

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 321 Session of
2005

INTRODUCED BY STACK, STOUT, COSTA, LAVALLE, KITCHEN, WOZNIAK,
RHOADES, TARTAGLIONE, KASUNIC, LOGAN, BOSCOLA, FERLO AND
C. WILLIAMS, FEBRUARY 18, 2005

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 18, 2005

AN ACT

1 Amending the act of July 8, 1986 (P.L.408, No.89), entitled, as
2 reenacted and amended, "An act providing for the creation of
3 the Health Care Cost Containment Council, for its powers and
4 duties, for health care cost containment through the
5 collection and dissemination of data, for public
6 accountability of health care costs and for health care for
7 the indigent; and making an appropriation," further providing
8 for definitions; providing for marketing cost disclosure; and
9 imposing penalties.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 3 of the act of July 8, 1986 (P.L.408,
13 No.89), known as the Health Care Cost Containment Act, reenacted
14 and amended June 28, 1993 (P.L.146, No.34), is amended by adding
15 definitions to read:

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 * * *

21 "Pharmaceutical manufacturing company." Any of the

1 following:

2 (1) An entity which is engaged in the production,
3 preparation, propagation, compounding, conversion or
4 processing of prescription drugs:

5 (i) directly or indirectly by extraction from
6 substances of natural origin;

7 (ii) independently by means of chemical synthesis;
8 or

9 (iii) by a combination of extraction and chemical
10 synthesis.

11 (2) An entity engaged in the packaging, repackaging,
12 labeling, relabeling or distribution of prescription drugs.

13 The term does not include a wholesale drug distributor or
14 pharmacist licensed under the act of December 14, 1992
15 (P.L.1116, No.145), known as the Wholesale Prescription Drug
16 Distributors License Act.

17 "Pharmaceutical marketer." An individual who, while employed
18 by or under contract to represent a pharmaceutical manufacturing
19 company, engages in pharmaceutical detailing, promotional
20 activities or other marketing of prescription drugs, in this
21 Commonwealth to any physician, hospital, nursing home,
22 pharmacist, health benefit plan administrator or other person
23 authorized to prescribe, dispense or purchase prescription
24 drugs. The term does not include a wholesale drug distributor or
25 the distributor's representative who promotes or otherwise
26 markets the services of the wholesale drug distributor in
27 connection with a prescription drug.

28 * * *

29 Section 2. The act is amended by adding a section to read:
30 Section 11.1. Marketing cost disclosure.

1 (a) Disclosure required.--A pharmaceutical manufacturing
2 company or pharmaceutical marketer that employs, directs or
3 utilizes marketing representatives in this Commonwealth shall
4 report the costs of marketing prescription drugs in this
5 Commonwealth as provided in this section.

6 (b) Purposes.--The costs of marketing prescription drugs in
7 this Commonwealth shall be reported to the council so that it
8 can determine the increase in the cost of health care
9 attributable to the costs of marketing prescription drugs in
10 this Commonwealth.

11 (c) Manner of reporting.--A pharmaceutical manufacturing
12 company or pharmaceutical marketer required to report under this
13 section shall file by January 1 an annual report with the
14 council in a manner determined by the council. The report shall
15 cover the 12-month period ending the preceding June 30. The
16 report shall be accompanied by payment of a fee set by the
17 council and collected to accomplish the purpose of this section.

18 (d) Content of annual report.--The annual report required
19 under subsection (c) shall include all of the following
20 information as it pertains to marketing activities conducted
21 within this Commonwealth:

22 (1) All costs associated with marketing, advertising and
23 direct promotion of prescription drugs through radio,
24 television, magazines, newspapers, direct mail and telephone
25 communications.

26 (2) All costs associated with educational programs,
27 seminars, entertainment, trips, remuneration for promoting or
28 participating in informational sessions regarding
29 prescription drugs and promotional gifts in excess of \$10 in
30 value. Free samples of prescription drugs intended to be

1 distributed to patients are not required to be reported.

2 (e) Public information.--Except as protected from disclosure
3 by this act or any other act or regulation, the content of the
4 annual reports filed under this section shall be public
5 information and all information collected and held by the
6 council pursuant to this section shall be considered a public
7 record under the act of June 21, 1957 (P.L.390, No.212),
8 referred to as the Right-to-Know Law.

9 (f) Trade secret information.--The council and the Office of
10 Attorney General shall keep confidential all trade secret
11 information. The disclosure form prescribed by the board shall
12 permit the company to identify any information that is a trade
13 secret.

14 (g) Report to General Assembly.--The council shall provide
15 the Office of Attorney General complete access to the
16 information required to be disclosed under this section. By
17 March 1 of each year, the Attorney General shall report to the
18 General Assembly on the prescription drug marketing activities
19 and the cost of those activities.

20 (h) Penalties.--The Attorney General may bring an action in
21 the court of common pleas for injunctive relief, costs and
22 attorney fees, and to impose on a pharmaceutical manufacturing
23 company or pharmaceutical marketer that fails to disclose as
24 required by this section a civil penalty of no more than \$10,000
25 per violation. Each unlawful failure to disclose shall
26 constitute a separate violation.

27 Section 3. The initial report under section 11.1 of the act
28 shall be made by January 1, 2006.

29 Section 4. This act shall take effect in 60 days.