To: Public Health and Human Services

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2007

By: Representative Moak

HOUSE BILL NO. 886

AN ACT TO CREATE THE CONTACT LENS CONSUMER PROTECTION ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT A MANUFACTURER OF CONTACT LENSES WHO SELLS, MARKETS OR DISTRIBUTES CONTACT LENSES IN THE STATE SHALL CERTIFY TO THE ATTORNEY GENERAL THOSE BRAND OF LENSES THAT ARE MADE AVAILABLE IN A COMMERCIALLY REASONABLE AND NONDISCRIMINATORY MANNER TO PRESCRIBERS, ENTITIES ASSOCIATED WITH PRESCRIBERS AND ALTERNATIVE CHANNELS OF DISTRIBUTION; TO PROVIDE THAT MANUFACTURERS SHALL ONLY SELL, MARKET OR DISTRIBUTE IN THE STATE THOSE CONTACT LENSES THAT HAVE BEEN CERTIFIED TO THE ATTORNEY GENERAL; TO PROVIDE FOR EXCEPTIONS AND LIMITATIONS REGARDING THE CONDUCT OF PRESCRIBERS AND MANUFACTURERS; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known as the "Contact Lens Consumer Protection Act."

SECTION 2. It is the policy of the State of Mississippi 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.

SECTION 3. As used in this act, the following terms shall have the meanings provided in this section:

(a) "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.

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

(c) "Manufacturer" means a manufacturer, its parents, subsidiaries, affiliates, successors and assigns.
(d) "Prescriber" means a licensed ophthalmologist or optometrist who prescribes contact lenses.

SECTION 4. (1) Beginning July 1, 2007, a manufacturer of contact lenses doing business in the State of Mississippi 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 of contact lenses shall only sell, market or distribute in the state those contact lenses that have been certified under subsection (1) of this section:

(3) Subsections (1) and (2) of this section 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, 2007, the manufacturer shall immediately certify that fact by affidavit to the Attorney General.

SECTION 5. Nothing in Section 4 of this act is intended to require a manufacturer to:

   (a) Sell to a competitor;
   (b) Sell contact lenses to different contact lens distributors or customers at the same price;
(c) Open or maintain any account for a contact lens seller who is not in substantial compliance with applicable Mississippi and federal laws regarding the sale of contact lenses;

(d) Decide whether a low volume account with a contact lens seller is a direct account or handled through a distributor;

or

(e) Sell to customers in all geographic areas lenses that are being test marketed on a limited basis in restricted geographic areas.

SECTION 6. (1) Any person who knowingly and intentionally violates Section 4 of this act is guilty of a misdemeanor.

(2) The Attorney General may bring a civil action or seek an injunction and a civil penalty against a person, entity or manufacturer who violates Section 4 of this act.

SECTION 7. This act shall take effect and be in force from and after July 1, 2007.