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HOUSE BILL 1454

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State of Washington

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By Representatives Dyer, Kessler, Buck, Campbell, Romero, K. Schmidt, Scott, Grant, Cooke, Quall, Hankins, Huff, Morris, L. Thomas, Veloria, Appelwick, Mastin, Ballasiotes, Blanton and Basich

Read first time 01/25/95. Referred to Committee on Health Care.

1 AN ACT Relating to pharmaceutical price discrimination; adding a  
2 new chapter to Title 69 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
5 otherwise, the definitions in this section apply throughout this  
6 chapter.

7 (1) "Drug" means a prescription drug that is subject to the  
8 provisions of section 503(b)(1) of the federal food, drug, and cosmetic  
9 act.

10 (2) "Manufacturer" means a person, other than a wholesaler, who  
11 trades in drugs for resale to purchasers or sale to consumers either  
12 directly or through a wholesaler.

13 (3) "Purchaser" means a person that purchases drugs for resale  
14 directly to consumers in the state or for dispensing directly to  
15 consumers in the state.

16 (4) "Wholesaler" means a person, other than a manufacturer, that  
17 sells drugs to purchasers.

18 (5) "Price discrimination" means a difference in a contemporaneous  
19 price, volume or blended product volume discount, rebate, payment

1 terms, free merchandise, or related trade concessions by a manufacturer  
2 as between different wholesalers or purchasers in this state, where the  
3 effect of such discrimination may be substantially to lessen  
4 competition or tend to create a monopoly in any line of commerce.

5 The prohibitions on price discrimination under this chapter include  
6 a prohibition on price discrimination for any drugs that are sold for  
7 delivery to a wholesaler, wholesaler facility, purchaser, purchaser  
8 facility, or consumers located in the state.

9 NEW SECTION. **Sec. 2.** (1)(a) A manufacturer shall sell drugs to  
10 every wholesaler in the state to which it sells or distributes on the  
11 same terms and conditions contemporaneously accorded to the  
12 manufacturer's most favored wholesaler, purchaser, or consumer in the  
13 state, including:

14 (i) Purchase prices for similar or blended volume purchases; and  
15 (ii) Rebates, free merchandise, payment terms, and related trade  
16 concessions.

17 (b) This subsection does not prohibit a manufacturer from offering  
18 a discount to a wholesaler for volume purchases, if:

19 (i) The discount is justified by the economies or efficiencies  
20 resulting from the volume purchases; and

21 (ii) The discount is made available to all wholesalers on  
22 proportionally equal terms; or

23 (iii) The discount represents reasonable reimbursement for the  
24 value to the manufacturer of a wholesaler's actual marketing functions,  
25 provided that such discounts are made available to every wholesaler who  
26 performs such functions; or

27 (iv) The discount meets in good faith the equally low prices or  
28 terms of a competitor.

29 (2)(a) A manufacturer shall sell drugs to every purchaser in the  
30 state to which it sells or distributes on the same terms and conditions  
31 contemporaneously accorded to the manufacturer's most favored purchaser  
32 or consumer in the state, including:

33 (i) Any transaction in which a manufacturer sells to a purchaser  
34 through a contractual arrangement implemented by one or more  
35 wholesalers;

36 (ii) Purchase prices for similar or blended volume purchases; and

37 (iii) Rebates, free merchandise, payment terms, and related trade  
38 concessions.

1 (b) This subsection does not prohibit a manufacturer from offering  
2 a discount to a purchaser for volume purchases, if:

3 (i) The discount is justified by the economies or efficiencies  
4 resulting from the volume purchases; and

5 (ii) The discount is made available to all purchasers on  
6 proportionally equal terms; or

7 (iii) The discount represents reasonable reimbursement for the  
8 value to the manufacturer of a purchaser's actual marketing function,  
9 provided that such discounts are made available to every purchaser who  
10 performs such functions; or

11 (iv) The discount meets in good faith the equally low prices or  
12 terms of a competitor.

13 NEW SECTION. **Sec. 3.** (1) Agencies of government and political  
14 subdivisions are not wholesalers or purchasers under this chapter, and  
15 manufacturers are not prohibited from according to them pricing or  
16 related arrangements that are not made available to wholesalers or  
17 purchasers in the state.

18 (2) An agency of the state may not purchase any drugs from a  
19 manufacturer that engages in any price discrimination prohibited under  
20 this chapter.

21 (3) A manufacturer that wishes to do business with an agency of the  
22 state shall agree in writing not to engage in any price discrimination  
23 prohibited under this chapter in any of its business dealings in the  
24 state.

25 (4) No wholesaler or purchaser shall knowingly induce or receive a  
26 discrimination in price, rebates, free merchandise, payment terms, or  
27 related trade concessions that is prohibited under this chapter.

28 NEW SECTION. **Sec. 4.** (1) Any person who violates this chapter or  
29 any rule adopted under this chapter or any order or injunction to cease  
30 and desist from such violations shall for purposes of the state  
31 medicaid program, have all of its drug entities declared ineligible for  
32 sale under the state medicaid program.

33 (2) A person who violates any provision of this chapter is liable  
34 for any damage caused by the violation, and for court costs and  
35 reasonable attorneys' fees.

1       (3) In any action under this chapter, the court may award, in  
2 addition to any other appropriate legal or equitable relief, an amount  
3 equal to three times the damages sustained by any person in interest.

4       (4) An action under this chapter is barred if it is not commenced  
5 within two years after the cause of action accrues.

6       NEW SECTION.   **Sec. 5.**   Sections 1 through 4 of this act shall  
7 constitute a new chapter in Title 69 RCW.

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