

# SENATE BILL REPORT

## SB 5489

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As of February 16, 2015

**Title:** An act relating to pricing agreements between contact lens manufacturers or distributors and retailers.

**Brief Description:** Concerning price agreements between contact lens manufacturers or distributors and retailers.

**Sponsors:** Senators Hewitt, Keiser and Parlette.

**Brief History:**

**Committee Activity:** Health Care: 2/16/15.

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### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Kathleen Buchli (786-7488)

**Background:** The Vision Care Consumer Assistance Act (Act) was adopted by the Legislature in 1994 to clarify the roles of vision care providers in order to control costs and to maximize patient access to eye care services. The Act regulated the prescriber-patient relationship and, among other requirements, provided that prescribers must provide patients with their prescription upon the completion of an eye exam, that the prescription must indicate if it is "OK for contacts" if the patient requests contact lenses and there are no contraindications, and that the prescriptions for contact lenses are good for two years.

The Consumer Protection Act is enforced by the Attorney General's Office Antitrust Division. Conduct that prohibits unfair competition such as monopolies, price fixing, and agreements to restrict trade fall under the jurisdiction of the Consumer Protection Act.

**Summary of Bill:** Manufacturers or distributors of contact lenses may not prevent a retailer from setting the price for contact lenses or restrict the distribution of lenses to retailers based on affiliation with a prescriber or dispenser. A manufacturer or distributor of contact lenses who violates this section is subject to the Consumer Protection Act.

**Appropriation:** None.

**Fiscal Note:** Available.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This provides fairness to the contact lens consumer. Unilateral pricing favors prescribers who are more likely to be able to sell contact lenses to patients instead of those patients taking their prescription and purchasing contact lenses elsewhere at a lesser price. This is the only medical device subject to a unilateral agreement. Consumers have seen a 35 percent price increase since the unilateral agreements have gone into effect. The question is whether prescribers prescribe what is best for their patients or if they prescribe what they can make more money for. Unilateral pricing does not ensure that consumers can purchase from other contact lens retailers. The situation is anti-competitive and harmful to consumers; manufacturers will require the products be sold at a higher rate than what some retailers would like to charge.

CON: With unilateral pricing, there are no agreements with retailers on pricing. This is not about price agreements. Contact lenses are medical devices and the prescribers and manufacturers must be responsible to the patients they serve. Because of unilateral pricing, two-thirds of consumers see a reduction in the price they pay for their contact lenses. People who use online retailers are at risk for eye infections or other medical issues if they do not see their doctor, and some have not seen their doctor in years.

**Persons Testifying:** PRO: Jay Magure, 1-800 CONTACTS, Vice President of Government Affairs; John Sullivan, Costco, Associate General Counsel; Garth Vincent, 1-800 CONTACTS, General Counsel; George Sampson, Sampson & Dunlap.

CON: Brad Tower, Mark Maraman, Optometric Physicians of WA; Dr. Carol Alexander, Johnson & Johnson Vision Care; Taketo Miura, Director of Pricing, Johnson & Johnson Vision Care.