

REFERENCE TITLE: prescription marketing costs; full disclosure

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1250**

Introduced by  
Senator Burton Cahill

AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; RELATING  
TO PRESCRIPTION MEDICATION MARKETING COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, Arizona Revised Statutes, is amended by adding  
3 chapter 11, to read:

4 CHAPTER 11

5 PRESCRIPTION MEDICATION MARKETING COSTS

6 ARTICLE 1. GENERAL PROVISIONS

7 36-1301. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ADMINISTRATION" MEANS THE ARIZONA HEALTH CARE COST CONTAINMENT  
10 SYSTEM ADMINISTRATION.

11 2. "DIRECTOR" MEANS THE DIRECTOR OF THE ARIZONA HEALTH CARE COST  
12 CONTAINMENT SYSTEM ADMINISTRATION.

13 3. "LABELER" MEANS AN ENTITY OR PERSON THAT RECEIVES PRESCRIPTION  
14 DRUGS FROM A MANUFACTURER OR WHOLESALER AND REPACKAGES THOSE DRUGS FOR LATER  
15 RETAIL SALE AND THAT HAS A LABELER CODE FROM THE UNITED STATES FOOD AND DRUG  
16 ADMINISTRATION UNDER 21 CODE OF FEDERAL REGULATIONS SECTION 207.20.

17 4. "MANUFACTURER" MEANS A MANUFACTURER OF PRESCRIPTION DRUGS AND  
18 INCLUDES A SUBSIDIARY OR AFFILIATE OF A MANUFACTURER.

19 36-1302. Marketing costs; reporting requirements; fee; civil  
20 penalty

21 A. BEGINNING FEBRUARY 1, 2009, EACH MANUFACTURER OR LABELER OF  
22 PRESCRIPTION DRUGS DISPENSED IN THIS STATE THAT EMPLOYS, DIRECTS OR USES  
23 MARKETING REPRESENTATIVES IN THIS STATE MUST SUBMIT AN ANNUAL REPORT OF  
24 MARKETING COSTS FOR PRESCRIPTION DRUGS IN THIS STATE TO THE ADMINISTRATION IN  
25 THE FORM AND MANNER PRESCRIBED BY THE DIRECTOR. THE REPORT MUST BE  
26 ACCOMPANIED BY A FEE AS PRESCRIBED BY THE ADMINISTRATION BY RULE.

27 B. THE ANNUAL REPORT MUST INCLUDE THE FOLLOWING INFORMATION FOR THE  
28 PRECEDING CALENDAR YEAR, BEGINNING WITH CALENDAR YEAR 2008, AS IT PERTAINS TO  
29 MARKETING ACTIVITIES CONDUCTED IN THIS STATE, AND MUST BE IN A FORM THAT  
30 PROVIDES THE VALUE, NATURE, PURPOSE AND RECIPIENT OF THE EXPENSE:

31 1. ALL EXPENSES ASSOCIATED WITH ADVERTISING, MARKETING AND DIRECT  
32 PROMOTION OF PRESCRIPTION DRUGS THROUGH RADIO, TELEVISION, MAGAZINES,  
33 NEWSPAPERS, DIRECT MAIL AND TELEPHONE COMMUNICATIONS AS THEY PERTAIN TO  
34 RESIDENTS OF THIS STATE, EXCEPT FOR EXPENSES ASSOCIATED WITH ADVERTISING  
35 PURCHASED FOR A REGIONAL OR NATIONAL MARKET THAT INCLUDES ADVERTISING IN THIS  
36 STATE.

37 2. WITH REGARD TO ALL PERSONS AND ENTITIES LICENSED TO PROVIDE HEALTH  
38 CARE IN THIS STATE, INCLUDING HEALTH CARE PROFESSIONALS AND PERSONS EMPLOYED  
39 BY THEM, INSURANCE CARRIERS, HEALTH PLANS AND BENEFITS MANAGERS, PHARMACIES  
40 AND HEALTH CARE INSTITUTIONS LICENSED PURSUANT TO THIS TITLE:

41 (a) ALL EXPENSES ASSOCIATED WITH EDUCATIONAL OR INFORMATIONAL  
42 PROGRAMS, MATERIALS AND SEMINARS, AND REMUNERATION FOR PROMOTING OR  
43 PARTICIPATING IN EDUCATIONAL OR INFORMATIONAL SESSIONS, REGARDLESS OF WHETHER  
44 THE MANUFACTURER OR LABELER PROVIDES THE EDUCATIONAL OR INFORMATIONAL  
45 SESSIONS OR MATERIALS.

1 (b) ALL EXPENSES ASSOCIATED WITH FOOD, ENTERTAINMENT AND GIFTS THAT  
2 ARE VALUED AT MORE THAN TWENTY-FIVE DOLLARS AND ANYTHING PROVIDED TO A HEALTH  
3 CARE PROFESSIONAL FOR LESS THAN MARKET VALUE.

4 (c) ALL EXPENSES ASSOCIATED WITH TRIPS AND TRAVEL.

5 (d) ALL EXPENSES ASSOCIATED WITH PRODUCT SAMPLES, EXCEPT FOR SAMPLES  
6 THAT WILL BE DISTRIBUTED FREE OF CHARGE TO PATIENTS.

7 3. THE AGGREGATE COST OF ALL EMPLOYEES OR CONTRACTORS OF THE  
8 MANUFACTURER OR LABELER WHO DIRECTLY OR INDIRECTLY ENGAGE IN THE ADVERTISING  
9 OR PROMOTIONAL ACTIVITIES LISTED IN PARAGRAPH 2 OF THIS SUBSECTION, INCLUDING  
10 ALL FORMS OF PAYMENT TO THOSE EMPLOYEES. THE COST REPORTED UNDER THIS  
11 PARAGRAPH MUST REFLECT ONLY THAT PORTION OF PAYMENT TO EMPLOYEES OR  
12 CONTRACTORS THAT PERTAINS TO ACTIVITIES IN THIS STATE OR TO RECIPIENTS OF THE  
13 ADVERTISING OR PROMOTIONAL ACTIVITIES WHO ARE RESIDENTS OF OR ARE EMPLOYED IN  
14 THIS STATE.

15 C. THE FOLLOWING MARKETING EXPENSES ARE NOT SUBJECT TO THE  
16 REQUIREMENTS OF THIS SECTION:

17 1. EXPENSES OF LESS THAN TWENTY-FIVE DOLLARS.

18 2. REASONABLE COMPENSATION AND REIMBURSEMENT FOR EXPENSES IN  
19 CONNECTION WITH A BONA FIDE CLINICAL TRIAL OF A NEW VACCINE, THERAPY OR  
20 TREATMENT.

21 3. SCHOLARSHIPS AND REIMBURSEMENT OF EXPENSES FOR ATTENDING A  
22 SIGNIFICANT EDUCATIONAL, SCIENTIFIC OR POLICY MAKING CONFERENCE OR SEMINAR OF  
23 A NATIONAL, REGIONAL OR SPECIALTY MEDICAL OR OTHER PROFESSIONAL ASSOCIATION  
24 IF THE RECIPIENT OF THE SCHOLARSHIP IS CHOSEN BY THE ASSOCIATION SPONSORING  
25 THE CONFERENCE OR SEMINAR.

26 D. BEGINNING OCTOBER 1, 2009, THE ADMINISTRATION SHALL SUBMIT AN  
27 ANNUAL REPORT THAT PROVIDES INFORMATION IN AN AGGREGATE FORM ON PRESCRIPTION  
28 DRUG MARKETING EXPENSES TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF  
29 REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND THE ATTORNEY GENERAL. THE  
30 ADMINISTRATION SHALL PROVIDE A COPY OF EACH REPORT TO THE SECRETARY OF STATE  
31 AND THE DIRECTOR OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS.

32 E. BEGINNING OCTOBER 1, 2010, THE ADMINISTRATION SHALL SUBMIT A REPORT  
33 EVERY TWO YEARS TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
34 THE PRESIDENT OF THE SENATE AND THE ATTORNEY GENERAL THAT CONTAINS AN  
35 ANALYSIS OF THE DATA SUBMITTED TO THE ADMINISTRATION, INCLUDING THE SCOPE OF  
36 PRESCRIPTION DRUG MARKETING ACTIVITIES AND EXPENSES AND THEIR EFFECT ON THE  
37 COST, UTILIZATION AND DELIVERY OF HEALTH CARE SERVICES. THE REPORT SHALL  
38 INCLUDE ANY RECOMMENDATIONS WITH REGARD TO MARKETING ACTIVITIES OF  
39 PRESCRIPTION DRUG MANUFACTURERS AND LABELERS. THE ADMINISTRATION SHALL  
40 PROVIDE A COPY OF EACH REPORT TO THE SECRETARY OF STATE AND THE DIRECTOR OF  
41 THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS.

42 F. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, INFORMATION  
43 SUBMITTED TO THE ADMINISTRATION PURSUANT TO THIS SECTION IS CONFIDENTIAL AND  
44 IS NOT SUBJECT TO PUBLIC INSPECTION. THE ADMINISTRATION MAY DISCLOSE  
45 INFORMATION TO A CONTRACTOR THAT PROVIDES SERVICES TO THE ADMINISTRATION

1 PURSUANT TO THIS SECTION, BUT THAT DISCLOSURE DOES NOT CHANGE THE  
2 CONFIDENTIAL STATUS OF THE INFORMATION. DATA COMPILED IN AGGREGATE FORM BY  
3 THE ADMINISTRATION FOR THE PURPOSES OF REPORTING REQUIRED BY THIS SECTION IS  
4 OPEN TO PUBLIC INSPECTION IF IT DOES NOT REVEAL TRADE INFORMATION THAT IS  
5 PROTECTED BY STATE OR FEDERAL LAW.

6 G. A MANUFACTURER OR LABELER THAT FAILS TO PROVIDE A REPORT AS  
7 REQUIRED PURSUANT TO THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF ONE  
8 THOUSAND DOLLARS FOR EACH VIOLATION IN ADDITION TO COSTS INCURRED TO ENFORCE  
9 THIS SECTION. THIS SECTION MAY BE ENFORCED IN A CIVIL ACTION BROUGHT BY THE  
10 ATTORNEY GENERAL.

11 H. THE ADMINISTRATION SHALL ADOPT RULES TO IMPLEMENT THIS SECTION.