

SENATE BILL NO. 211—SENATORS WOODHOUSE, CARLTON,
BREEDEN; COPENING, HORSFORD, LEE, PARKS AND SCHNEIDER

MARCH 13, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Enacts provisions relating to manufacturers and
wholesalers of prescription drugs. (BDR 54-1056)

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 State Board of Pharmacy a report
disclosing certain economic benefits that the wholesalers
and manufacturers have provided to certain persons; 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) This bill requires wholesalers
4 and manufacturers who are licensed by the Board to file with the Board an annual
5 report disclosing certain gifts and other economic benefits that the wholesaler or
6 manufacturer has provided to certain persons. This bill requires that the annual
7 report identify information which is a trade secret and prohibits the Board from
8 disclosing such information. Further, this bill requires a wholesaler or manufacturer
9 to: (1) include in its annual report the name of each person to whom it provides
10 economic benefits whose aggregate value exceeds \$1,000; and (2) notify the person
11 before the value of the economic benefits provided to him exceeds that amount.
12 This bill also requires the Board to prepare a compilation of the information
13 contained in the annual reports, excluding trade secrets, to make the compilation
14 available on the Internet and to provide a compilation to the Governor and
15 Legislative Counsel Bureau. Finally, this bill further authorizes the imposition of
16 civil penalties for wholesalers and manufacturers who fail to comply with the
17 reporting requirements.



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

Section 1. Chapter 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, each wholesaler and manufacturer shall file with the Board, on a form prescribed by the 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.



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1 3. A wholesaler or manufacturer is not required to file a
2 report pursuant to this section if the wholesaler, manufacturer or
3 its agent has not provided an economic benefit to a practitioner,
4 pharmacist, administrator of a health care facility or plan or any
5 other person authorized to purchase wholesale, prescribe or
6 dispense prescription drugs in this State during the 12-month
7 period ending on June 30 of the year in which the report would
8 otherwise be due.

9 4. A wholesaler or manufacturer or its agent shall, before
10 providing an economic benefit to a practitioner, pharmacist,
11 administrator of a health care facility or plan or any other person
12 authorized to purchase wholesale, prescribe or dispense
13 prescription drugs in this State that would, if accepted by the
14 person, result in his having received economic benefits from the
15 wholesaler or manufacturer or its agent in excess of an aggregate
16 value of \$1,000 during the 12-month period ending on June 30 of
17 the year in which the benefit is provided, inform the person that if
18 he accepts the economic benefit:

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

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

27 5. Any information identified as a trade secret in a report
28 filed pursuant to this section is confidential and must not be
29 disclosed by the Board.

30 6. On or before October 1 of each year, each wholesaler and
31 manufacturer shall disclose in writing to the Board the name and
32 address of the person responsible for ensuring that the wholesaler
33 or manufacturer complies with the provisions of this section.

34 7. The Board shall, on or before January 15 of each odd-
35 numbered year, prepare and submit to the Governor and to the
36 Director of the Legislative Counsel Bureau for transmittal to
37 the Legislature a compilation of the information contained in the
38 reports received by the Board pursuant to this section, other than
39 any information identified as a trade secret in such a report.

40 8. The Board shall, on or before January 15 of each year, or
41 on or before such other date each year as the Board prescribes by
42 regulation, prepare a compilation of the information contained in
43 the reports received by the Board pursuant to this section, other
44 than any information identified as a trade secret in such a report.
45 The Board shall:



- 1 (a) Make the compilation available on its website; or
- 2 (b) Provide the compilation to the Office for Consumer Health
- 3 Assistance, which shall make the compilation available on its
- 4 website.

5 9. If a wholesaler or manufacturer fails to file a report
6 required pursuant to this section in a timely manner or knowingly
7 and willfully fails to disclose in such a report any information that
8 is required pursuant to this section, the wholesaler or
9 manufacturer is subject to a civil penalty of not more than \$10,000
10 for each violation. The Attorney General may bring a civil action
11 in the name of the State of Nevada to enforce the provisions of this
12 section. If a court finds the wholesaler or manufacturer liable for
13 the civil penalty, the court shall also order the wholesaler or
14 manufacturer to pay:

- 15 (a) Court costs; and
- 16 (b) Reasonable costs of the investigation and prosecution of
- 17 the civil action, including, without limitation, attorney's fees.

18 10. The Board may adopt such regulations as are necessary
19 and convenient:

- 20 (a) For the enforcement of the provisions of this section,
- 21 including, without limitation, a schedule of civil penalties for
- 22 violations of this section; and

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

24 11. As used in this section:

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

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

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

37 (d) "Trade secret" has the meaning ascribed to it in
38 NRS 600A.030.

