PRINTER'S NO. 1664

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1223 Session of 2007

INTRODUCED BY STACK, KASUNIC, COSTA, LOGAN, WASHINGTON, FONTANA, O'PAKE, EARLL, RHOADES, BOSCOLA AND WOZNIAK, DECEMBER 21, 2007

REFERRED TO PUBLIC HEALTH AND WELFARE, DECEMBER 21, 2007

AN ACT

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

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

Section 1. Section 3 of the act of July 8, 1986 (P.L.408, No.89), known as the Health Care Cost Containment Act, reenacted and amended July 17, 2003 (P.L.31, No.14), is amended by adding definitions to read:

Section 3. Definitions.

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

* * *

"Pharmaceutical manufacturing company." Any of the

following:

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

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

(ii) independently by means of chemical synthesis; or

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

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

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

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

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Section 2. The act is amended by adding a section to read:

Section 11.1. Marketing cost disclosure.

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

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

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

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

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

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

distributed to patients are not required to be reported.

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

(f) Trade secret information.--The council and the Office of Attorney General shall keep confidential all trade secret information obtained under this section. The disclosure form prescribed by the board shall permit a company to identify any information that is a trade secret.

(g) Report to General Assembly.--

(1) The council shall provide the Office of Attorney General complete access to the information required to be disclosed under this section.

(2) By March 1 of each year, the Attorney General shall report to the General Assembly on the prescription drug marketing activities and the cost of those activities.

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

Section 3. The initial report under section 11.1 of the act shall be made by January 1, 2008.

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