

By: Representative Moak

To: Public Health and Human
Services

HOUSE BILL NO. 886

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

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

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

16 **SECTION 2.** It is the policy of the State of Mississippi that
17 citizens who wear contact lenses pursuant to valid prescriptions
18 should not be unreasonably denied the opportunity to purchase
19 their contact lenses from their retailer of choice.

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

22 (a) "Alternative channels of distribution" means any
23 mail order company, Internet retailer, pharmacy, buying club,
24 department store or mass merchandise outlet, without regard to
25 whether it is associated with a prescriber, unless the account
26 meets the definition of a competitor.

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

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

32 (d) "Prescriber" means a licensed ophthalmologist or
33 optometrist who prescribes contact lenses.

34 **SECTION 4.** (1) Beginning July 1, 2007, a manufacturer of
35 contact lenses doing business in the State of Mississippi shall
36 certify by affidavit to the Attorney General those brands of
37 contact lenses produced, marketed, distributed or sold by the
38 manufacturer in the state that are made available in a
39 commercially reasonable and nondiscriminatory manner to:

40 (a) Prescribers;

41 (b) Entities associated with prescribers; and

42 (c) Alternative channels of distribution.

43 (2) Notwithstanding any other provision of law, a
44 manufacturer of contact lenses shall only sell, market or
45 distribute in the state those contact lenses that have been
46 certified under subsection (1) of this section:

47 (3) Subsections (1) and (2) of this section do not apply to:

48 (a) Rigid gas permeable lenses;

49 (b) Bitoric gas permeable lenses;

50 (c) Bifocal gas permeable lenses;

51 (d) Keratoconus lenses;

52 (e) Custom soft toric lenses that are manufactured for
53 an individual patient and are not mass marketed or mass produced;
54 and

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

57 (4) Any time a brand ceases to be made available after July
58 1, 2007, the manufacturer shall immediately certify that fact by
59 affidavit to the Attorney General.

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

62 (a) Sell to a competitor;

63 (b) Sell contact lenses to different contact lens
64 distributors or customers at the same price;

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

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

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

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

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 Section 4 of this act.

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