

ASSEMBLY BILL NO. 128—ASSEMBLYMEN CONKLIN, BUCKLEY,
ANDERSON, HORNE, PARKS, BOBZIEN, CLABORN, DENIS,
GERHARDT, HOGAN, KIRKPATRICK, KOIVISTO, LESLIE,
MANENDO, MORTENSON, MUNFORD, PIERCE, SEGERBLOM
AND SMITH

FEBRUARY 20, 2007

JOINT SPONSORS: SENATORS TITUS AND CARLTON

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to prescription drugs.
(BDR 18-108)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prescription drugs; requiring certain
wholesalers and manufacturers of prescription drugs to
file annually with the Office of the Attorney General a
report disclosing certain economic benefits that the
wholesalers and manufacturers have provided to certain
persons; clarifying provisions concerning the
confidentiality of the contents of a prescription; and
providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law prohibits a person from manufacturing or engaging in the
- 2 wholesale distribution of certain drugs unless the person is licensed to do so by the
- 3 State Board of Pharmacy. (NRS 639.100, 639.233) **Section 1** of this bill requires
- 4 wholesalers and manufacturers who are licensed by the Board to file with the
- 5 Office of the Attorney General an annual report disclosing certain gifts and other
- 6 economic benefits that the wholesaler or manufacturer has provided to certain
- 7 persons. **Section 1** requires that the annual report identify information which is a
- 8 trade secret and prohibits the Office of the Attorney General from disclosing such
- 9 information. **Section 1** also requires the Office of the Attorney General to provide



* A B 1 2 8 *

to the Governor and the Legislature a compilation of the information contained in the annual reports, excluding trade secrets. **Section 1** further authorizes the imposition of civil penalties for wholesalers and manufacturers who fail to comply with the reporting requirements.

Existing law provides that prescriptions filed with a pharmacy are not a public record and prohibits, with certain exceptions, a pharmacist from divulging the contents of a prescription. (NRS 639.238) **Section 2** of this bill clarifies that this prohibition applies to the divulgence of the name of the prescribing medical practitioner.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 228 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On or before December 31 of each year, a wholesaler or manufacturer who is licensed pursuant to chapter 639 of NRS shall file with the Office of the Attorney General, on a form prescribed by the Attorney General, a report that discloses the value, nature and purpose of any economic benefit which:

(a) During the 12-month period ending on June 30 of the year in which the report is due, the wholesaler or manufacturer or its agent provided, directly or indirectly, to a practitioner, pharmacist, administrator of a health care facility or plan or any other person authorized to purchase wholesale, prescribe or dispense prescription drugs in this State;

(b) Has no direct benefit to a patient; and

(c) Exceeds \$100.

2. The report:

(a) Must include:

(1) If the wholesaler or manufacturer or its agent has provided one or more economic benefits in excess of an aggregate value of \$1,000 during the period to which the report pertains to a practitioner, pharmacist, administrator of a health care facility or plan or any other person authorized to purchase wholesale, prescribe or dispense prescription drugs in this State, the name of the recipient and the value, nature and purpose of each such economic benefit.

(2) The identification of any information contained in the report that is a trade secret.

(b) Must not include the disclosure of:

(1) Any free sample of a product of the wholesaler or manufacturer that is provided for distribution to patients;

(2) Any payment of reasonable compensation and reimbursement of expenses in connection with a bona fide clinical trial or study;



1 (3) Any scholarship or other support for a medical student,
2 resident or fellow to attend a significant educational, scientific or
3 policymaking conference of a national, regional or specialty
4 medical or other professional association, if the recipient of the
5 scholarship or other support is selected by the professional
6 association; or

7 (4) Any fees, honoraria or reimbursement for expenses paid
8 to a person providing a presentation at an educational or scientific
9 conference on behalf of the wholesaler or manufacturer.

10 3. Any information identified as a trade secret in a report
11 filed pursuant to this section is confidential and must not be
12 disclosed by the Office of the Attorney General.

13 4. On or before October 1 of each year, a wholesaler or
14 manufacturer licensed pursuant to chapter 639 of NRS shall
15 disclose in writing to the Office of the Attorney General the name
16 and address of the person responsible for ensuring that the
17 wholesaler or manufacturer complies with the provisions of this
18 section.

19 5. The Office of the Attorney General shall, on or before
20 January 15 of each odd-numbered year, prepare and submit to the
21 Governor and to the Director of the Legislative Counsel Bureau
22 for transmittal to the Legislature a compilation of the information
23 contained in the reports received by the Office of the Attorney
24 General pursuant to this section, other than any information
25 identified as a trade secret in such a report.

26 6. If a wholesaler or manufacturer fails to file a report
27 required pursuant to this section in a timely manner or knowingly
28 and willfully fails to disclose in such a report any information that
29 is required pursuant to this section, the wholesaler or
30 manufacturer is subject to a civil penalty of not more than \$500
31 for each day that such a violation persists. The Attorney General
32 may bring a civil action in the name of the State of Nevada to
33 enforce the provisions of this section. If a court finds the
34 wholesaler or manufacturer liable for the civil penalty, the court
35 shall also order the wholesaler or manufacturer to pay:

36 (a) Court costs; and

37 (b) Reasonable costs of the investigation and prosecution of
38 the civil action, including, without limitation, attorney's fees.

39 7. The Attorney General may adopt such regulations as are
40 necessary and convenient for the enforcement of the provisions of
41 this section, including, without limitation, a schedule of civil
42 penalties for violations of this section.

43 8. As used in this section:

44 (a) "Administrator of a health care facility or plan" means a
45 person who is authorized to direct, control or supervise the policies



1 *or practices of an entity providing health care or an entity*
2 *operating or administering any type of facility, program or plan*
3 *relating to the provision of health care, including, without*
4 *limitation, a third-party administrator.*

5 (b) *"Economic benefit" includes, without limitation, a gift, fee,*
6 *payment or subsidy.*

7 (c) *"Health care facility" has the meaning ascribed to it in*
8 *NRS 449.800.*

9 (d) *"Practitioner" has the meaning ascribed to it in*
10 *NRS 639.0125.*

11 (e) *"Trade secret" has the meaning ascribed to it in*
12 *NRS 600A.030.*

13 **Sec. 2.** NRS 639.238 is hereby amended to read as follows:

14 639.238 1. Prescriptions filled and on file in a pharmacy are
15 not a public record. Except as otherwise provided in NRS 639.2357,
16 a pharmacist shall not divulge the contents of any prescription ,
17 *including, without limitation, the name of the prescribing*
18 *practitioner,* or provide a copy of any prescription, except to:

19 (a) The patient for whom the original prescription was issued;

20 (b) The practitioner who originally issued the prescription;

21 (c) A practitioner who is then treating the patient;

22 (d) A member, inspector or investigator of the Board or an
23 inspector of the Food and Drug Administration or an agent of the
24 Investigation Division of the Department of Public Safety;

25 (e) An agency of state government charged with the
26 responsibility of providing medical care for the patient;

27 (f) An insurance carrier, on receipt of written authorization
28 signed by the patient or his legal guardian, authorizing the release of
29 such information;

30 (g) Any person authorized by an order of a district court;

31 (h) Any member, inspector or investigator of a professional
32 licensing board which licenses a practitioner who orders
33 prescriptions filled at the pharmacy;

34 (i) Other registered pharmacists for the limited purpose of and to
35 the extent necessary for the exchange of information relating to
36 persons who are suspected of:

37 (1) Misusing prescriptions to obtain excessive amounts of
38 drugs; or

39 (2) Failing to use a drug in conformity with the directions for
40 its use or taking a drug in combination with other drugs in a manner
41 that could result in injury to that person; ~~for~~

42 (j) A peace officer employed by a local government for the
43 limited purpose of and to the extent necessary:

44 (1) For the investigation of an alleged crime reported by an
45 employee of the pharmacy where the crime was committed; or



(2) To carry out a search warrant or subpoena issued pursuant to a court order ~~H~~; or

(k) A county coroner, medical examiner or investigator employed by an office of a county coroner for the purpose of:

(1) Identifying a deceased person;

(2) Determining a cause of death; or

(3) Performing other duties authorized by law.

2. Any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is issued to a county coroner, medical examiner or investigator employed by an office of a county coroner must be limited to a copy of the prescription filled or on file for:

(a) The person whose name is on the container of the controlled substance or dangerous drug that is found on or near the body of a deceased person; or

(b) The deceased person whose cause of death is being determined.

3. Except as otherwise provided in NRS 639.2357, any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS, issued to a person authorized by this section to receive such a copy, must contain all of the information appearing on the original prescription and be clearly marked on its face "Copy, Not Refillable—For Reference Purposes Only." The copy must bear the name or initials of the registered pharmacist who prepared the copy.

4. If a copy of a prescription for any controlled substance or a dangerous drug as defined in chapter 454 of NRS is furnished to the customer, the original prescription must be voided and notations made thereon showing the date and the name of the person to whom the copy was furnished.

5. As used in this section, "peace officer" does not include:

(a) A member of the Police Department of the Nevada System of Higher Education.

(b) A school police officer who is appointed or employed pursuant to NRS 391.100.

