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**SUBSTITUTE SENATE BILL 5149**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, Thibaudeau, Keiser, Kline and Spanel)

READ FIRST TIME 03/02/05.

1       AN ACT Relating to prescription drug marketing and disclosure;  
2 adding a new chapter to Title 70 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       NEW SECTION. **Sec. 1.** The purpose of this act is to require  
5 disclosure and reporting of gifts, grants, and gratuities made by  
6 pharmaceutical manufacturers, directly or indirectly, to any person or  
7 entity authorized to prescribe, dispense, or purchase prescription  
8 drugs in Washington.

9       NEW SECTION. **Sec. 2.** (1) The definitions in this subsection apply  
10 throughout this section unless the context clearly requires otherwise.

11       (a) "Group purchasing organization" means any group of two or more  
12 hospitals, nursing homes, or other health care organizations that  
13 collectively purchase either directly from a manufacturer or by  
14 accessing contracts through another group.

15       (b) "Health benefit plan administrator" means any person or entity  
16 who manages or administers a private, self-insured health benefit plan  
17 or public employee health benefit plan and any person who manages or

1 administers health benefit plans for another person, including health  
2 insuring corporations and sickness and accident insurers under contract  
3 to provide managerial and administrative services.

4 (c) "Pharmaceutical detailing, promotional, or marketing  
5 activities" means promotional or educational activities by  
6 pharmaceutical marketers directed at physicians, their staff, or other  
7 health care professionals who prescribe, dispense, or administer  
8 prescription drugs.

9 (d) "Pharmaceutical manufacturing company" means an entity that is  
10 engaged in the production, preparation, propagation, compounding,  
11 conversion, or processing of prescription drugs, either directly or  
12 indirectly by extraction from substances of natural origin, or  
13 independently by means of chemical synthesis, or by a combination of  
14 extraction and chemical synthesis, or any entity engaged in the  
15 packaging, repackaging, labeling, relabeling, or distribution of  
16 prescription drugs. This term does not include pharmacists or  
17 pharmacies licensed under this chapter or pharmacy operations of any  
18 integrated delivery system undertaken for the benefit of patients  
19 obtaining care through that system.

20 (e) "Pharmaceutical marketer" means a person, agent, or  
21 representative who, while employed by or under contract to represent a  
22 pharmaceutical manufacturing company, engages in pharmaceutical  
23 detailing, promotional activities, or other marketing of prescription  
24 drugs in this state to any entity or person authorized to prescribe,  
25 dispense, or purchase prescription drugs in this state.

26 (f) "Pharmacy benefit manager" means a person or business entity  
27 that administers or otherwise assists with prescription drug benefit  
28 services including formulary management, rebates, discounted pharmacy  
29 network, mail service pharmacies, and electronic claims processing.  
30 Such services may be provided on behalf of a health insurer, an  
31 employer-sponsored health benefit plan, or an agency of the state.

32 (2) On or before January 1st of each year, every pharmaceutical  
33 manufacturing company must disclose to the office of the attorney  
34 general the value, nature, and purpose of any gift, fee, or payment  
35 made to any person or entity licensed under Title 18 RCW who is  
36 authorized to prescribe or dispense prescription drugs, hospital  
37 licensed under chapter 70.41 RCW, health benefit plan administrator,  
38 group purchasing organization or pharmacy benefit manager, or other

1 entity authorized to purchase prescription drugs in this state. For  
2 the purpose of this section, disclosure includes any subsidy or other  
3 economic benefit provided in connection with detailing, promotional, or  
4 other marketing activities by the company directly or through its  
5 pharmaceutical marketers. Disclosure to the office of the attorney  
6 general must include both direct payments made by the company, as well  
7 as indirect payments made through any other entity at the direction of  
8 or with the implied or express knowledge of the company. Disclosure  
9 must include the names of all persons or entities receiving the gift,  
10 fee, or payment and be made in electronic format in a manner prescribed  
11 by the office of the attorney general. Initial disclosure must be made  
12 on or before January 1, 2007, for the twelve-month period ending June  
13 30, 2006. The office of the attorney general must report annually on  
14 the disclosures made under this section to the legislature and the  
15 governor on or before March 1st.

16 (3) The office of the attorney general shall keep confidential all  
17 trade secrets, as defined in RCW 19.108.010. The disclosure form must  
18 permit the company to identify any information that is a trade secret.

19 (4) Each company subject to the provisions of this section must  
20 also disclose to the office of the attorney general, on or before  
21 October 1, 2005, and annually thereafter, the name and address of the  
22 individual responsible for the company's compliance with the provisions  
23 of this section.

24 (5) The following are exempt from disclosure:

25 (a) Free samples of prescription drugs intended to be distributed  
26 to patients;

27 (b) Any gift, fee, payment, subsidy, or other economic benefit the  
28 value of which in the aggregate to any entity including all of its  
29 employees is less than one hundred dollars; and

30 (c) Any gift, fee, payment, subsidy, or other economic benefit  
31 given in support of an educational activity that is certified for  
32 professional continuing education credit or professional continuing  
33 pharmacy education credit.

34 (6) The attorney general may bring an action in Thurston county  
35 superior court for injunctive relief, costs, and attorneys' fees, and  
36 to impose on a pharmaceutical manufacturing company that fails to  
37 disclose as required by subsection (2) of this section a civil penalty

1 of not more than ten thousand dollars per violation. Each unlawful  
2 failure to disclose constitutes a separate violation.

3 (7) The attorney general may adopt rules to implement the  
4 provisions of this section.

5 NEW SECTION. **Sec. 3.** This act may be known and cited as the  
6 prescription drug marketing and disclosure act.

7 NEW SECTION. **Sec. 4.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute  
12 a new chapter in Title 70 RCW.

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