

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

14       “705.137. (1) Except as provided in subsection (3) of this section, a docu-  
15 ment, material or other information that the Department of Consumer and  
16 Business Services possesses or controls for the purpose of administering ORS  
17 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842,  
18 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726,  
19 the Bank Act and the Insurance Code **and section 2 of this 2017 Act** and  
20 that is described in statute as confidential or as not subject to disclosure is  
21 not subject to disclosure under ORS 192.410 to 192.505, is not subject to  
22 subpoena and is not subject to discovery or admissible in evidence in a pri-  
23 vate civil action. The Director of the Department of Consumer and Business  
24 Services may use a confidential document, material or other information in  
25 administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095,  
26 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters  
27 59, 723, 725 and 726, the Bank Act and the Insurance Code and in furthering  
28 a regulatory or legal action the director brings as a part of the director’s  
29 duties.

30       “(2) A document, material or other information to which subsection (1)

1 of this section applies is subject to the public officer privilege described in  
2 ORS 40.270.

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

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

12 “(b) Share a document, material or other information, including a confi-  
13 dential document, material or other information that is subject to subsection  
14 (1) of this section or that is otherwise confidential under ORS 192.501 or  
15 192.502, with other state, federal, foreign and international regulatory and  
16 law enforcement agencies, with the Federal Reserve Board and with the  
17 National Association of Insurance Commissioners and affiliates or subsid-  
18 iaries of the National Association of Insurance Commissioners, if the recip-  
19 ient agrees to maintain the confidentiality of the document, material or other  
20 information.

21 “(c) Receive a document, material or other information, including an  
22 otherwise confidential document, material or other information, from state,  
23 federal, foreign and international regulatory and law enforcement agencies,  
24 from the Federal Reserve Board and from the National Association of In-  
25 surance Commissioners and affiliates or subsidiaries of the National Associ-  
26 ation of Insurance Commissioners. As provided in this section, the director  
27 shall maintain the confidentiality of documents, materials or other informa-  
28 tion the director receives if the director receives notice or has an under-  
29 standing that the document, material or other information is confidential or  
30 privileged under the laws of the jurisdiction that is the source of the docu-

1 ment, material or other information.

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

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

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