

House Bill 634

By: Representatives Burmeister of the 96th, Gardner of the 42nd, Post 3, Reece of the 21st, Amerson of the 9th, Watson of the 60th, Post 2, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to
2 control of hazardous conditions, preventable diseases, and metabolic disorders, so as to
3 provide for the comprehensive revision of provisions regarding restrictions on sale or
4 dispensing of contact lens prescriptions; to provide for related matters; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to control of
9 hazardous conditions, preventable diseases, and metabolic disorders, is amended by striking
10 Code Section 31-12-12, relating to restrictions on sale or dispensing of contact lenses, and
11 inserting in its place a new 31-12-12 to read as follows:

12 "31-12-12.

13 (a) No person shall sell, dispense, or serve as a conduit for the sale or dispensing of the
14 first set of contact lenses issued pursuant to a prescription to the ultimate user of such
15 contact lenses in this state, except persons licensed and regulated by Chapter 29, 30, or 34
16 of Title 43. Such lenses are deemed sold or dispensed within the state at the time the person
17 for whom prescribed takes delivery.

18 (b) All contact lenses used in the determination of a contact lens prescription are
19 considered to be diagnostic lenses. After the diagnostic period and the contact lenses have
20 been adequately fitted and the patient released from immediate follow-up care by persons
21 licensed and regulated by Chapter 29, 30, or 34 of Title 43, ~~the prescribing optometrist or~~
22 ~~ophthalmologist shall, upon the request of the patient, at no cost, provide a prescription in~~
23 ~~writing for replacement contact lenses. A person shall not dispense or adapt contact lenses~~
24 ~~without first receiving authorization to do so by a written prescription, except when~~
25 ~~authorized orally to do so by a person licensed and regulated by Chapter 30 or 34 of Title~~
26 ~~43~~ the patient shall be entitled to receive a copy, at no additional cost, of such patient's

1 replacement contact lens prescription in writing. Any prescription for a specific brand of
2 contact lenses available only from a person licensed and regulated by Chapter 29, 30, or
3 34 of Title 43, but which are generally marketed under an alternative brand, must disclose
4 the name of the manufacturer and trade name of the alternative brand.

5 (c) Patients who comply with such fitting and follow-up requirements as may be
6 established by the prescribing optometrist or ophthalmologist may obtain replacement
7 contact lenses until the expiration date listed on the prescription.

8 (d) A prescriber may refuse to give the patient a copy of the patient's prescription until the
9 patient has paid for all services rendered in connection with the prescription.

10 (e) Except for replacement contact lenses sold or dispensed by persons licensed and
11 regulated by and operating pursuant to Chapter 29, 30, or 34 of Title 43, no replacement
12 contact lenses may be sold or dispensed except pursuant to a prescription which:

13 (1) Conforms to state and federal regulations governing such forms and includes the
14 name, address, and state licensure number of a prescribing practitioner;

15 (2) Explicitly states an expiration date of not ~~more than 12 months from the date of the~~
16 ~~last prescribing contact lens examination, unless a medical or refractive problem affecting~~
17 ~~vision requires an earlier expiration date~~ less than 12 months from either the date the
18 prescription is first determined or the last date of the contact evaluation by a licensed
19 optometrist or ophthalmologist, whichever is later, unless a medical or refractive
20 problem affecting vision requires an earlier expiration date. If the prescription is valid
21 for less than 12 months, the optometrist or ophthalmologist must note the medical reason
22 for the prescription's expiration date in the patient's record and must orally explain to the
23 patient at the time of the eye examination the reason for the prescription's expiration date;

24 (3) Explicitly states the number of refills;

25 (4) Explicitly states that it is for contact lenses and indicates the lens brand name and
26 type, including all specifications necessary for the ordering or fabrication of lenses; ~~and~~

27 (5) Is kept on file by the person selling or dispensing the replacement contact lenses for
28 at least 24 months after the prescription is filled;

29 (6) An optometrist or ophthalmologist shall promptly respond to any request from a
30 physician, optometrist, optician, or contact lens retailer to verify a patient's prescription
31 information in order for the person requesting the information to accurately dispense the
32 contact lenses. Verification must be requested by telephone, by facsimile transmission,
33 or through electronic communications during the prescriber's normal business hours.
34 Consistently failing to respond to verification requests within a reasonable period of time
35 shall be grounds for disciplinary action by the respective regulatory board;

36 (7) No contact lenses may be sold, dispensed, or distributed to a patient in this state
37 unless a seller of contact lenses has a copy of a valid, unexpired prescription or has

1 obtained verification of a valid, unexpired prescription and unless one of the following
 2 has occurred:

3 (A) The patient has given or mailed the seller an original valid, unexpired written
 4 contact lens prescription;

5 (B) The prescribing doctor has given, mailed, or transmitted by facsimile transmission
 6 a copy of a valid, unexpired written contact lens prescription to a seller designated in
 7 writing by the patient to act on the patient's behalf; or

8 (C) The prescribing doctor has orally or in writing verified the valid, unexpired
 9 prescription to a seller designated by the patient to act on the patient's behalf; and

10 (8) No verification shall be provided unless the patient has designated the contact lens
 11 seller to act on the patient's behalf. Verification by the prescribing doctor shall take place
 12 within a reasonable period of time after receipt of the request for verification by a seller.
 13 In any case where the existence of a valid designation by the patient of a seller to act on
 14 the patient's behalf is in question, the prescriber shall promptly contact the patient to
 15 determine if a designation is in effect. Under no circumstance shall a nonresponse to a
 16 verification request be deemed to authorize, validate, or confirm any prescription.

17 (f) Except for persons licensed and regulated by Chapter 29, 30, or 34 of Title 43, any
 18 person, firm, or corporation that dispenses or sells contact lenses on the prescription of a
 19 practitioner licensed in this state shall, at the time of delivery of the lenses, inform the
 20 recipient in writing that he or she should return to a prescriber to ascertain the accuracy and
 21 suitability of the prescribed lenses. The prescriber shall not be responsible for any damages
 22 or injury resulting from negligence in packaging or manufacturing of the prescribed lenses.

23 (g) Anyone who fills a prescription bears the full responsibility of the accuracy of the
 24 contact lenses provided under the prescription. At no time, without the direction of a
 25 prescriber, shall any changes or substitutions be made in the brand or type of lenses the
 26 prescription calls for with the exceptions of tint change if requested by the patient.
 27 However, if a prescription specifies 'only' a specific color or tinted lens, those instructions
 28 shall be observed.

29 (h) No person, other than persons licensed and regulated by Chapter 29, 30, or 34 of Title
 30 43, shall sell, dispense, or serve as a conduit for the sale or dispensing of contact lenses to
 31 the ultimate user of such contact lenses in this state through the mail ~~or any other means~~
 32 ~~other than direct, in-person delivery to such ultimate user by such person after having~~
 33 ~~personally ascertained by reliable means the identity of the deliverer.~~ unless such person
 34 is licensed and registered with the Secretary of State to dispense contact lenses. Such
 35 licensing and registration fee shall be set by the Secretary of State. Approval of
 36 registration for dispensing contact lenses shall be provided by the Secretary of State upon
 37 certification that such person or entity:

1 (1) Is licensed or regulated to dispense contact lenses in the state where the dispensing
 2 facility is located;

3 (2) Provides the location, names, and titles of the principal corporate officers and of the
 4 person who is responsible for overseeing the dispensing of contact lenses in Georgia;

5 (3) Certifies that such licensee will respond directly and within a reasonable period of
 6 time, not to exceed 15 days, to all communications from the Secretary of State concerning
 7 the dispensing of contact lenses in Georgia;

8 (4) Maintains records of contact lenses and their valid, unexpired prescription for at least
 9 24 months after the prescription is filled;

10 (5) Agrees to cooperate with the Secretary of State in providing information to the
 11 Secretary of State concerning matters related to the dispensing of contact lenses in
 12 Georgia;

13 (6) Provides a toll-free number in literature accompanying mailed contact lenses for
 14 responding to questions and complaints from the ultimate user of such contact lenses;

15 (7) Refers all questions relating to eye care for lenses prescribed to the person licensed
 16 and regulated by Chapter 29, 30, or 34 of Title 43 who determined the contact lens
 17 prescription;

18 (8) Provides the following, or substantially equivalent written, notification to the patient
 19 whenever contact lenses are supplied:

20 WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS,
 21 REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE
 22 PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED
 23 EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS.

24 (9) Fills contact lens prescriptions according to the strict directions of a person licensed
 25 to practice optometry or ophthalmology in Georgia, without any deviation or substitution
 26 of lenses; and

27 (10) Consents in writing to the personal and subject matter jurisdiction of the courts and
 28 the appropriate state licensing board for actions arising out of this Code section.

29 ~~(i) Any person who violates the provisions of subsection (a) or (e) of this Code section~~
 30 ~~shall be guilty of a misdemeanor of a high and aggravated nature~~ If a person or entity
 31 dispensing contact lenses in Georgia is openly in violation of this Code section, the
 32 Secretary of State or the Attorney General may commence an action to enjoin such person
 33 from further violations of this Code section for from mailing, shipping, or otherwise
 34 dispensing contact lenses in Georgia.

35 (j) Proceedings to enforce the provisions of this Code section may be brought by any board
 36 created under Chapter 29, 30, or 34 of Title 43 or by any other interested person through
 37 criminal prosecution, injunction, or other appropriate remedy.

1 (k) Upon a finding of any violation of this Code section, in lieu of or in addition to any
2 other action, the board created under Chapter 29, 30, or 34 of Title 43 may assess a civil
3 fine not in excess of \$10,000.00 against such person dispensing contact lenses under this
4 Code section.

5 (l) Any person dispensing contact lenses under this Code section shall bring to the exercise
6 of that profession a reasonable degree of care and skill. Any injury resulting from a want
7 of such care and skill shall be a tort for which a recovery may be had."

8 **SECTION 2.**

9 All laws and parts of laws in conflict with this Act are repealed.