
SUBSTITUTE HOUSE BILL 2431

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Zellinsky, R. Meyers, Schmidt, Kessler, Lemmon, Dorn, Kremen, Grant, Scott, Campbell, Quall and Jones)

Read first time 02/02/94.

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.** The legislature finds that drug
5 manufacturers and drug wholesalers engage in pricing practices that
6 result in unfair price discrimination among the retail prescription
7 pharmacies in the state of Washington, including the independent and
8 chain pharmacies, paying the highest prices for drugs, regardless of
9 the quantities they purchase. The legislature further finds that as
10 part of this practice, many manufacturers refuse to sell to retail
11 pharmacies directly, but sell through wholesalers at higher prices than
12 charged to other privileged purchasers. This practice adversely
13 affects the retail pharmacies' ability to bid for prescription services
14 in proposed insurance contracts, to form or become part of any health
15 care reform alliances, and to offer consumers a reasonable price in
16 comparison to those charged by the privileged purchasers who receive
17 the deep discounts. The legislature finds that this price
18 discrimination results in subsidization by consumers and pharmacies to
19 further this practice of deep discounts to privileged purchasers.

1 NEW SECTION. **Sec. 2.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Drug" means any substance subject to section 503(b) of the
5 federal food, drug and cosmetic act.

6 (2) "Manufacturer" means any person who is engaged in
7 manufacturing, preparing, propagating, compounding, processing,
8 packaging, repackaging, or labeling of a drug, provided that a
9 pharmacist compounding drugs to be dispensed from the pharmacy in which
10 the drugs are compounded pursuant to prescriptions for individual
11 patients shall not be considered a manufacturer; a manufacturer
12 generally sells drugs to sellers, purchasers, or both.

13 (3) "Person" means any individual, partnership or other
14 association, or corporation.

15 (4) "Purchaser" means any person who sells or dispenses drugs
16 directly to consumers, whether in person, by mail, or other means of
17 delivery, or any co-op or buying group that purchases drugs on behalf
18 of pharmacies; purchasers who resell to other purchasers or sellers
19 shall be deemed to be sellers in such resale transactions.

20 (5) "Seller" means any person who sells drugs to purchasers.

21 NEW SECTION. **Sec. 3.** (1)(a) It is the intent of this section that
22 all Washington consumers pay a fair price for drugs, and that some
23 Washington consumers not subsidize large discounts for others due to
24 formularies and other nonvolume-based pricing mechanisms. To
25 accomplish this, the purpose of this section is to prohibit price
26 discrimination or differentiation based on factors other than volume.

27 (b) Subsection (2) of this section prohibits nonvolume-based
28 discounts on all drugs delivered to purchasers located in Washington
29 for resale in this state, regardless of where the manufacturer or
30 seller are located.

31 (c) Subsection (3) of this section prohibits nonvolume-based
32 discounts on all drugs sold by manufacturers to sellers or purchasers,
33 or by sellers to purchasers, for resale to Washington consumers,
34 regardless of where the manufacturers, sellers, or purchasers are
35 located. The legislature does not intend to improperly interfere with
36 commerce, but does intend to exercise its full authority by law to
37 protect the health, safety, and welfare of Washington consumers of
38 drugs. Washington does not intend to regulate the price of any drug

1 that is not going to be resold in Washington state. The legislature
2 intends to regulate out-of-state manufacturers, sellers, and purchasers
3 just as the state licenses these out-of-state manufacturers, sellers,
4 and purchasers when the drugs are resold to Washington consumers. The
5 legislature also does not intend to protect intrastate purchasers, but
6 also does not intend to put them at a disadvantage; therefore,
7 subsection (3) of this section treats out-of-state purchasers and
8 intrastate purchases the same for drugs resold to Washington consumers.

9 (2)(a) Every manufacturer shall offer drugs to any seller with all
10 rights and privileges offered or accorded by the manufacturer to the
11 most favored seller, including purchase prices for similar volume
12 purchases. Every manufacturer shall offer rebates, free merchandise,
13 and similar trade concessions on proportionally equal terms to every
14 seller. Nothing in this subsection prohibits the giving of a discount
15 for volume purchases, so long as the discount is justified by the
16 economies or efficiencies resulting from those volume purchases and the
17 discount is made available to all sellers on proportionally equal
18 terms.

19 (b) Every manufacturer or seller shall offer drugs to every
20 purchaser, with all rights and privileges offered or accorded by the
21 manufacturer or seller to the most favored purchaser, including
22 purchase prices for similar volume purchases. A manufacturer or seller
23 shall offer rebates, free merchandise, samples, and similar trade
24 concessions on proportionally equal terms to every purchaser. Nothing
25 in this subsection prohibits the giving of a discount for volume
26 purchases, so long as such discount is justified by the economies or
27 efficiencies resulting from such volume purchases and such discount is
28 made available to all purchasers on proportionally equal terms.

29 (c) This subsection applies to any purchase of drugs that is
30 delivered to a purchaser or purchaser facility located in this state.

31 (3)(a) Every manufacturer who offers any drug to any seller shall
32 offer the drug to every seller with all rights and privileges offered
33 or accorded by the manufacturer to the most favored seller, including
34 rebates, free merchandise, samples, and similar trade concessions.
35 Nothing in this subsection prohibits the giving of a discount for
36 volume purchases, so long as such discount is justified by the
37 economies or efficiencies resulting from such volume purchases and such
38 discount is made available to all purchasers on proportionally equal
39 terms.

1 (b) Every manufacturer or seller who offers any drug to any
2 purchaser shall offer the drug to every purchaser with all rights and
3 privileges offered or accorded by the manufacturer or seller to the
4 most favored purchaser, including rebates, free merchandise, samples,
5 and similar trade concessions. Nothing in this subsection prohibits
6 the giving of a discount for volume purchases, so long as such discount
7 is justified by the economies or efficiencies resulting from such
8 volume purchases and such discount is made available to all purchasers
9 on proportionally equal terms.

10 (c) This subsection applies to drugs sold by manufacturers or
11 sellers that are resold by purchasers to Washington consumers.

12 (4) This section shall not apply to the purchase of drugs by a
13 hospital for its own use. "For its own use" refers to drugs that are
14 used by a hospital to care for hospital patients and are not sold
15 directly to the patient through the hospital's pharmacy.

16 NEW SECTION. **Sec. 4.** Agencies of state government and political
17 subdivisions of the state may not purchase any drugs from a
18 manufacturer or seller that engages in any price discrimination
19 prohibited by this chapter.

20 NEW SECTION. **Sec. 5.** (1) Any person damaged by violation of this
21 chapter may bring an action to recover treble damages sustained by
22 reason of such violation. Proof of price discrimination shall
23 constitute prima facie evidence of damage. The monetary amount of the
24 unlawful discrimination is conclusively presumed to equal the amount of
25 sustained damages. The plaintiff may establish further damages.

26 (2) Any person who violates this chapter or any rule adopted under
27 this chapter or any order or injunction to cease and desist from such
28 violations shall be required to pay a civil penalty of not less than
29 one thousand dollars nor more than one hundred thousand dollars per
30 violation.

31 NEW SECTION. **Sec. 6.** (1) The legislature finds that the practices
32 covered by this chapter are matters vitally affecting the public
33 interest for the purpose of applying the consumer protection act,
34 chapter 19.86 RCW. Violations of this chapter are not reasonable in
35 relation to the development and preservation of business. A violation
36 of this chapter is an unfair or deceptive act in trade or commerce and

1 an unfair method of competition for the purpose of applying the
2 consumer protection act, chapter 19.86 RCW.

3 (2) A private party shall not recover treble damages under both
4 this section and section 5 of this act.

5 NEW SECTION. **Sec. 7.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
10 constitute a new chapter in Title 69 RCW.

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