

By: Senator(s) Fillingane

To: Public Health and Welfare

SENATE BILL NO. 2971

1 AN ACT ENTITLED THE "CONTACT LENS CONSUMER PROTECTION ACT";  
2 TO PROVIDE DEFINITIONS; TO PROVIDE THAT A MANUFACTURER SHALL ONLY  
3 SELL, MARKET OR DISTRIBUTE CONTACT LENSES IN THIS STATE THAT HAVE  
4 BEEN CERTIFIED WITH THE OFFICE OF THE ATTORNEY GENERAL; TO PROVIDE  
5 FOR MANUFACTURERS' CONDUCT; TO PRESCRIBE CRIMINAL PENALTIES FOR  
6 VIOLATIONS OF THIS ACT AND AUTHORIZE THE ATTORNEY GENERAL TO BRING  
7 CIVIL ACTION OR AN INJUNCTION; AND FOR RELATED PURPOSES.

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

9 **SECTION 1. Title.** This act is known as the "Contact Lens  
10 Consumer Protection Act."

11 **SECTION 2. Policy.** It is the policy of the state that  
12 citizens who wear contact lenses pursuant to valid prescriptions  
13 should not be unreasonably denied the opportunity to purchase  
14 their contact lenses from their retailer of choice.

15 **SECTION 3. Definitions.** As used in this act:

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

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

25 (c) "Manufacturer" means a manufacturer, its parents,  
26 subsidiaries, affiliates, successors and assigns.

27 (d) "Prescriber" means an individual licensed or  
28 authorized to prescribe contact lenses, as defined in Section  
29 73-19-61, Mississippi Code of 1972.

30           **SECTION 4. Certification of availability of contact lenses -**

31 **Exceptions.** (1) Beginning July 1, 2007, a manufacturer of  
32 contact lenses doing business in the state shall certify by  
33 affidavit to the Office of the Attorney General those brands of  
34 contact lenses produced, marketed, distributed or sold by the  
35 manufacturer in the state that are made available in a  
36 commercially reasonable and nondiscriminatory manner to:

- 37           (a) Prescribers;  
38           (b) Entities associated with prescribers; and  
39           (c) Alternative channels of distribution.

40           (2) Notwithstanding any other provision of law, a  
41 manufacturer shall only sell, market or distribute lenses in the  
42 state that have been certified under subsection (1).

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

- 44           (a) Rigid gas permeable lenses;  
45           (b) Bitoric gas permeable lenses;  
46           (c) Bifocal gas permeable lenses;  
47           (d) Keratoconus lenses;  
48           (e) Custom soft toric lenses that are manufactured for

49 an individual patient and are not mass marketed or mass produced;  
50 and

51           (f) Custom designed lenses that are manufactured for an  
52 individual patient and are not mass marketed or mass produced.

53           (4) Any time a brand ceases to be made available after July  
54 1, 2007, the manufacturer shall immediately certify that fact by  
55 affidavit to the Office of the Attorney General.

56           **SECTION 5. Manufacturers' conduct.** Nothing in Section 4 is  
57 intended to require a manufacturer to:

- 58           (a) Sell to a competitor;  
59           (b) Sell contact lenses to different contact lens

60 distributors or customers at the same price;

61 (c) Open or maintain any account for a contact lens  
62 seller who is not in substantial compliance with applicable  
63 Mississippi and federal laws regarding the sale of contact lenses;

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

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

70 **SECTION 6. Penalties for violations.** (1) Any person  
71 violating the provisions of this act shall be guilty of a  
72 misdemeanor, and upon conviction, shall be fined not more than One  
73 Thousand Dollars (\$1,000.00) and/or imprisoned not less than six  
74 (6) months nor more than one (1) year, at the discretion of the  
75 court.

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

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