

Amendment No. 140

Assembly Amendment to Assembly Bill No. 128

(BDR 18-108)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold*** is newly added transitory language.

WBD/TMC



Date: 4/9/2007

A.B. No. 128—Revises provisions relating to prescription drugs. (BDR 18-108)



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 ~~118-109~~ 54-108)

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

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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}~~ **State Board of Pharmacy** 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:

Existing law prohibits a person from manufacturing or engaging in the wholesale distribution of certain drugs unless the person is licensed to do so by the State Board of Pharmacy. (NRS 639.100, 639.233) **Section 1** of this bill requires wholesalers and manufacturers who are licensed by the Board to file with the ~~{Office of the Attorney General}~~ **Board** an annual report disclosing certain gifts and other economic benefits that the wholesaler or manufacturer has provided to certain persons. **Section 1** requires that the annual report identify information which is a trade secret and prohibits the ~~{Office of the Attorney General}~~ **Board** from disclosing such information. **Section 1** **requires a wholesaler or manufacturer to include in its annual report the name of each person to whom it provides economic benefits whose aggregate value exceeds \$1,000, but also requires that the wholesaler or manufacturer notify the person before the value of the economic benefits provided to him exceeds that amount.** **Section 1** also requires the ~~{Office of the Attorney General to provide to the Governor and the Legislature}~~ **Board to prepare a compilation of the information contained in the annual reports, excluding trade secrets, and to make the compilation available on the Internet.** **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 ~~628~~ 639 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~~ each wholesaler and manufacturer shall file with the ~~Office of the Attorney General~~ Board, on a form prescribed by the ~~Attorney General~~ Board, 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;*

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

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

3. *A wholesaler or manufacturer is not required to file a report pursuant to this section if the wholesaler, manufacturer or its agent has not provided an economic benefit 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 during the 12-month period ending on June 30 of the year in which the report would otherwise be due.*

4. *A wholesaler or manufacturer or its agent shall, before providing an economic benefit to a practitioner, pharmacist, administrator of a health care*

1 facility or plan or any other person authorized to purchase wholesale, prescribe
2 or dispense prescription drugs in this State that would, if accepted by the person,
3 result in his receiving economic benefits from the wholesaler or manufacturer or
4 its agent in excess of an aggregate value of \$1,000 during the 12-month period
5 ending on June 30 of the year in which the benefit is provided, inform the person
6 that if he accepts the economic benefit:

7 (a) The economic benefits provided to him by the wholesaler or
8 manufacturer or its agent will be in excess of an aggregate value of \$1,000
9 during the period; and

10 (b) The person's name and the value, nature and purpose of each economic
11 benefit provided to him by the wholesaler or manufacturer or its agent during the
12 period will be included in the report for the period filed by the wholesaler or
13 manufacturer pursuant to this section.

14 5. Any information identified as a trade secret in a report filed pursuant to
15 this section is confidential and must not be disclosed by the ~~Office of the~~
16 ~~Attorney General.~~

17 ~~4.~~ Board.

18 6. On or before October 1 of each year, ~~a wholesaler or manufacturer~~
19 ~~licensed pursuant to chapter 639 of NRS~~ each wholesaler and manufacturer
20 shall disclose in writing to the ~~Office of the Attorney General~~ Board the name
21 and address of the person responsible for ensuring that the wholesaler or
22 manufacturer complies with the provisions of this section.

23 ~~5.~~ 7. The ~~Office of the Attorney General~~ Board shall, on or before
24 January 15 of each ~~odd-numbered~~ year, or on or before such other date each
25 year as the Board prescribes by regulation, prepare ~~and submit to the Governor~~
26 and to the Director of the Legislative Counsel Bureau for transmittal to the
27 Legislature a compilation of the information contained in the reports received by
28 the ~~Office of the Attorney General~~ Board pursuant to this section, other than
29 any information identified as a trade secret in such a report.

30 ~~6.~~ The Board shall:

31 ~~(a) Make the compilation available on its website; or~~

32 ~~(b) Provide the compilation to the Office for Consumer Health Assistance~~
33 which shall make the compilation available on its website.

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

42 (a) Court costs; and

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

45 ~~7. The Attorney General~~

46 9. The Board may adopt such regulations as are necessary and convenient
47 ~~for~~ :

48 (a) For the enforcement of the provisions of this section, including, without
49 limitation, a schedule of civil penalties for violations of this section.

50 ~~8.~~ ; and

51 (b) To otherwise carry out the provisions of this section.

52 10. As used in this section:

(a) "Administrator of a health care facility or plan" means a person who is authorized to direct, control or supervise the policies or practices of an entity providing health care or an entity operating or administering any type of facility, program or plan relating to the provision of health care, including, without limitation, a third-party administrator.

(b) "Economic benefit" includes, without limitation, a gift, fee, payment or subsidy. The term does not include a contract or other agreement between persons authorized to purchase wholesale, prescribe or dispense prescription drugs in this State.

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

~~(d) "Practitioner" has the meaning ascribed to it in NRS 639.0125.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) For the investigation of an alleged crime reported by an 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 [.] ; 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.~~ (Deleted by amendment.)