

House Bill 2376

Sponsored by Representative TOMEI (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires pharmaceutical manufacturer to annually report to Department of Justice gifts, fees, payments, subsidies or other economic benefits manufacturer provides to purchasers, providers or dispensers of manufacturer's prescription drugs in this state.

Authorizes imposition of civil penalty, not to exceed \$10,000 for each violation, for failure to report required information.

Directs department to report to Legislative Assembly and Governor.

Establishes Pharmaceutical Marketing Reporting Fund. Appropriates moneys in fund to department for administration of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to reporting of economic benefits provided by pharmaceutical manufacturers; appropriating
3 money; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) A pharmaceutical manufacturer that sells the manufacturer's products**
6 **in this state shall annually report to the Department of Justice any gift, fee, payment, sub-**
7 **sidy or other economic benefit that the manufacturer provides directly, or through a phar-**
8 **maceutical marketer acting on behalf of the manufacturer, to any purchaser, prescriber or**
9 **dispenser of the manufacturer's prescription drugs in this state.**

10 **(2) The report required under subsection (1) of this section must:**

11 **(a) Be made annually by February 15;**

12 **(b) Specify the value of gifts, fees, payments, subsidies or other economic benefits pro-**
13 **vided by the pharmaceutical manufacturer and the names of the recipients of the gifts, fees,**
14 **payments, subsidies or other economic benefits that are being reported during the calendar**
15 **year ending on December 31 preceding the reporting date;**

16 **(c) Include the name and address of the individual charged by the manufacturer with the**
17 **responsibility for ensuring compliance with the requirements of subsection (1) of this section;**
18 **and**

19 **(d) Be made in the manner established by the department by rule.**

20 **(3) The department shall keep confidential all information reported under subsection (1)**
21 **of this section that is a trade secret as that term is used in ORS 192.501.**

22 **(4) The department shall adopt rules necessary for the administration of this section.**

23 **(5) As used in this section:**

24 **(a) "Drug" has the meaning given that term in ORS 689.005.**

25 **(b) "Gift, fee, payment, subsidy or other economic benefit" does not include a drug sam-**
26 **ple provided by a pharmaceutical manufacturer, the manufacturer's agent or the manufac-**
27 **turer's pharmaceutical marketer to a purchaser, prescriber or dispenser of the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 manufacturer's prescription drugs for distribution, free of charge, to patients, customers or
 2 enrollees of the purchaser, prescriber or dispenser.

3 (c)(A) "Pharmaceutical manufacturer" means an entity engaged in:

4 (i) The production, preparation, propagation, compounding, conversion or processing of
 5 prescription drugs, directly or indirectly by extraction from substances of natural origin or
 6 independently by means of chemical synthesis, or by a combination of extraction and chem-
 7 ical synthesis; or

8 (ii) The packaging, repackaging, labeling or distribution of prescription drugs.

9 (B) "Pharmaceutical manufacturer" does not include a pharmacist licensed under ORS
 10 chapter 689.

11 (d) "Pharmaceutical marketer" means a person that, while employed by or under con-
 12 tract to represent a pharmaceutical manufacturer, engages in detailing, promotional or other
 13 prescription drug marketing activities.

14 (e) "Prescription drug" has the meaning given that term in ORS 689.005.

15 (f) "Purchaser, prescriber or dispenser" means any individual who is:

16 (A) Authorized or licensed under the laws of this state to prescribe drugs;

17 (B) Authorized or licensed under the laws of this state to dispense drugs; or

18 (C) Authorized or employed by a health benefit plan, as defined in ORS 743.730, to deter-
 19 mine the drugs to be included in the plan's drug formulary or to purchase drugs in bulk for
 20 dispensing to the enrollees in the health benefit plan.

21 **SECTION 2.** (1) The Department of Justice may impose a civil penalty of up to \$10,000 for
 22 each violation of section 1 of this 2009 Act. Each gift, fee, payment, subsidy or other eco-
 23 nomic benefit not reported as required by section 1 of this 2009 Act constitutes a separate
 24 violation of section 1 of this 2009 Act.

25 (2) Civil penalties under this section shall be imposed in the manner provided by ORS
 26 183.745.

27 **SECTION 3.** The Department of Justice shall, by April 1 of each year, submit to the
 28 Legislative Assembly in the manner provided in ORS 192.245 and to the Governor, a report
 29 of:

30 (1) Information obtained under section 1 of this 2009 Act, except for trade secrets kept
 31 confidential under section 1 (3) of this 2009 Act; and

32 (2) Penalties imposed under section 2 of this 2009 Act during the reporting year.

33 **SECTION 4.** The Pharmaceutical Marketing Reporting Fund is established, separate and
 34 distinct from the General Fund. All moneys received under section 2 of this 2009 Act shall
 35 be credited to the Pharmaceutical Marketing Reporting Fund and are continuously appro-
 36 priated to the Department of Justice for the purposes of administering sections 1 to 3 of this
 37 2009 Act.

38 **SECTION 5.** Sections 1 and 2 of this 2009 Act become operative on January 1, 2010.

39 **SECTION 6.** Section 3 of this 2009 Act becomes operative on January 1, 2011.

40 **SECTION 7.** The Department of Justice may take any action prior to the operative dates
 41 specified in sections 5 and 6 of this 2009 Act in order to carry out the duties, functions and
 42 powers of the department under sections 1 to 3 of this 2009 Act.

43 **SECTION 8.** This 2009 Act being necessary for the immediate preservation of the public
 44 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 45 on its passage.

