78th OREGON LEGISLATIVE ASSEMBLY – 2016 Regular Session **MEASURE: SB 1576**

PRELIMINARY STAFF MEASURE SUMMARY

CARRIER:

House Committee on Judiciary

REVENUE: No revenue impact
FISCAL: May have fiscal impact, statement not yet issued
SUBSEQUENT REFERRAL TO:

Action:
Vote:
Yeas:
Nays:
Exc.:
Prepared By: Channa Newell, Counsel
Meeting Dates: 2/8

WHAT THE MEASURE DOES: Prohibits manufacturer or distributor of prescription contact lenses from preventing retailer from selling or advertising contact lenses at price below that set by manufacturer or distributor. Makes violation Unlawful Trade Practice.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT:

BACKGROUND: According to the Centers for Disease Control and Prevention, over 30 million people in the United States wear contact lenses. Contact lenses are considered a medical device and are regulated by the US Food and Drug Administration. Four major manufacturers produce nearly all contact lenses sold in the US. In recent months, contact lens manufacturers have instituted minimum sale prices on some products.

Minimum resale pricing agreements between a manufacturer and distributor , also called vertical agreements, were considered *per se* unlawful until 2007, when the Supreme Court determined that the "rule of reason" is the standard to determine whether a pricing agreement is in violation of federal Antitrust statutes. *See Leegin Creative Leather Products, Inc. v PSKS, Inc.*, 127 S. Ct. 2705 (2007). Under the rule of reason, a court weighs all of the circumstances of a case to determine whether a restrictive pricing practice imposes an unreasonable restrain on competition.

Utah recently adopted legislation similar to that proposed in Senate Bill 1576 and it is in the midst of litigation in the 10th Circuit.