



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5726

by Rep. Jay C. Hoffman

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

20 ILCS 2205/2205-15 new

Amends the Freedom of Information Act and the Department of Public Aid Law of the Civil Administrative Code of Illinois. Provides that every manufacturer or labeler of prescription drugs dispensed in this State that employs, directs, or utilizes marketing representatives must report the manufacturer or labeler's advertising costs for prescription drugs, based on aggregate national data, to the Department of Healthcare and Family Services. Provides that the purpose of the reporting is to assist the State in its role as a purchaser of prescription drugs and an administrator of prescription drug programs. Makes certain items exempt from the reporting requirements, including free samples of prescription drugs intended to be distributed to patients. Provides that information reported to the Department is confidential and not a public record subject to disclosure under the Freedom of Information Act. Requires the Department to establish programs aimed at educating health care practitioners about the relative costs and benefits of various prescription drugs. Authorizes the Department to assign responsibilities to the Special Advocate for Prescription Drugs within the Department.

LRB095 19912 DRJ 46329 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) The following shall be exempt from inspection and
9 copying:

10 (a) Information specifically prohibited from
11 disclosure by federal or State law or rules and regulations
12 adopted under federal or State law.

13 (b) Information that, if disclosed, would constitute a
14 clearly unwarranted invasion of personal privacy, unless
15 the disclosure is consented to in writing by the individual
16 subjects of the information. The disclosure of information
17 that bears on the public duties of public employees and
18 officials shall not be considered an invasion of personal
19 privacy. Information exempted under this subsection (b)
20 shall include but is not limited to:

21 (i) files and personal information maintained with
22 respect to clients, patients, residents, students or
23 other individuals receiving social, medical,

1 educational, vocational, financial, supervisory or
2 custodial care or services directly or indirectly from
3 federal agencies or public bodies;

4 (ii) personnel files and personal information
5 maintained with respect to employees, appointees or
6 elected officials of any public body or applicants for
7 those positions;

8 (iii) files and personal information maintained
9 with respect to any applicant, registrant or licensee
10 by any public body cooperating with or engaged in
11 professional or occupational registration, licensure
12 or discipline;

13 (iv) information required of any taxpayer in
14 connection with the assessment or collection of any tax
15 unless disclosure is otherwise required by State
16 statute;

17 (v) information revealing the identity of persons
18 who file complaints with or provide information to
19 administrative, investigative, law enforcement or
20 penal agencies; provided, however, that identification
21 of witnesses to traffic accidents, traffic accident
22 reports, and rescue reports may be provided by agencies
23 of local government, except in a case for which a
24 criminal investigation is ongoing, without
25 constituting a clearly unwarranted per se invasion of
26 personal privacy under this subsection; and

1 (vi) the names, addresses, or other personal
2 information of participants and registrants in park
3 district, forest preserve district, and conservation
4 district programs.

5 (c) Records compiled by any public body for
6 administrative enforcement proceedings and any law
7 enforcement or correctional agency for law enforcement
8 purposes or for internal matters of a public body, but only
9 to the extent that disclosure would:

10 (i) interfere with pending or actually and
11 reasonably contemplated law enforcement proceedings
12 conducted by any law enforcement or correctional
13 agency;

14 (ii) interfere with pending administrative
15 enforcement proceedings conducted by any public body;

16 (iii) deprive a person of a fair trial or an
17 impartial hearing;

18 (iv) unavoidably disclose the identity of a
19 confidential source or confidential information
20 furnished only by the confidential source;

21 (v) disclose unique or specialized investigative
22 techniques other than those generally used and known or
23 disclose internal documents of correctional agencies
24 related to detection, observation or investigation of
25 incidents of crime or misconduct;

26 (vi) constitute an invasion of personal privacy

1 under subsection (b) of this Section;

2 (vii) endanger the life or physical safety of law
3 enforcement personnel or any other person; or

4 (viii) obstruct an ongoing criminal investigation.

5 (d) Criminal history record information maintained by
6 State or local criminal justice agencies, except the
7 following which shall be open for public inspection and
8 copying:

9 (i) chronologically maintained arrest information,
10 such as traditional arrest logs or blotters;

11 (ii) the name of a person in the custody of a law
12 enforcement agency and the charges for which that
13 person is being held;

14 (iii) court records that are public;

15 (iv) records that are otherwise available under
16 State or local law; or

17 (v) records in which the requesting party is the
18 individual identified, except as provided under part
19 (vii) of paragraph (c) of subsection (1) of this
20 Section.

21 "Criminal history record information" means data
22 identifiable to an individual and consisting of
23 descriptions or notations of arrests, detentions,
24 indictments, informations, pre-trial proceedings, trials,
25 or other formal events in the criminal justice system or
26 descriptions or notations of criminal charges (including

1 criminal violations of local municipal ordinances) and the
2 nature of any disposition arising therefrom, including
3 sentencing, court or correctional supervision,
4 rehabilitation and release. The term does not apply to
5 statistical records and reports in which individuals are
6 not identified and from which their identities are not
7 ascertainable, or to information that is for criminal
8 investigative or intelligence purposes.

9 (e) Records that relate to or affect the security of
10 correctional institutions and detention facilities.

11 (f) Preliminary drafts, notes, recommendations,
12 memoranda and other records in which opinions are
13 expressed, or policies or actions are formulated, except
14 that a specific record or relevant portion of a record
15 shall not be exempt when the record is publicly cited and
16 identified by the head of the public body. The exemption
17 provided in this paragraph (f) extends to all those records
18 of officers and agencies of the General Assembly that
19 pertain to the preparation of legislative documents.

20 (g) Trade secrets and commercial or financial
21 information obtained from a person or business where the
22 trade secrets or information are proprietary, privileged
23 or confidential, or where disclosure of the trade secrets
24 or information may cause competitive harm, including:

25 (i) All information determined to be confidential
26 under Section 4002 of the Technology Advancement and

1 Development Act.

2 (ii) All trade secrets and commercial or financial
3 information obtained by a public body, including a
4 public pension fund, from a private equity fund or a
5 privately held company within the investment portfolio
6 of a private equity fund as a result of either
7 investing or evaluating a potential investment of
8 public funds in a private equity fund. The exemption
9 contained in this item does not apply to the aggregate
10 financial performance information of a private equity
11 fund, nor to the identity of the fund's managers or
12 general partners. The exemption contained in this item
13 does not apply to the identity of a privately held
14 company within the investment portfolio of a private
15 equity fund, unless the disclosure of the identity of a
16 privately held company may cause competitive harm.

17 Nothing contained in this paragraph (g) shall be construed
18 to prevent a person or business from consenting to disclosure.

19 (h) Proposals and bids for any contract, grant, or
20 agreement, including information which if it were
21 disclosed would frustrate procurement or give an advantage
22 to any person proposing to enter into a contractor
23 agreement with the body, until an award or final selection
24 is made. Information prepared by or for the body in
25 preparation of a bid solicitation shall be exempt until an
26 award or final selection is made.

1 (i) Valuable formulae, computer geographic systems,
2 designs, drawings and research data obtained or produced by
3 any public body when disclosure could reasonably be
4 expected to produce private gain or public loss. The
5 exemption for "computer geographic systems" provided in
6 this paragraph (i) does not extend to requests made by news
7 media as defined in Section 2 of this Act when the
8 requested information is not otherwise exempt and the only
9 purpose of the request is to access and disseminate
10 information regarding the health, safety, welfare, or
11 legal rights of the general public.

12 (j) Test questions, scoring keys and other examination
13 data used to administer an academic examination or
14 determined the qualifications of an applicant for a license
15 or employment.

16 (k) Architects' plans, engineers' technical
17 submissions, and other construction related technical
18 documents for projects not constructed or developed in
19 whole or in part with public funds and the same for
20 projects constructed or developed with public funds, but
21 only to the extent that disclosure would compromise
22 security, including but not limited to water treatment
23 facilities, airport facilities, sport stadiums, convention
24 centers, and all government owned, operated, or occupied
25 buildings.

26 (1) Library circulation and order records identifying

1 library users with specific materials.

2 (m) Minutes of meetings of public bodies closed to the
3 public as provided in the Open Meetings Act until the
4 public body makes the minutes available to the public under
5 Section 2.06 of the Open Meetings Act.

6 (n) Communications between a public body and an
7 attorney or auditor representing the public body that would
8 not be subject to discovery in litigation, and materials
9 prepared or compiled by or for a public body in
10 anticipation of a criminal, civil or administrative
11 proceeding upon the request of an attorney advising the
12 public body, and materials prepared or compiled with
13 respect to internal audits of public bodies.

14 (o) Information received by a primary or secondary
15 school, college or university under its procedures for the
16 evaluation of faculty members by their academic peers.

17 (p) Administrative or technical information associated
18 with automated data processing operations, including but
19 not limited to software, operating protocols, computer
20 program abstracts, file layouts, source listings, object
21 modules, load modules, user guides, documentation
22 pertaining to all logical and physical design of
23 computerized systems, employee manuals, and any other
24 information that, if disclosed, would jeopardize the
25 security of the system or its data or the security of
26 materials exempt under this Section.

1 (q) Documents or materials relating to collective
2 negotiating matters between public bodies and their
3 employees or representatives, except that any final
4 contract or agreement shall be subject to inspection and
5 copying.

6 (r) Drafts, notes, recommendations and memoranda
7 pertaining to the financing and marketing transactions of
8 the public body. The records of ownership, registration,
9 transfer, and exchange of municipal debt obligations, and
10 of persons to whom payment with respect to these
11 obligations is made.

12 (s) The records, documents and information relating to
13 real estate purchase negotiations until those negotiations
14 have been completed or otherwise terminated. With regard to
15 a parcel involved in a pending or actually and reasonably
16 contemplated eminent domain proceeding under the Eminent
17 Domain Act, records, documents and information relating to
18 that parcel shall be exempt except as may be allowed under
19 discovery rules adopted by the Illinois Supreme Court. The
20 records, documents and information relating to a real
21 estate sale shall be exempt until a sale is consummated.

22 (t) Any and all proprietary information and records
23 related to the operation of an intergovernmental risk
24 management association or self-insurance pool or jointly
25 self-administered health and accident cooperative or pool.

26 (u) Information concerning a university's adjudication

1 of student or employee grievance or disciplinary cases, to
2 the extent that disclosure would reveal the identity of the
3 student or employee and information concerning any public
4 body's adjudication of student or employee grievances or
5 disciplinary cases, except for the final outcome of the
6 cases.

7 (v) Course materials or research materials used by
8 faculty members.

9 (w) Information related solely to the internal
10 personnel rules and practices of a public body.

11 (x) Information contained in or related to
12 examination, operating, or condition reports prepared by,
13 on behalf of, or for the use of a public body responsible
14 for the regulation or supervision of financial
15 institutions or insurance companies, unless disclosure is
16 otherwise required by State law.

17 (y) Information the disclosure of which is restricted
18 under Section 5-108 of the Public Utilities Act.

19 (z) Manuals or instruction to staff that relate to
20 establishment or collection of liability for any State tax
21 or that relate to investigations by a public body to
22 determine violation of any criminal law.

23 (aa) Applications, related documents, and medical
24 records received by the Experimental Organ Transplantation
25 Procedures Board and any and all documents or other records
26 prepared by the Experimental Organ Transplantation

1 Procedures Board or its staff relating to applications it
2 has received.

3 (bb) Insurance or self insurance (including any
4 intergovernmental risk management association or self
5 insurance pool) claims, loss or risk management
6 information, records, data, advice or communications.

7 (cc) Information and records held by the Department of
8 Public Health and its authorized representatives relating
9 to known or suspected cases of sexually transmissible
10 disease or any information the disclosure of which is
11 restricted under the Illinois Sexually Transmissible
12 Disease Control Act.

13 (dd) Information the disclosure of which is exempted
14 under Section 30 of the Radon Industry Licensing Act.

15 (ee) Firm performance evaluations under Section 55 of
16 the Architectural, Engineering, and Land Surveying
17 Qualifications Based Selection Act.

18 (ff) Security portions of system safety program plans,
19 investigation reports, surveys, schedules, lists, data, or
20 information compiled, collected, or prepared by or for the
21 Regional Transportation Authority under Section 2.11 of
22 the Regional Transportation Authority Act or the St. Clair
23 County Transit District under the Bi-State Transit Safety
24 Act.

25 (gg) Information the disclosure of which is restricted
26 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

2 (hh) Information the disclosure of which is exempted
3 under the State Officials and Employees Ethics Act.

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

10 (jj) Information contained in a local emergency energy
11 plan submitted to a municipality in accordance with a local
12 emergency energy plan ordinance that is adopted under
13 Section 11-21.5-5 of the Illinois Municipal Code.

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 the measures or the safety of the personnel who implement

1 them or the public. Information exempt under this item may
2 include such things as details pertaining to the
3 mobilization or deployment of personnel or equipment, to
4 the operation of communication systems or protocols, or to
5 tactical operations.

6 (mm) Maps and other records regarding the location or
7 security of generation, transmission, distribution,
8 storage, gathering, treatment, or switching facilities
9 owned by a utility or by the Illinois Power Agency.

10 (nn) Law enforcement officer identification
11 information or driver identification information compiled
12 by a law enforcement agency or the Department of
13 Transportation under Section 11-212 of the Illinois
14 Vehicle Code.

15 (oo) Records and information provided to a residential
16 health care facility resident sexual assault and death
17 review team or the Executive Council under the Abuse
18 Prevention Review Team Act.

19 (pp) Information provided to the predatory lending
20 database created pursuant to Article 3 of the Residential
21 Real Property Disclosure Act, except to the extent
22 authorized under that Article.

23 (qq) Defense budgets and petitions for certification
24 of compensation and expenses for court appointed trial
25 counsel as provided under Sections 10 and 15 of the Capital
26 Crimes Litigation Act. This subsection (qq) shall apply

1 until the conclusion of the trial of the case, even if the
2 prosecution chooses not to pursue the death penalty prior
3 to trial or sentencing.

4 (rr) Information contained in or related to proposals,
5 bids, or negotiations related to electric power
6 procurement under Section 1-75 of the Illinois Power Agency
7 Act and Section 16-111.5 of the Public Utilities Act that
8 is determined to be confidential and proprietary by the
9 Illinois Power Agency or by the Illinois Commerce
10 Commission.

11 (ss) Information reported to the Department of
12 Healthcare and Family Services by a prescription drug
13 manufacturer or labeler under Section 2205-15 of the
14 Department of Public Aid Law of the Civil Administrative
15 Code of Illinois.

16 (2) This Section does not authorize withholding of
17 information or limit the availability of records to the public,
18 except as stated in this Section or otherwise provided in this
19 Act.

20 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
21 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
22 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
23 8-28-07.)

24 Section 10. The Department of Public Aid Law of the Civil
25 Administrative Code of Illinois is amended by adding Section

1 2205-15 as follows:

2 (20 ILCS 2205/2205-15 new)

3 Sec. 2205-15. Prescription drugs; reporting of advertising
4 costs; prescriber education.

5 (a) Every manufacturer or labeler of prescription drugs
6 dispensed in this State that employs, directs, or utilizes
7 marketing representatives must report the manufacturer or
8 labeler's advertising costs for prescription drugs, based on
9 aggregate national data, to the Department of Healthcare and
10 Family Services. The purpose of this reporting is to assist the
11 State in its role as a purchaser of prescription drugs and an
12 administrator of prescription drug programs, enabling the
13 State to determine the scope of prescription drug advertising
14 costs and their effect on the cost, utilization, and delivery
15 of health care services and furthering the role of this State
16 as guardian of the public interest. The reporting of this
17 information will allow the State to obtain an accurate view of
18 the level and scope of drug marketing and advertising in
19 Illinois. The assignment of responsibilities to the Department
20 under this Section is appropriate in light of the Department's
21 responsibilities in connection with State healthcare
22 purchasing.

23 (b) The Department shall adopt rules establishing the
24 reporting requirements for prescription drug manufacturers and
25 labelers under this Section. The information to be reported

1 must include all national aggregate expenses associated with
2 the advertising and direct promotion of prescription drugs
3 through radio, television, magazines, newspapers, direct mail,
4 and telephone communications as they pertain to residents of
5 this State. In developing the rules, the Department shall
6 explore requirements and criteria, including the level of
7 detail, for manufacturers and labelers to report their
8 expenditures for advertising, marketing, and promotion, based
9 on aggregate national data. The Department also shall work to
10 achieve disclosure of the amounts spent by prescription drug
11 manufacturers and labelers with regard to expenditures for
12 advertising, marketing, and promotion, as well as for provider
13 incentives and research and development efforts. The
14 information required to be reported under this Section shall
15 include, but need not be limited to, the following:

16 (1) The names and qualifications of drug sales
17 representatives who call on prescribers of prescription
18 drugs in this State or otherwise operate within this State
19 ("Illinois drug sales representatives").

20 (2) The aggregate expenditures by each manufacturer or
21 labeler that are associated with the manufacturer or
22 labeler's Illinois drug sales representatives, including
23 salaries, benefits, support staff, marketing program
24 expenses, outside contractors, and expense accounts. A
25 manufacturer or labeler must report only its aggregate data
26 and need not report individual salaries and information.

1 (3) All gifts, grants, or payments of any kind made
2 directly or indirectly to any person authorized to
3 prescribe drugs in Illinois. Every manufacturer or labeler
4 must report the total annual amount for each such
5 prescriber.

6 (4) A list of prescription drugs that were advertised
7 direct-to-consumers and reached Illinois residents,
8 together with the relevant annual expenditures in
9 connection with each such drug.

10 (5) All gifts, grants, or payments of any kind made
11 directly or indirectly to any patient advocacy group that
12 has members or otherwise operates within Illinois. Every
13 manufacturer or labeler must report the total annual amount
14 for each such patient advocacy group.

15 (6) All promotional or informational programs
16 conducted by the manufacturer or labeler for pharmacies in
17 Illinois.

18 (7) A copy of the manufacturer or labeler's most recent
19 federal income tax return.

20 (c) The following items are exempt from the reporting
21 requirements under this Section:

22 (1) All free samples of prescription drugs intended to
23 be distributed to patients.

24 (2) All payments of reasonable compensation and
25 reimbursement of expenses in connection with a bona fide
26 clinical trial. As used in this paragraph (2), "clinical

1 trial" means an approved clinical trial conducted in
2 connection with a research study designed to answer
3 specific questions about vaccines, new therapies, or new
4 ways of using known treatments.

5 (3) All scholarships or other support for medical
6 students, residents, and fellows to attend significant
7 educational, scientific, or policy-making conferences of a
8 national, regional, or specialty medical or other
9 professional association if the recipient of the
10 scholarship or other support is selected by the
11 association.

12 (d) The Department may establish time lines and the
13 documentation, form, and manner of reporting required under
14 this Section to effectuate the purposes of this Section. The
15 Department shall report to the Commission on Government
16 Forecasting and Accountability, in an aggregate form, the
17 information reported to the Department under this Section.

18 (e) Notwithstanding any provision of law to the contrary,
19 information submitted to the Department pursuant to this
20 Section is confidential and is not a public record and is not
21 required to be made available for inspection and copying under
22 the Freedom of Information Act. Data compiled in aggregate form
23 by the Department for the purpose of reporting to the
24 Commission on Government Forecasting and Accountability as
25 required under subsection (d) is a public record as defined in
26 the Freedom of Information Act, as long as it does not reveal

1 trade information that is protected by State or federal law.

2 (f) The Department shall establish programs aimed at
3 educating health care practitioners authorized to prescribe
4 prescription drugs about the relative costs and benefits of
5 various prescription drugs, with an emphasis on (i) authorizing
6 generic substitutes for brand-name drugs when available and
7 appropriate, (ii) prescribing established, less-costly drugs
8 instead of newer and more expensive drugs when appropriate, and
9 (iii) prescribing lower dosages of prescription drugs when
10 appropriate.

11 (g) The Department may assign its responsibilities under
12 this Section to the Special Advocate for Prescription Drugs
13 within the Department, as appropriate.