

SENATE BILL 1040

J3

0lr3488
CF HB 1180

By: **Senator Lenett**

Introduced and read first time: February 25, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Prescription Confidentiality Act**

3 FOR the purpose of prohibiting certain patient–identifiable or prescriber–identifiable
4 information from being licensed, transferred, used, or sold for any commercial
5 purpose by certain entities; making certain provisions relating to prescription
6 information inapplicable to certain actions under certain circumstances;
7 prohibiting certain provisions relating to prescription information from being
8 construed to prohibit certain actions; defining certain terms; and generally
9 relating to the confidentiality of certain information derived from or relating to
10 a prescription drug order.

11 BY adding to

12 Article – Health – General
13 Section 21–220.1
14 Annotated Code of Maryland
15 (2009 Replacement Volume)

16 BY repealing and reenacting, without amendments,

17 Article – Health – General
18 Section 21–1215
19 Annotated Code of Maryland
20 (2009 Replacement Volume)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Health – General**

24 **21–220.1.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
2 **MEANINGS INDICATED.**

3 **(2) “CARRIER” MEANS:**

4 **(I) AN INSURER;**

5 **(II) A NONPROFIT HEALTH SERVICE PLAN;**

6 **(III) A HEALTH MAINTENANCE ORGANIZATION;**

7 **(IV) A DENTAL PLAN ORGANIZATION;**

8 **(V) A THIRD-PARTY ADMINISTRATOR; OR**

9 **(VI) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT**
10 **PLANS SUBJECT TO REGULATION BY THE STATE.**

11 **(3) “COMMERCIAL PURPOSE” MEANS:**

12 **(I) ADVERTISING;**

13 **(II) MARKETING;**

14 **(III) PROMOTING;**

15 **(IV) DETAILING; OR**

16 **(V) ANY OTHER ACTIVITY THAT COULD BE USED TO:**

17 **1. INFLUENCE SALES OR MARKET SHARE OF A**
18 **PHARMACEUTICAL PRODUCT;**

19 **2. INFLUENCE OR EVALUATE THE PRESCRIBING**
20 **BEHAVIOR OF A HEALTH CARE PRACTITIONER; OR**

21 **3. EVALUATE THE EFFECTIVENESS OF A**
22 **PROFESSIONAL PHARMACEUTICAL DETAILING SALES FORCE.**

23 **(4) “ELECTRONIC HEALTH NETWORK” MEANS AN ENTITY OR A**
24 **WORLDWIDE NETWORK OF COMPUTERS THAT PROVIDES THE INFRASTRUCTURE**
25 **THAT CONNECTS THE COMPUTER SYSTEMS OR OTHER ELECTRONIC DEVICES**
26 **USED BY PRESCRIBERS, PHARMACIES, HEALTH CARE FACILITIES, PHARMACY**
27 **BENEFITS MANAGERS, AND CARRIERS, OR AGENTS AND CONTRACTORS OF**

1 **PRESCRIBERS, PHARMACIES, HEALTH CARE FACILITIES, PHARMACY BENEFITS**
2 **MANAGERS, AND CARRIERS, TO FACILITATE THE SECURE TRANSMISSION OF AN**
3 **INDIVIDUAL’S PRESCRIPTION DRUG ORDER, REFILL, AUTHORIZATION REQUEST,**
4 **CLAIM, PAYMENT, OR ANY OTHER HEALTH CARE TRANSACTION.**

5 **(B) THIS SECTION DOES NOT APPLY TO:**

6 **(1) THE LICENSE, TRANSFER, USE, OR SALE OF PRESCRIPTION**
7 **INFORMATION FOR THE PURPOSE OF:**

8 **(I) PHARMACY REIMBURSEMENT;**

9 **(II) FORMULARY COMPLIANCE;**

10 **(III) UTILIZATION REVIEW; OR**

11 **(IV) HEALTH CARE RESEARCH APPROVED BY AN**
12 **INSTITUTIONAL REVIEW BOARD UNDER A FEDERALWIDE ASSURANCE FOR THE**
13 **PROTECTION OF HUMAN SUBJECTS; OR**

14 **(2) THE COLLECTION, USE, TRANSFER, OR SALE OF**
15 **INFORMATION DERIVED FROM OR RELATING TO A PRESCRIPTION FOR A**
16 **COMMERCIAL PURPOSE IF THE INFORMATION:**

17 **(I) IS NOT PATIENT–IDENTIFIABLE OR**
18 **PRESCRIBER–IDENTIFIABLE; AND**

19 **(II) IS AGGREGATED BY ZIP CODE, OTHER GEOGRAPHIC**
20 **REGION, OR MEDICAL SPECIALTY.**

21 **(C) PATIENT–IDENTIFIABLE OR PRESCRIBER–IDENTIFIABLE**
22 **INFORMATION DERIVED FROM OR RELATING TO A PRESCRIPTION MAY NOT BE**
23 **LICENSED, TRANSFERRED, USED, OR SOLD FOR ANY COMMERCIAL PURPOSE BY:**

24 **(1) A PHARMACY BENEFITS MANAGER;**

25 **(2) A CARRIER;**

26 **(3) AN ELECTRONIC HEALTH NETWORK;**

27 **(4) A RETAIL, MAIL ORDER, OR INTERNET PHARMACY; OR**

28 **(5) AN AUTHORIZED PRESCRIBER.**

1 **(D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT:**

2 **(1) THE DISPENSING OF PRESCRIPTION DRUGS TO A PATIENT OR**
3 **THE PATIENT'S AUTHORIZED REPRESENTATIVE;**

4 **(2) THE TRANSMISSION OF PRESCRIPTION INFORMATION**
5 **BETWEEN AN AUTHORIZED PRESCRIBER AND A LICENSED PHARMACY;**

6 **(3) THE TRANSFER OF PRESCRIPTION INFORMATION BETWEEN**
7 **LICENSED PHARMACIES; OR**

8 **(4) THE TRANSFER OF PRESCRIPTION RECORDS THAT MAY**
9 **OCCUR IN THE EVENT THAT THE OWNERSHIP OF THE PHARMACY IS CHANGED**
10 **OR TRANSFERRED.**

11 21–1215.

12 (a) This section does not apply to a violation of § 21–220(b)(4) of this title.

13 (b) A person who violates any provision of Subtitle 2 of this title or any
14 regulation adopted under Subtitle 2 of this title is guilty of a misdemeanor and on
15 conviction is subject to:

16 (1) A fine not exceeding \$10,000 or imprisonment not exceeding 1 year
17 or both; or

18 (2) If the person has been convicted once of violating Subtitle 2 of this
19 title, a fine not exceeding \$25,000 or imprisonment not exceeding 3 years or both.

20 (c) In addition to any criminal penalties imposed under this section, a person
21 who violates any provision of Subtitle 2 of this title, any rule or regulation adopted
22 under Subtitle 2 of this title, or any term, condition, or limitation of any license or
23 registration issued under Subtitle 2 of this title:

24 (1) Is subject to a civil penalty not exceeding \$5,000, in an action in
25 any District Court; and

26 (2) May be enjoined from continuing the violation.

27 (d) Each day on which a violation occurs is a separate violation under this
28 section.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2010.