

Requested by HOUSE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2388**

1 In line 2 of the printed bill, after the first semicolon delete the rest of the  
2 line and insert “creating new provisions; and amending ORS 705.137 and  
3 735.532.”.

4 Delete lines 4 through 19 and insert:

5 **“SECTION 1. Section 2 of this 2017 Act is added to and made a part  
6 of ORS 735.530 to 735.552.**

7 **“SECTION 2. (1) In accordance with ORS chapter 183, the Depart-  
8 ment of Consumer and Business Services may deny an application for  
9 registration as a pharmacy benefit manager or an application for re-  
10 newal of a registration as a pharmacy benefit manager, and may sus-  
11 pend or revoke a registration as a pharmacy benefit manager, if the  
12 department finds that an applicant or registrant:**

13 **“(a) Falsified an application for registration or for the renewal of  
14 a registration or engaged in any dishonest act in relation to the ap-  
15 plication;**

16 **“(b) Engaged in dishonesty, fraud or gross negligence in the con-  
17 duct of business as a pharmacy benefit manager;**

18 **“(c) Engaged in conduct that resulted in a conviction of a felony  
19 under the laws of any state or of the United States, to the extent that  
20 such conduct may be considered under ORS 670.280;**

21 **“(d) Was convicted under the laws of any state or of the United**

1 States of any crime of which an essential element is dishonesty or  
2 fraud;

3 “(e) Had a certificate of authority or authority to conduct business  
4 as a pharmacy benefit manager denied, revoked or suspended in an-  
5 other state;

6 “(f) Failed to pay a civil penalty imposed by final order of the de-  
7 partment or to comply with the terms of suspension set by the de-  
8 partment;

9 “(g) Failed to meet the terms of a consent decree approved by a  
10 court of competent jurisdiction in this state, or a consent order made  
11 between the department and the pharmacy benefit manager;

12 “(h) Refused to be examined or to produce accounts, records or files  
13 for examination, including the refusal by any officer of the applicant  
14 or registrant to give information with respect to the affairs of the  
15 pharmacy benefit manager, or refused to perform any other legal ob-  
16 ligation with respect to an examination by the department; or

17 “(i) Violated any rule or order of the department or any provision  
18 of the Insurance Code.

19 “(2) The department may prescribe by rule a procedure by which a  
20 pharmacy or an entity acting on behalf of a pharmacy may file a  
21 complaint with the department alleging that a pharmacy benefit  
22 manager has engaged in conduct described in this section. The de-  
23 partment may restrict the right of a pharmacy or entity to file a  
24 complaint only to the extent necessary to prevent abuse of the com-  
25 plaint process.

26 “**SECTION 3.** ORS 735.532 is amended to read:

27 “735.532. (1) To conduct business in this state, a pharmacy benefit man-  
28 ager must register with the Department of Consumer and Business Services  
29 and annually renew the registration.

30 “(2) To register under this section, a pharmacy benefit manager must:

1       “(a) Submit an application to the department on a form prescribed by the  
2 department by rule.

3       “(b) Pay a registration fee[, *not to exceed \$50,*] **in an amount** adopted by  
4 the department by rule.

5       “(3) To renew a registration under this section, a pharmacy benefit man-  
6 ager must pay a renewal fee[, *not to exceed \$50,*] **in an amount** adopted by  
7 the department by rule.

8       “(4) The department shall deposit all moneys collected under this section  
9 into the Consumer and Business Services Fund created in ORS 705.145.

10       **“(5) Any fee adopted by the department under this section must be**  
11 **based on the department’s reasonable costs in administering ORS**  
12 **735.530 to 735.552.**

13       **“(6) The department may conduct an examination of a pharmacy**  
14 **benefit manager prior to approving an application or at any time after**  
15 **the application has been approved for the purpose of investigating**  
16 **conduct described in section 2 of this 2017 Act. Any accounts, records**  
17 **or files obtained by the department during the course of the exam-**  
18 **ination are confidential and may not be further disclosed.**

19       **“SECTION 4.** ORS 705.137 is amended to read:

20       “705.137. (1) Except as provided in subsection (3) of this section, a docu-  
21 ment, material or other information that the Department of Consumer and  
22 Business Services possesses or controls for the purpose of administering ORS  
23 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842,  
24 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726,  
25 the Bank Act and the Insurance Code **and section 2 of this 2017 Act** and  
26 that is described in statute as confidential or as not subject to disclosure is  
27 not subject to disclosure under ORS 192.410 to 192.505, is not subject to  
28 subpoena and is not subject to discovery or admissible in evidence in a pri-  
29 vate civil action. The Director of the Department of Consumer and Business  
30 Services may use a confidential document, material or other information in

1 administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095,  
2 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters  
3 59, 723, 725 and 726, the Bank Act and the Insurance Code and in furthering  
4 a regulatory or legal action the director brings as a part of the director's  
5 duties.

6 “(2) A document, material or other information to which subsection (1)  
7 of this section applies is subject to the public officer privilege described in  
8 ORS 40.270.

9 “(3) In order to assist in the performance of the director's duties, the di-  
10 rector may:

11 “(a) Authorize sharing a confidential document, material or other infor-  
12 mation that is subject to subsection (1) of this section as appropriate among  
13 the administrative divisions and staff offices of the department created under  
14 ORS 705.115 for the purpose of administering and enforcing the statutes  
15 identified in subsection (1) of this section, in order to enable the adminis-  
16 trative divisions and staff offices to carry out the functions and responsibil-  
17 ities of the administrative divisions and staff offices.

18 “(b) Share a document, material or other information, including a confi-  
19 dential document, material or other information that is subject to subsection  
20 (1) of this section or that is otherwise confidential under ORS 192.501 or  
21 192.502, with other state, federal, foreign and international regulatory and  
22 law enforcement agencies, with the Federal Reserve Board and with the  
23 National Association of Insurance Commissioners and affiliates or subsid-  
24 iaries of the National Association of Insurance Commissioners, if the recip-  
25 ient agrees to maintain the confidentiality of the document, material or other  
26 information.

27 “(c) Receive a document, material or other information, including an  
28 otherwise confidential document, material or other information, from state,  
29 federal, foreign and international regulatory and law enforcement agencies,  
30 from the Federal Reserve Board and from the National Association of In-

1 surance Commissioners and affiliates or subsidiaries of the National Associ-  
2 ation of Insurance Commissioners. As provided in this section, the director  
3 shall maintain the confidentiality of documents, materials or other informa-  
4 tion the director receives if the director receives notice or has an under-  
5 standing that the document, material or other information is confidential or  
6 privileged under the laws of the jurisdiction that is the source of the docu-  
7 ment, material or other information.

8 “(4) Disclosing a document, material or other information to the director  
9 under this section or sharing a document, material or other information as  
10 authorized in subsection (3) of this section does not waive an applicable  
11 privilege or claim of confidentiality in the document, material or other in-  
12 formation.

13 “(5) This section does not prohibit the director from disclosing to a da-  
14 tabase or other clearinghouse service maintained by the National Associ-  
15 ation of Insurance Commissioners or affiliates or subsidiaries of the National  
16 Association of Insurance Commissioners information about a final, adjudi-  
17 cated action, including a suspension or revocation of a certificate of au-  
18 thority or a license, if the information is otherwise open to public  
19 inspection.”.

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