Session of 2006

HOUSE BILL No. 2895

By Representative Swenson

2-13

AN ACT concerning prescription drugs, creating the prescription drug ethical marketing act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This Act shall be known and may be cited as the prescription drug ethical marketing act.

Sec. 2. (a) The legislature finds that:

(1) Prescription drugs are the fastest growing component of health care spending in the United States;

(2) drug manufacturers' marketing to doctors, or detailing, causes doctors to prescribe the most expensive medicines, even when less expensive drugs are as effective or safer; and

(3) gifts from prescription drug detailers to doctors play a major role in persuading doctors to change which drugs they prescribe.

(b) This law is enacted to lower prescription drug costs for individuals, businesses and the state, and to protect the health of residents, by deterring the practice of unethical gift-giving by drug manufacturers.

Sec. 3. (a) As used in this act:

(1) "Pharmaceutical marketer" means a person who, while employed by or under contract to represent a manufacturer or labeler, engages in pharmaceutical detailing, promotional activities or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator or any other person authorized to prescribe or dispense prescription drugs;

(2) "secretary" means the secretary of the department of health and environment, or the secretary's designee;

(3) "manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. Section 1396r-8 (k)(5), including a subsidiary or affiliate of a manufacturer; and

(4) "labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler to repackage for retail sale and that has a labeler code from the food and drug administration under 21 C.F.R. Section 207.20.

(b) (1) On or before January 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall disclose to the sec-

retary the name and address of the individual responsible for the company's compliance with the provisions of this section.

(2) On or before February 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall file a marketing disclosure report with the secretary listing the value, nature and purpose of any gift, fee, payment, subsidy or other economic benefit provided in connection with detailing, promotion or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator or any other person in Kansas authorized to prescribe or dispense prescription drugs. Each gift recipient shall be clearly identified by full name and address. The marketing disclosure report shall cover the prior year and be submitted on paper and in a standardized electronic database format prescribed by the secretary.

(3) On or before February 15 of each year, the secretary shall make the marketing disclosure reports available to the public on paper and through the internet.

(4) The following shall be exempt from disclosure:

(A) Any gift, fee, payment, subsidy or other economic benefit worth less than $25;

(B) free samples of prescription drugs to be distributed to patients;

(C) the payment of reasonable compensation and reimbursement of expenses in connection with a bona fide clinical trial conducted in connection with a research study designed to answer specific questions about vaccines, new therapies or new uses of known treatments; and

(D) scholarship or other support for medical students, residents and fellows to attend a bona fide educational, scientific or policy-making conference of an established professional association, if the recipient of the scholarship or other support is selected by the association.

(c) This section shall be enforced by the secretary, who shall promulgate such regulations as needed to implement and administer compliance, including regulations describing bona fide clinical trials in subsection (b)(4)(C) and bona fide conferences in subsection (b)(4)(D).

If a manufacturer or labeler violates this section, the secretary may bring an action in court for injunctive relief, costs, attorneys' fees and a civil penalty of up to $10,000 per violation. Each unlawful failure to disclose shall constitute a separate violation.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.