

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

---

Legislative Document

No. 1256

H.P. 930

House of Representatives, March 6, 2003

### An Act To Prohibit Unethical Drug Marketing Practices

---

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FAIRCLOTH of Bangor.  
Cosponsored by Senator BRENNAN of Cumberland and  
Representatives: DUDLEY of Portland, McNEIL of Rockland, MILLS of Cornville, O'NEIL  
of Saco, PINGREE of North Haven, RICHARDSON of Brunswick, SIMPSON of Auburn,  
Senator: MAYO of Sagadahoc.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 24 MRSA c. 21, sub-c. 11 is enacted to read:

6 **SUBCHAPTER 11**

8 **ACCEPTANCE OF GIFTS OR OTHER INDUCEMENTS BY  
HEALTH CARE PRACTITIONERS AND HEALTH CARE PROVIDERS**

10 **§2991. Definitions**

12 As used in this subchapter, unless the context otherwise  
14 indicates, the following terms have the following meanings.

16 1. Drug distributor. "Drug distributor" means a person  
18 that purchases prescription drugs from one or more drug  
20 manufacturers or that sells or distributes prescription drugs to  
22 a health care practitioner or health care provider or that  
purchases, sells or distributes prescription drugs.  
Manufacturing drugs or directly providing health care through the  
use of drugs does not render a person a drug distributor.

24 2. Drug manufacturer. "Drug manufacturer" means a person  
26 engaged in the production of prescription drugs and includes a  
subsidiary or affiliate of a manufacturer.

28 3. Labeler. "Labeler" means a person that receives  
30 prescription drugs from a manufacturer or wholesaler and  
32 repackages those drugs for later retail sale and that has a  
labeler code from the United States Department of Health and  
Human Services, Food and Drug Administration under 21 Code of  
Federal Regulations, 207.20 (2002).

34 4. Sales representative. "Sales representative" means any  
36 person who represents a prescription drug manufacturer, drug  
38 distributor or labeler in marketing or promoting the  
prescription, purchase or sale of drugs.

40 **§2992. Interference in patient relationship prohibited**

42 A drug manufacturer, drug distributor or labeler may not  
44 interfere or attempt to interfere in the relationship between a  
health care practitioner or health care provider and a patient.

46 1. Nonmonetary gifts and other inducements; exceptions.  
48 The offer of any nonmonetary gift or other nonmonetary inducement  
50 by a drug manufacturer or drug distributor to or for the benefit  
of a health care practitioner or health care provider that is  
intended to or reasonably may influence the prescription or

2 dispensing practices of that health care practitioner or health  
3 care provider constitutes an attempt to interfere in the  
4 relationship between that health care practitioner or health care  
5 provider and its patients. This subsection does not apply to a  
6 gift:

7 A. Of not more than \$100 in market value if it is related  
8 to the health care practitioner's or health care provider's  
9 work or primarily entails a benefit to patients;

10 B. Supporting medical research or education, including  
11 textbooks, meals of not more than \$50 in value and other  
12 gifts if they serve a genuine educational function;

13 C. Providing scientific and educational information;

14 D. In exchange for consulting services by the health care  
15 practitioner or health care provider of approximately equal  
16 value; or

17 E. Consisting of drug samples intended for free  
18 distribution to consumers or for personal use.

19 **2. Gift of money; exceptions.** The offer of any gift of  
20 money by a drug manufacturer or drug distributor to or for the  
21 benefit of a health care practitioner or health care provider  
22 that is intended to or reasonably may influence the prescription  
23 or dispensing practices of that health care practitioner or  
24 health care provider constitutes an attempt to interfere in the  
25 relationship between the health care practitioner or health care  
26 provider and a patient. This subsection does not apply to:

27 A. A subsidy to attend a continuing medical education  
28 program or other scientific, educational or professional  
29 meeting if the program or meeting is not conducted,  
30 sponsored or underwritten by the person making the subsidy;

31 B. Money given in exchange for consulting services of  
32 approximately equal value; or

33 C. A scholarship or educational funds for attendance at an  
34 event or institution if the recipient of the scholarship or  
35 funds is selected by the event or institution.

36 **§2993. Attempts to interfere**

37 The promotion to a health care practitioner or health care  
38 provider by a drug manufacturer, drug distributor or labeler,  
39 directly or indirectly through the subsidy, sponsorship or  
40 underwriting of speakers or programs, of any drug for a use not  
41 permitted by this section.

2 approved by the United States Department of Health and Human  
3 Services, Food and Drug Administration constitutes an attempt to  
4 interfere in the relationship between that health care  
5 practitioner or health care provider and a patient.

6 **§2994. Lack of influence not a defense**

8 Lack of influence over or a failure to influence a health  
9 care practitioner's or health care provider's prescribing or  
10 dispensing practices is not a defense to a claim of attempted  
11 interference in the relationship between a health care  
12 practitioner or health care provider and a patient.

14 **§2995. Acts of sales representatives are acts of their employers**

16 Any act prohibited by this subchapter that is committed by a  
17 sales representative employed by a drug manufacturer, drug  
18 distributor or labeler is deemed the act of that drug  
19 manufacturer, drug distributor or labeler for purposes of  
20 liability and determining penalties under this subchapter.

22 **§2996. Penalties**

24 **1. Unfair trade practice.** A violation of this subchapter  
25 is also a violation of the Maine Unfair Trade Practices Act.

26 **2. Fines.** Each violation of this subchapter constitutes a  
27 separate civil violation for which a fine of not less than \$1,000  
28 may be adjudged.

30 **3. Enforcement action.** A person or class of persons may  
31 commence an action on behalf of the State for penalties under  
32 this section and is entitled to retain 10% of the fines assessed,  
33 plus reasonable costs and attorney's fees.

36 **SUMMARY**

38 This bill restricts the offer of gifts and other inducements  
39 by a drug manufacturer or drug distributor to a health care  
40 practitioner or health care provider.