothing in Section 58-16a-904 is intended to require a manufacturer to:

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

Enacted by Chapter 245, 2006 General Session

58-16a-905.1 Contact lens manufacturer or distributor -- Prohibited conduct.

A contact lens manufacturer or a contact lens distributor may not:

- (1) take any action, by agreement, unilaterally, or otherwise, that has the effect of fixing or otherwise controlling the price that a contact lens retailer charges or advertises for contact lenses; or
- (2) discriminate against a contact lens retailer based on whether the contact lens retailer:
 - (a) sells or advertises contact lenses for a particular price;
 - (b) operates in a particular channel of trade;
 - (c) is a person authorized by law to prescribe contact lenses; or
 - (d) is associated with a person authorized by law to prescribe contact lenses.

Enacted by Chapter 293, 2015 General Session

58-16a-906 Penalties for violations.

- (1) A person who knowingly and intentionally violates a provision of Section 58-16a-904 is guilty of a class A misdemeanor.
- (2) The attorney general may bring a civil action or seek an injunction and a civil penalty against any person who violates a provision of Section 58-16a-904 or 58-16a-905.1.

Amended by Chapter 293, 2015 General Session