

(Reprinted with amendments adopted on June 3, 2007)

THIRD REPRINT

A.B. 232

ASSEMBLY BILL NO. 232—ASSEMBLYMEN LESLIE, BUCKLEY, HORNE, MCCLAIN, OCEGUERA, ALLEN, ANDERSON, ARBERRY, ATKINSON, BEERS, BOBZIEN, CLABORN, CONKLIN, DENIS, GERHARDT, HOGAN, KIHUEN, KIRKPATRICK, KOIVISTO, MABEY, MANENDO, MORTENSON, MUNFORD, OHRENSCHALL, PARKS, PARNELL, PIERCE, SEGERBLOM AND SMITH

MARCH 1, 2007

JOINT SPONSORS: SENATORS WIENER, TITUS, CARE, COFFIN, LEE, MCGINNESS, NOLAN, SCHNEIDER AND WOODHOUSE

Referred to Committee on Health and Human Services

SUMMARY—Provides for certain information relating to pharmacies and the prices of commonly prescribed prescription drugs to be made available to consumers. (BDR 40-856)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Contains Appropriation not included in Executive Budget.

~

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

AN ACT relating to health; providing for certain information relating to pharmacies and the prices of commonly prescribed prescription drugs to be made available to consumers; requiring the Department of Health and Human Services to perform certain activities and adopt certain regulations; providing for the imposition of an administrative penalty under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 2** of this bill defines the term “pharmacy” for the purposes of the bill.
- 2 As defined, the term excludes institutional pharmacies. (NRS 639.0085) **Section 3**
- 3 of this bill requires the organization that the Department of Health and Human
- 4 Services determines to be the organization in the State with the largest membership
- 5 of represented retail merchants, to prepare a list of not less than 100 prescription



* A B 2 3 2 R 3 *

6 drugs, including generic equivalents, that are most commonly prescribed to
7 residents of this State.

8 **Section 4** of this bill requires certain pharmacies to provide certain contact
9 information to the Department. **Section 5** of this bill requires the Department to
10 present on its Internet website: (1) the contact information provided by the
11 pharmacies to the Department; and (2) the usual and customary price that the
12 pharmacies charge for the prescription drugs set forth on the list prepared pursuant
13 to **section 3**, so that consumers may compare the prices currently being charged by
14 those pharmacies for those prescription drugs. The Department is allowed to obtain
15 the usual and customary prices charged by the pharmacies from claims reported by
16 the pharmacies to the Medicaid program.

17 **Section 6** of this bill requires the Department to ensure that the information is
18 presented to consumers in such a manner that the prices charged by pharmacies for
19 the relevant prescription drugs may be easily compared. **Section 7** of the bill
20 clarifies that the Department and its members, officers and employees are not liable
21 in the event that information fails to be provided to consumers or in the event that
22 incorrect information is provided to consumers. **Section 8** of this bill requires the
23 Department to adopt certain regulations.

24 **Section 9** of this bill allows the Department to accept grants, donations, gifts
25 and other public and private money to carry out the provisions of this bill. **Section**
26 **9** also requires the Department to determine at the beginning of each fiscal year
27 whether sufficient money is available to fund one or more components of the
28 programs and duties of the Department relating to **sections 2-10** of this bill and, if
29 sufficient money is not available, to suspend temporarily a component of the
30 programs for which money is lacking.

31 **Section 10** of this bill provides that if a pharmacy is required to provide
32 information to the Department pursuant to **section 4** and the pharmacy, without
33 good cause, fails to do so or fails to do so in a timely manner, the Department may
34 impose an administrative penalty of up to \$500 for each day on which such a failure
35 occurs.

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

1 **Section 1.** Chapter 439 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 10, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 10, inclusive, of this act,*
5 *unless the context otherwise requires, “pharmacy” means every*
6 *store or shop licensed by the State Board of Pharmacy where*
7 *drugs, controlled substances, poisons, medicines or chemicals are*
8 *stored or possessed, or dispensed or sold at retail, or displayed for*
9 *sale at retail, or where prescriptions are compounded or*
10 *dispensed. The term does not include an institutional pharmacy as*
11 *defined in NRS 639.0085.*

12 **Sec. 3.** *The organization with the largest membership in this*
13 *State which represents the interests of retail merchants, as*
14 *determined by the Department, shall:*



1 1. Prepare a list of not less than the 100 brand name
2 prescription drugs or generic equivalents most commonly
3 prescribed to residents of this State; and

4 2. At least once each calendar year, update the list prepared
5 pursuant to subsection 1 and transmit the list to the Department.

6 **Sec. 4.** 1. Except as otherwise provided in subsections 2
7 and 3, each pharmacy shall, in accordance with the regulations
8 adopted pursuant to section 8 of this act, provide to the
9 Department:

10 (a) Information that a consumer may use to locate, contact or
11 otherwise do business with the pharmacy, including, without
12 limitation:

13 (1) The name of the pharmacy;

14 (2) The physical address of the pharmacy; and

15 (3) The phone number of the pharmacy;

16 (b) If the pharmacy maintains an electronic mail address, the
17 electronic mail address of the pharmacy; and

18 (c) If the pharmacy maintains an Internet website, the Internet
19 address of that website.

20 2. If a pharmacy is not located within the State of Nevada, the
21 pharmacy may, but is not required to, provide to the Department
22 the information described in subsection 1.

23 3. If a pharmacy is part of a larger company or corporation
24 or a chain of pharmacies or retail stores, the parent company or
25 corporation may provide to the Department the information
26 described in subsection 1.

27 **Sec. 5.** 1. Except as otherwise provided in subsection 2, the
28 Department shall:

29 (a) Place or cause to be placed on the Internet website
30 maintained by the Department the information provided by each
31 pharmacy pursuant to section 4 of this act;

32 (b) Ensure that the information provided by each pharmacy
33 pursuant to section 4 of this act and placed on the Internet website
34 maintained by the Department is organized so that each individual
35 pharmacy has its own separate entry on that website; and

36 (c) Ensure that the usual and customary price that each
37 pharmacy charges for each prescription drug that is on the list
38 prepared pursuant to section 3 of this act and that is stocked by the
39 pharmacy:

40 (1) Is presented on the Internet website maintained by the
41 Department in a manner which complies with the requirements of
42 section 6 of this act; and

43 (2) Is updated not less frequently than once each calendar
44 quarter.



1 ↪ Nothing in this subsection prohibits the Department from
2 determining the usual and customary price that a pharmacy
3 charges for a prescription drug by extracting or otherwise
4 obtaining such information from claims reported by pharmacies to
5 the Medicaid program.

6 2. If a pharmacy is part of a larger company or corporation
7 or a chain of pharmacies or retail stores, the Department may
8 present the pricing information pertaining to such a pharmacy in
9 such a manner that the pricing information is combined with the
10 pricing information relative to other pharmacies that are part of
11 the same company, corporation or chain, to the extent that the
12 pricing information does not differ among those pharmacies.

13 3. The Department may establish additional or alternative
14 procedures by which a consumer who is unable to access the
15 Internet or is otherwise unable to receive the information
16 described in subsection 1 in the manner in which it is presented by
17 the Department may obtain that information:

- 18 (a) In the form of paper records;
19 (b) Through the use of a telephonic system; or
20 (c) Using other methods or technologies designed specifically
21 to assist consumers who are hearing impaired or visually
22 impaired.

23 4. As used in this section, "usual and customary price"
24 means the usual and customary charges that a provider charges to
25 the general public for a drug, as described in 42 C.F.R. § 447.331.

26 **Sec. 6.** 1. Except as otherwise provided in this section, the
27 Department shall ensure that the list of prescription drugs
28 prepared pursuant to section 3 of this act and the information that
29 pharmacies and the Department provide and obtain pursuant to
30 sections 4 and 5 of this act are combined and presented to
31 consumers in such a manner that a consumer may easily compare
32 the prices for particular prescription drugs, and their generic
33 equivalents, that are currently charged by:

- 34 (a) Pharmacies located within the same city, county or zip code
35 in which the consumer resides;
36 (b) Internet pharmacies; and
37 (c) Pharmacies that provide mail order service to residents of
38 Nevada.

39 ↪ The requirements of paragraphs (b) and (c) apply only to the
40 extent that information regarding such pharmacies is made
41 available to the Department.

42 2. As used in this section, "Internet pharmacy" has the
43 meaning ascribed to it in NRS 639.00865.



1 **Sec. 7. The Department and its members, officers and**
2 *employees are not liable civilly or criminally for any act, omission,*
3 *error or technical problem that results in:*

4 1. *The failure to provide to consumers information regarding*
5 *a pharmacy, including, without limitation, the prices charged by*
6 *the pharmacy for the prescription drugs and generic equivalents*
7 *that are on the list prepared pursuant to section 3 of this act; or*

8 2. *The providing to consumers of incorrect information*
9 *regarding a pharmacy, including, without limitation, the prices*
10 *charged by the pharmacy for the prescription drugs and generic*
11 *equivalents that are on the list prepared pursuant to section 3 of*
12 *this act.*

13 **Sec. 8. The Department shall adopt such regulations as it**
14 *determines to be necessary or advisable to carry out the provisions*
15 *of sections 2 to 10, inclusive, of this act. Such regulations must*
16 *provide for, without limitation:*

17 1. *Notice to consumers stating that:*

18 (a) *Although the Department will strive to ensure that*
19 *consumers receive accurate information regarding pharmacies,*
20 *including, without limitation, the prices charged by those*
21 *pharmacies for the prescription drugs and generic equivalents that*
22 *are on the list prepared pursuant to section 3 of this act, the*
23 *Department is unable to guarantee the accuracy of such*
24 *information;*

25 (b) *If a consumer follows an Internet link from the Internet*
26 *website maintained by the Department to an Internet website*
27 *maintained by a pharmacy, the Department is unable to guarantee*
28 *the accuracy of any information made available on the Internet*
29 *website maintained by the pharmacy; and*

30 (c) *The Department advises consumers to contact a pharmacy*
31 *directly to verify the accuracy of any information regarding the*
32 *pharmacy which is made available to consumers pursuant to*
33 *sections 2 to 10, inclusive, of this act;*

34 2. *Procedures adopted cooperatively with the Office of the*
35 *Governor to direct consumers who have questions regarding the*
36 *program described in sections 2 to 10, inclusive, of this act to*
37 *contact the Office for Consumer Health Assistance in the Office of*
38 *the Governor;*

39 3. *Provisions in accordance with which the Department will*
40 *allow an Internet link to the information provided by each*
41 *pharmacy pursuant to section 4 of this act and made available on*
42 *the Department's Internet website to be placed on other Internet*
43 *websites managed or maintained by other persons and entities,*
44 *including, without limitation, Internet websites managed or*
45 *maintained by:*



1 (a) Other governmental entities, including, without limitation,
2 the State Board of Pharmacy and the Office of the Governor; and

3 (b) Nonprofit organizations and advocacy groups;

4 4. Procedures pursuant to which consumers and pharmacies
5 may report to the Department that information made available to
6 consumers pursuant to sections 2 to 10, inclusive, of this act is
7 inaccurate;

8 5. The form and manner in which pharmacies are to provide
9 to the Department the information described in section 4 of this
10 act; and

11 6. Standards and criteria pursuant to which the Department
12 may remove from its Internet website information regarding a
13 pharmacy or an Internet link to the Internet website maintained by
14 a pharmacy, or both, if the Department determines that the
15 pharmacy has:

16 (a) Ceased to be licensed and in good standing pursuant to
17 chapter 639 of NRS; or

18 (b) Engaged in a pattern of providing to consumers
19 information that is false or would be misleading to reasonably
20 informed persons.

21 **Sec. 9. 1.** On or before July 1 of each odd-numbered year,
22 the Department shall make a determination of whether sufficient
23 money is available and authorized for expenditure to fund one or
24 more components of the programs and other duties of the
25 Department relating to sections 2 to 10, inclusive, of this act.

26 2. The Department shall temporarily suspend any
27 components of the program or duties of the Department for which
28 it determines pursuant to subsection 1 that sufficient money is not
29 available.

30 3. The Department may apply for and accept any available
31 grants and may accept any bequests, devises, donations or gifts
32 from any public or private source to carry out the provisions of
33 sections 2 to 10, inclusive, of this act.

34 **Sec. 10.** If a pharmacy that is licensed under the provisions
35 of chapter 639 of NRS and is located within the State of Nevada
36 fails to provide to the Department the information required to be
37 provided pursuant to section 4 of this act or fails to provide such
38 information on a timely basis, and the failure was not caused by
39 excusable neglect, technical problems or other extenuating
40 circumstances, the Department may impose against the pharmacy
41 an administrative penalty of not more than \$500 for each day of
42 such failure.

43 **Sec. 11.** NRS 639.2802 is hereby amended to read as follows:
44 639.2802 ~~Prescription~~ In addition to any applicable
45 requirements set forth in sections 2 to 10, inclusive, of this act,



* A B 2 3 2 R 3 *

prescription price information must be made available, upon request, by a pharmacist or practitioner who dispenses drugs.

Sec. 12. NRS 639.28025 is hereby amended to read as follows:

639.28025 ~~[Every]~~ *In addition to any applicable requirements set forth in sections 2 to 10, inclusive, of this act, every* practitioner who dispenses drugs shall post on the premises in a place conspicuous to customers and easily accessible and readable by customers a notice, provided by the Board, advising customers that a price list of drugs and professional services is available to them upon request.

Sec. 13. (Deleted by amendment.)

Sec. 14. 1. This section and section 9 of this act become effective upon passage and approval.

2. Sections 1 to 8, inclusive, 10, 11 and 12 of this act become effective on October 1, 2007.

