

HOUSE BILL NO. 457

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GUTTENBERG

Introduced: 2/13/06

Referred: Labor and Commerce, Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to prescription drug marketing."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **FINDINGS AND INTENT.** (a) The legislature finds that

6 (1) prescription drug spending is the fastest growing component of health care
7 spending in the United States;

8 (2) the marketing of prescription drugs to doctors by manufacturers is
9 affecting the way that doctors prescribe prescription drugs with the result that doctors too
10 often prescribe the most expensive prescription drugs when less expensive prescription drugs
11 are as effective or safer; and

12 (3) gifts from the marketers of prescription drugs can influence the decisions
13 of doctors regarding the prescription drugs doctors prescribe.

14 (b) The legislature is enacting this law to lower prescription drug costs for
15 individuals, businesses, and the state, and to protect the health of residents by deterring the

1 practice of unethical gift-giving by prescription drug manufacturers.

2 * **Sec. 2.** AS 17 is amended by adding a new chapter to read:

3 **Chapter 50. Ethical Prescription Drug Marketing.**

4 **Sec. 17.50.010. Disclosure of marketing practices.** On or before February 1
5 of each year, a prescription drug marketer shall provide a written report to the
6 department that describes the value, nature, and purpose of each economic benefit that
7 the prescription drug marketer provided during the preceding calendar year to a health
8 care provider in this state in connection with the prescription drug marketing activities
9 of the prescription drug marketer, whether the activities are done directly by the
10 prescription drug marketer itself or through a pharmaceutical marketer. The
11 prescription drug marketer shall make the report on a form and in a manner
12 established by the department.

13 **Sec. 17.50.020. Report of responsible individual.** On or before January 1 of
14 each year, a prescription drug marketer who markets prescription drugs in the state,
15 including marketing through a pharmaceutical marketer, shall submit to the
16 department a written report that provides the name and address of the individual in the
17 prescription drug marketer's business who is responsible for the prescription drug
18 marketer's compliance with this chapter. The prescription drug marketer shall make
19 the report on a form and in a manner established by the department.

20 **Sec. 17.50.030. Report by department.** (a) On or before March 1 of each
21 calendar year, the department shall provide a written report to the governor and to the
22 legislature on the information received by the department under AS 17.50.010.

23 (b) The report under (a) of this section must contain the name of each
24 prescription drug marketer who provided a report for the preceding calendar year to
25 the department under AS 17.50.010 and a summary of the value, nature, and purpose
26 of the economic benefits provided by the prescription drug marketer. The report may
27 not contain the names of the health care providers to whom the prescription drug
28 marketer provided the economic benefits.

29 **Sec. 17.50.040. Exempt information.** A prescription drug marketer is not
30 required to report the following economic benefits under AS 17.50.010:

31 (1) a gift, fee, payment, subsidy, or other economic benefit if the total

1 amount of the economic benefits provided in a month under this paragraph to one
2 health care provider is less than \$25;

3 (2) a free sample of a prescription drug to be distributed to a patient;

4 (3) reasonable compensation and reimbursement of expenses in
5 connection with a bona fide clinical trial conducted in connection with a research
6 study designed to answer specific questions about a vaccine, a new therapy, or a new
7 way of using a known treatment; or

8 (4) a scholarship or other support for a medical student, resident, or
9 fellow to attend a bona fide educational, scientific, or policy-making conference of an
10 established professional association if the recipient of the scholarship or other support
11 is selected by the association.

12 **Sec. 17.50.050. Enforcement.** The department shall enforce this chapter. The
13 department shall adopt regulations that are necessary to implement and administer
14 compliance with this chapter, including regulations defining a bona fide clinical trial
15 under AS 17.50.040(3) and a bona fide conference under AS 17.50.040(4).

16 **Sec. 17.50.060. Remedies.** (a) If a prescription drug marketer fails to provide a
17 report under AS 17.50.010

18 (1) after February 1 but provides a report on or before March 1, the
19 prescription drug marketer is liable for a civil penalty of \$500;

20 (2) after March 1, the prescription drug marketer is liable for a civil
21 penalty of up to \$10,000.

22 (b) If a prescription drug marketer fails to disclose an economic benefit in a
23 report under AS 17.50.010, the prescription drug marketer is liable for a civil penalty
24 of up to \$10,000. Each economic benefit that the prescription drug marketer fails to
25 disclose constitutes a separate failure for which the prescription drug marketer is liable
26 under this subsection.

27 (c) The department may bring an action in superior court for injunctive relief
28 and for a civil penalty under (a) or (b) of this section.

29 **Sec. 17.50.090. Definitions.** In this chapter,

30 (1) "department" means the Department of Health and Social Services;

31 (2) "economic benefit" means a gift, a fee, a payment, a subsidy, or

1 another economic benefit;

2 (3) "health care provider" means a physician, a hospital, a nursing
3 home, a pharmacist, a health benefit plan administrator, or another person in the state
4 who is authorized to prescribe or dispense prescription drugs;

5 (4) "pharmaceutical marketer" means a person who, while employed
6 by or under contract to represent a prescription drug marketer, engages in the
7 marketing of prescription drugs in this state to a health care provider;

8 (5) "prescription drug marketer" means a manufacturer or a labeler
9 who sells prescription drugs in the state; in this paragraph,

10 (A) "labeler" means a person who

11 (i) receives prescription drugs from a manufacturer or
12 wholesaler and repackages the drugs for later retail sale; and

13 (ii) has a labeler code issued by the United States Food
14 and Drug Administration under 21 C.F.R. 207.20;

15 (B) "manufacturer" means a manufacturer under 42 U.S.C.
16 1396r-8 and includes a subsidiary or an affiliate of a manufacturer.

17 **Sec. 17.50.095. Short title.** This chapter may be cited as the Prescription Drug
18 Ethical Marketing Act.