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**SENATE BILL 5596**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators J. Wilson, Fortunato, Rivers, McCune, and Short

AN ACT Relating to restoring trust in public health through consumer protection; amending RCW 19.86.010, 9.04.010, 9.04.050, 9.04.060, 9.04.070, 9.04.080, 69.04.004, 69.04.007, and 69.04.019; adding new sections to chapter 19.86 RCW; adding a new section to chapter 9.04 RCW; adding new sections to chapter 69.04 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Trust in government communications regarding drugs and medical devices is critical to public safety, and trust is built upon accurate information that is void of conflicts of interest and the perception of conflicts of interest;

(b) The COVID-19 pandemic brought to light inconsistencies between the communication requirements of the federal food, drug, and cosmetic act including emergency use authorization and communications promulgated by government offices and agencies regarding drugs and medical devices made available in Washington. Inconsistent communications have eroded public trust of government;

(c) Government agencies purchase, store, distribute, promote, and mandate various drug and medical device products. Because of their ability to reach all consumers through various means, government agencies often have greater influence on consumer decisions than do the product manufacturers;

(d) Real or perceived conflicts of interest exist when government agencies or their employees are members of organizations that collaborate with or are directly or indirectly sponsored by drug and product manufacturers for which products the government is responsible for creating or implementing policy; and

(e) Only the federal government has the authority to enforce the food, drug, and cosmetic act. When the federal government does not enforce federal laws, Washington consumers are exposed to communications that jeopardize critical consumer protections and undermine trust in public health.

(2) The legislature, therefore, intends to protect consumers and rebuild trust in public health by preventing certain conflicts of interest, and by requiring government agencies in Washington to adhere to state consumer protection laws and federal labeling and advertising laws that apply to drug and medical device manufacturers and their products.

**Sec.**  RCW 19.86.010 and 1961 c 216 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, wherever situated, and any other thing of value.

(2) "Communication" or "promotion" means the publication, dissemination, or display by any means including, but not limited to, in-person, mail, telephone, major media, social media, website, webinar, and electronic communication.

(3) "Drugs" has the same meaning as in RCW 69.04.009 and includes mRNA and DNA vaccines.

(4) "False, misleading, and deceptive communication or promotion" means communication and promotion that fails to reveal material facts, the omission of which is likely to induce, directly or indirectly, the public to utilize a product they may not have otherwise utilized, or would not have utilized in the manner suggested by the communication and promotion.

(5) "Government agency" means:

(a) State offices and entities;

(b) State officers, state employees, and volunteers acting in the capacity of a state officer or state employee;

(c) Local governmental entities and offices, as defined in RCW 4.96.010; and

(d) Local government officers, local government employees, and volunteers.

(6) "Medical devices" has the same meaning as "device" in RCW 69.04.010 and includes personal protective equipment.

(7) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations ((~~and~~)), partnerships, and government agencies.

((~~(2)~~)) (8) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

((~~(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 19.86 RCW to read as follows:

(1) Government agency communication and promotion of drugs and medical devices shall constitute "trade" and "commerce" for the purposes of this chapter, regardless of whether the government agency directly or indirectly offers a product to the public or whether the product is available at no cost to the consumer.

(2) All government agency communication and promotion relating to a drug or medical device must adhere to the requirements and limitations for the product's labeling, promotion, and advertising as set forth for product manufacturers in the following:

(a) The product's food and drug administration emergency use authorization, or licensing agreement, if any; and

(b) Title 21 U.S.C. Sec. 352(a) and (n) and any implementing regulations of the federal food and drug administration, except those regulations relating to reminder advertisements.

(3) Government agencies may not use coercion or undue influence to promote the use of a drug or medical device.

(4) Government agencies may not use false, misleading, or deceptive communication or promotion regarding a drug or medical device, and shall be subject to the requirements of this chapter and chapters 9.04 and 69.04 RCW.

(5) A government agency may not hold membership in an organization that collaborates with or is directly or indirectly sponsored by manufacturers of products for which the agency is responsible for creating or implementing policy.

(6) Government agencies that refer or direct consumers to entities that provide information about drugs or medical devices that are not subject to this chapter shall provide an oral or written warning with the referral or direction.

(7) Government agencies shall establish, implement, and enforce reasonable guidelines and controls to assure adherence to and compliance with this chapter.

(8) When the state attorney general or a county prosecuting attorney becomes aware of or is notified of a violation of this chapter, the attorney shall commence an action to seek all available legal remedies against the violator.

(9) To prevail in an action under this section, the party seeking relief is not required to demonstrate that the government agency acted with intent to harm the public.

(10) Nothing in this section shall be construed or implied to limit or impair the right of a person to pursue a legal action under another law.

(11) Nothing in this section shall be construed to deny, abrogate, or impair any statutory or common law right, remedy, or prohibition otherwise available to a party.

(12) Because trust in government agency communication is necessary for public safety, it is the intent of the legislature that, in construing this act, the courts are guided by applicable federal statutes pertaining to the same or similar matters including the criminal fines for violations of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). To this end, this act shall be liberally construed, that its beneficial purposes of protecting Washington citizens and consumers and restoring trust in government may be served.

(13) All relevant materials and information distributed prior to the effective date of this section shall be removed, retracted, and otherwise withdrawn as soon as reasonably practical, no later than September 1, 2023.

NEW SECTION. **Sec.**  A new section is added to chapter 19.86 RCW to read as follows:

Nothing in this chapter shall be construed to mean that government agencies are prohibited from publicly expressing disagreement with product authorization and approval decisions of federal agencies regarding drugs or medical devices.

NEW SECTION. **Sec.**  A new section is added to chapter 9.04 RCW to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advertisement" includes, in the context of a government agency, any communication or promotion regarding a drug or medical device product, regardless of whether the agency directly or indirectly offers the product to the public or whether the product is available at no cost to the consumer.

(2) "Communication" or "promotion" means the publication, dissemination, or display by any means including, but not limited to, in-person, mail, telephone, major media, social media, website, webinar, and electronic communication.

(3) "Drugs" has the same meaning as in RCW 69.04.009 and includes mRNA and DNA vaccines.

(4) "Government agency" means:

(a) State offices and entities;

(b) State officers, state employees, and volunteers acting in the capacity of a state officer or state employee;

(c) Local governmental entities and offices, as defined in RCW 4.96.010; and

(d) Local government officers, local government employees, and volunteers.

(5) "Medical devices" has the same meaning as "device" in RCW 69.04.010 and includes personal protective equipment.

**Sec.**  RCW 9.04.010 and 1913 c 34 s 1 are each amended to read as follows:

Any person, firm, government agency, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: PROVIDED, That the provisions of this section shall not apply to any owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof.

**Sec.**  RCW 9.04.050 and 2000 c 33 s 1 are each amended to read as follows:

It shall be unlawful for any person or government agency to publish, disseminate or display, or cause directly or indirectly, to be published, disseminated or displayed in any manner or by any means, including solicitation or dissemination by mail, telephone, electronic communication, or door-to-door contacts, any false, deceptive or misleading advertising, with knowledge of the facts which render the advertising false, deceptive or misleading, for any business, trade or commercial purpose or for the purpose of inducing, or which is likely to induce, directly or indirectly, the public to purchase, consume, lease, dispose of, utilize or sell any property or service, or to enter into any obligation or transaction relating thereto: PROVIDED, That nothing in this section shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, such advertising in good faith without knowledge of its false, deceptive or misleading character.

**Sec.**  RCW 9.04.060 and 1961 c 189 s 2 are each amended to read as follows:

The attorney general or the prosecuting attorneys of the several counties may bring an action in the superior court to restrain and prevent any person or government agency from violating any provision of RCW 9.04.050 through 9.04.080.

**Sec.**  RCW 9.04.070 and 1999 c 143 s 1 are each amended to read as follows:

Any person ((~~who~~)) or government agency that violates any order or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both.

**Sec.**  RCW 9.04.080 and 2011 c 336 s 288 are each amended to read as follows:

In the enforcement of RCW 9.04.050 through 9.04.080 the official enforcing RCW 9.04.050 through 9.04.080 may accept an assurance of discontinuance of any act or practice deemed in violation of RCW 9.04.050 through 9.04.080, from any person or government agency engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. A violation of such assurance shall constitute prima facie proof of a violation of RCW 9.04.050 through 9.04.080: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney.

**Sec.**  RCW 69.04.004 and 1945 c 257 s 5 are each amended to read as follows:

The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. With respect to a government agency, "intrastate commerce" includes any communication or promotion regarding a drug or medical device product, regardless of whether the agency directly or indirectly offers the product to the public or whether the product is available at no cost to the consumer.

**Sec.**  RCW 69.04.007 and 1945 c 257 s 8 are each amended to read as follows:

The term "person" includes individual, partnership, corporation, ((~~and~~)) association, and government agency.

**Sec.**  RCW 69.04.019 and 1945 c 257 s 20 are each amended to read as follows:

The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. With respect to a government agency, the term "advertisement" means any communication or promotion regarding a drug or medical device product, regardless of whether the agency directly or indirectly offers the product to the public or whether the product is available at no cost to the consumer.

NEW SECTION. **Sec.**  A new section is added to chapter 69.04 RCW to read as follows:

The terms "communication" and "promotion" mean the publication, dissemination, or display by any means, including, but not limited to in-person, mail, telephone, major media, social media, website, webinar, and electronic communication.

NEW SECTION. **Sec.**  A new section is added to chapter 69.04 RCW to read as follows:

The term "government agency" means:

(1) State offices and entities;

(2) State officers, state employees, and volunteers acting in the capacity of a state officer or state employee;

(3) Local governmental entities and offices, as defined in RCW 4.96.010; and

(4) Local government officers, local government employees, and volunteers.

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2023.

NEW SECTION. **Sec.**  This act shall be known and may be cited as the improving consumer protection to restore trust in public health act.

**--- END ---**