

LEGISLATIVE BILL 1035

Approved by the Governor April 15, 2024

Introduced by Hughes, 24; Aguilar, 35; Ballard, 21; Blood, 3; Bosn, 25; Bostar, 29; Bostelman, 23; Brandt, 32; Cavanaugh, J., 9; Cavanaugh, M., 6; Clements, 2; Conrad, 46; Day, 49; DeBoer, 10; DeKay, 40; Dungan, 26; Hardin, 48; Holdcroft, 36; Ibach, 44; Lippincott, 34; Lowe, 37; McKinney, 11; Murman, 38; Riepe, 12; Sanders, 45; Slama, 1; von Gillern, 4; Walz, 15; Wayne, 13; Fredrickson, 20; Meyer, 41; Brewer, 43; McDonnell, 5; Halloran, 33; Jacobson, 42; Dorn, 30; Dover, 19; Moser, 22; Linehan, 39; Vargas, 7; Wishart, 27; Erdman, 47; Albrecht, 17.

A BILL FOR AN ACT relating to public health and welfare; to adopt the Prescription Drug Donation Program Act.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Prescription Drug Donation Program Act.

Sec. 2. For purposes of the Prescription Drug Donation Program Act:

(1) Department means the Department of Health and Human Services;

(2) Health care facility has the definition found in section 71-413 and includes the office of an individual licensed to practice medicine and surgery or osteopathic medicine and surgery;

(3) Pharmacy has the definition found in section 71-425;

(4) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe drugs;

(5) Prescription drug has the definition found in section 38-2841 excluding controlled substances as defined in section 28-401 and any drugs subject to the requirements of 21 U.S.C. 355-1(f)(3); and

(6) Program means the Prescription Drug Donation Program approved pursuant to section 3 of this act.

Sec. 3. The department shall approve a prescription drug donation program that meets the criteria set forth in section 5 of this act and designate a nonprofit organization to administer the program. Participation in the program shall be voluntary.

Sec. 4. Any individual or entity, including, but not limited to, a prescription drug manufacturer or health care facility, may donate prescription drugs, over-the-counter medicines and products, and supplies to the program. A health care facility or pharmacy may charge a handling fee for distributing or dispensing prescription drugs or supplies under the program.

Sec. 5. The department shall ensure that donated prescription drugs meet the following requirements:

(1) A prescription drug or supply is in its original, unopened, sealed, and tamper-evident packaging. A prescription drug packaged in single-unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program;

(2) The prescription drug or supply is inspected by the program before the prescription drug or supply is dispensed by a licensed pharmacist and such drugs are only dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another health care facility or pharmacy for dispensing; and

(3) The prescription drug (a) bears an expiration date that is more than six months after the date the prescription drug was donated, except that such drug may be accepted and distributed if the drug is in high demand as determined by the program and can be dispensed for use, (b) is not adulterated or misbranded as defined in section 71-2461 or 71-2470, (c) has not expired, and (d) does not have restricted distribution by the federal Food and Drug Administration.

Sec. 6. (1) The program shall (a) comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated prescription drugs and (b) not resell donated prescription drugs and supplies.

(2) Nothing in the Prescription Drug Donation Program Act shall be construed to restrict the use of samples by a prescribing practitioner during the course of such practitioner's duties at a health care facility or pharmacy.

Sec. 7. (1) Any individual or entity which exercises reasonable care in donating, accepting, distributing, or dispensing prescription drugs or supplies under the Prescription Drug Donation Program Act or rules and regulations adopted and promulgated by the department shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(2) Any nonprofit organization administering such program shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(3) A drug manufacturer shall not, in the absence of bad faith or a finding of gross negligence, be subject to criminal prosecution or liability in

tort or other civil action, for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person under the program, including, but not limited to, liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.