
HOUSE BILL 2431

State of Washington

53rd Legislature

1994 Regular Session

By Representatives Zellinsky, R. Meyers, Schmidt, Kessler, Lemmon, Dorn, Kremen, Grant, Scott, Campbell, Quall and Jones

Read first time 01/14/94. Referred to Committee on Financial Institutions & Insurance.

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 201(g) of the
5 federal food, drug and cosmetic act except for injectable products.

6 (2) "Purchaser" means any person who sells or dispenses drugs
7 directly to consumers, or any co-op or buying group that purchases
8 drugs on behalf of pharmacies.

9 (3) "Seller" means any person who sells drugs to purchasers.

10 (4) "Manufacturer" means any person who sells drugs to sellers,
11 purchasers, or both.

12 NEW SECTION. **Sec. 3.** (1) Every manufacturer shall offer drugs to
13 every seller with all rights and privileges offered or accorded by the
14 manufacturer to the most favored seller, including purchase prices for
15 similar volume purchases. Every manufacturer shall offer rebates, free
16 merchandise, and similar trade concessions on proportionally equal
17 terms to every seller. Nothing in this subsection prohibits the giving
18 of a discount for volume purchases, so long as the discount is
19 justified by the economies or efficiencies resulting from those volume
20 purchases and the discount is made available to all sellers on
21 proportionally equal terms.

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

32 (3) This section applies to any purchase of drugs that are
33 delivered to a purchaser or purchaser facility located in this state.

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

1 NEW SECTION. **Sec. 5.** (1) Any purchaser damaged by violation of
2 this chapter may bring an action against the seller to recover treble
3 damages sustained by reason of such violation. Proof of price
4 discrimination shall constitute prima facie evidence of damage to a
5 disfavored purchaser. The monetary amount of the unlawful
6 discrimination is conclusively presumed to equal the amount of
7 sustained damages. The disfavored purchaser may establish further
8 damages.

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

14 NEW SECTION. **Sec. 6.** The legislature finds that the practices
15 covered by this chapter are matters vitally affecting the public
16 interest for the purpose of applying the consumer protection act,
17 chapter 19.86 RCW. Violations of this chapter are not reasonable in
18 relation to the development and preservation of business. A violation
19 of this chapter is an unfair or deceptive act in trade or commerce and
20 an unfair method of competition for the purpose of applying the
21 consumer protection act, chapter 19.86 RCW.

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

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