

SENATE NO. 1239

AN ACT REQUIRING LICENSURE OF HEALTH CARE REPRESENTATIVES AND GIFT BAN

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 112 of the general laws, as appearing in the 2004 Official Edition, is
2 hereby amended by inserting at the end the following new section:-
3 “Section 227. The department of public health, in consultation with the board of registration of
4 pharmacy, shall promulgate regulations requiring the licensing of all pharmaceutical
5 representatives. As a prerequisite to such licensing, pharmaceutical representatives shall
6 complete such training as may be deemed appropriate by the department. As a prerequisite to
7 the renewal of such license, pharmaceutical representatives shall complete continuing education
8 as may be deemed appropriate by the department. The fee for such license shall be \$500 per
9 year. Revenue generated from this fee shall be divided in equal shares, 50 per cent to the office
10 of attorney general, line item 0810-0000, for the investigation and prosecution of Medicaid
11 fraud and other fraudulent drug pricing schemes disadvantaging the commonwealth or its
12 citizens and 50 per cent to the board of registration in pharmacy, line item 4510-0722, to assist
13 the board in implementing patient safety and medical error reduction programs.”

14 Section 1 of chapter 268B of the general laws, as appearing in the 2004 Official Edition, is
15 hereby amended by inserting in paragraph “(g)”, line 39, after the word “entertainment”, the
16 following words:- “meals, travel”; and by inserting after paragraph “(m)” the following new
17 paragraphs:-

18 “(n) “pharmaceutical manufacturer agent”, a pharmaceutical marketer or any other person who
19 for compensation or reward does any act to promote, oppose or influence the prescribing of a
20 particular prescription drug or medical device or category of prescription drugs or medical
21 devices. The term shall not include a licensed pharmacist, licensed physician or any other
22 licensed healthcare professional with authority to prescribe prescription drugs who is acting
23 within the ordinary scope of the practice for which he is licensed;

24 “(o) “pharmaceutical marketer”, a person who, while employed by or under contract to
25 represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing,
26 promotional activities or other marketing of prescription drugs in this state to any physician,
27 hospital, nursing home, pharmacist, health benefit plan administrator or any other person
28 authorized to prescribe, dispense or purchase prescription drugs. The term does not include a
29 wholesale drug distributor licensed under section 37A of chapter 112, a representative of such a
30 distributor who promotes or otherwise markets the services of the wholesale drug distributor in
31 connection with a prescription drug, or a retail pharmacist registered under section 37 of chapter
32 112 if such person is not engaging in such practices under contract with a manufacturing
33 company;”.

34 Section 1 of said chapter 268B is hereby further amended by deleting “(o)” and inserting in
35 place thereof “(p)”; and by deleting “(p)” and inserting in place thereof “(q)”; and by deleting

36 “(q)” and inserting in place thereof “(r)” and by deleting “(r)” and inserting in place thereof
37 “(s)” and by deleting “(s)” and inserting in place thereof “(t)”.

38 Said chapter 268B is hereby amended by inserting after the words “Section 6” the following
39 letter “(a)” and by inserting at the end of section 6, after line 6, the following paragraph:-

40 “(b) No pharmaceutical manufacturer agent shall knowingly and willfully offer or give to a
41 public official, and no public official shall knowingly or willfully solicit or accept from any
42 pharmaceutical manufacturer agent, gifts of any value. A person who violates this section shall
43 be punished by a fine of not more than \$5,000 or by imprisonment for not more than 2 years, or
44 both.”

45 The general laws are hereby amended by adding after chapter 268B the following new chapter:-

46 Chapter 268C. Physician and Pharmaceutical Manufacturer Conduct

47 Section 1. As used in this chapter, the following words shall have the following meanings:-

48 "Gift", a payment, entertainment, meals, travel, honorarium, subscription, advance,
49 services or anything of value, unless consideration of equal or greater value is received. "Gift"
50 shall not include anything of value received by inheritance, a gift received from a member of the
51 physician's immediate family or from a relative within the third degree of consanguinity of the
52 physician or of the physician's spouse or from the spouse of any such relative, or prescription
53 drugs provided to a physician solely and exclusively for use by the physician's patients.

54 "Immediate family", a spouse and any dependent children residing in the reporting
55 person's household.

56 “Medical device”, an instrument, apparatus, implement, machine, contrivance, implant,
57 in vitro reagent, or other similar or related article, including any component, part, or accessory,
58 which is:

59 (1) recognized in the official National Formulary, or the United States Pharmacopeia, or
60 any supplement to them,

61 (2) intended for use in the diagnosis of disease or other conditions, or in the cure,
62 mitigation, treatment, or prevention of disease, in man or other animals, or

63 (3) intended to affect the structure or any function of the body of man or other animals,
64 and which does not achieve its primary intended purposes through chemical action within or on
65 the body of man or other animals and which is not dependent upon being metabolized for the
66 achievement of its primary intended purposes.

67 "Person", a business, individual, corporation, union, association, firm, partnership,
68 committee, or other organization or group of persons.

69 "Pharmaceutical marketer", a person who, while employed by or under contract to
70 represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing,
71 promotional activities, or other marketing of prescription drugs in this state to any physician,
72 hospital, nursing home, pharmacist, health benefit plan administrator, or any other person
73 authorized to prescribe, dispense, or purchase prescription drugs. The term does not include a
74 wholesale drug distributor licensed under section 36A of chapter 112, a representative of such a
75 distributor who promotes or otherwise markets the services of the wholesale drug distributor in
76 connection with a prescription drug, or a retail pharmacist registered under section 37 of chapter
77 112 if such person is not engaging in such practices under contract with a manufacturing
78 company.

79 "Pharmaceutical manufacturing company", any entity which is engaged in the
80 production, preparation, propagation, compounding, conversion, or processing of prescription
81 drugs, either directly or indirectly by extraction from substances of natural origin, or

82 independently by means of chemical synthesis, or by a combination of extraction and chemical
83 synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or
84 distribution of prescription drugs. The term does not include a wholesale drug distributor
85 licensed under section 36A of chapter 112 or a retail pharmacist registered under section 37 of
86 chapter 112.

87 “Pharmaceutical manufacturer agent”, a pharmaceutical marketer or any other person
88 who for compensation or reward does any act to promote, oppose or influence the prescribing of
89 a particular prescription drug or medical device or category of prescription drugs or medical
90 devices. The term shall not include a licensed pharmacist, licensed physician or any other
91 licensed health care professional with authority to prescribe prescription drugs who is acting
92 within the ordinary scope of the practice for which he is licensed.

93 “Physician”, a person licensed to practice medicine by the board of medicine pursuant to
94 section 2 of chapter 112 who prescribes prescription drugs for any person, or the physician’s
95 employees or agents.

96 “Prescription drugs”, any and all drugs upon which the manufacturer or distributor has
97 placed or must, in compliance with federal law and regulations, place the following or a
98 comparable warning: “Caution federal law prohibits dispensing without prescription.”

99 Section 2. No pharmaceutical manufacturer agent shall knowingly and willfully offer or give to
100 a physician or a member of a physician’s immediate family or a physician’s employee or agent
101 or a health care facility or employee or agent of a health care facility, and no physician or a
102 member of a physician’s immediate family or a physician’s employee or agent or health care
103 facility or employee or agent of a health care facility shall knowingly and willfully solicit or
104 accept from any pharmaceutical manufacturer agent, gifts of any value.

105 Section 3. A person who violates this section shall be punished by a fine of not more than
106 \$5,000 or by imprisonment for not more than 2 years, or both.”