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HOUSE BILL 264

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Heaton

**FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE LEGISLATIVE HEALTH SUBCOMMITTEE**

AN ACT

**RELATING TO HEALTH; ENACTING THE PRESCRIPTION DRUG FAIR
PRICING ACT; PROVIDING FOR EQUAL ACCESS TO PRESCRIPTION DRUG
PRICES; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE.--This act may be cited as the
"Prescription Drug Fair Pricing Act".**

**Section 2. DEFINITIONS.--As used in the Prescription
Drug Fair Pricing Act:**

**A. "charitable health care provider" means a
health care provider that is exempt from federal taxation
under Section 501(c)(3) of the Internal Revenue Code of 1986;**

**B. "covered transaction" means any sale of a
prescription drug to a purchaser doing business in this state
in which a manufacturer, whether by direct sale to a purchaser**

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1 or through a contractual arrangement implemented by one or
2 more wholesalers, negotiates, establishes, determines or
3 otherwise controls the price, terms or conditions of the sale,
4 including rebates, free merchandise, samples and similar trade
5 concessions;

6 C. "manufacturer" or "seller" means a person,
7 other than a wholesaler, that trades in prescription drugs for
8 resale, either directly or through a wholesaler, to purchasers
9 in this state;

10 D. "prescription drug" means a drug or device that
11 may be dispensed only upon a prescription pursuant to
12 provisions of the New Mexico Drug, Device and Cosmetic Act;

13 E. "purchaser" means a person doing business in
14 this state that engages in selling or dispensing prescription
15 drugs directly to consumers but does not include:

16 (1) the federal department of veterans
17 affairs, the federal department of defense, entities covered
18 under Section 256b(a)(4) of the federal Public Health Service
19 Act and any other federal, state or local government program
20 that directly purchases or procures prescription drugs;

21 (2) hospitals that purchase prescription
22 drugs for their inpatients' own use, but not for resale or
23 outpatient use; and

24 (3) charitable health care providers, except
25 those that offer, issue or administer a health insurance

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1 policy or an employee benefit plan; and

2 F. "wholesaler" means a person other than a
3 manufacturer that sells prescription drugs to purchasers.

4 Section 3. PRESCRIPTION DRUG PRICE DISCRIMINATION
5 PROHIBITED. --

6 A. A seller that offers prescription drugs in a
7 covered transaction to a purchaser shall, during the same or
8 substantially the same time period, offer the same or
9 substantially the same terms and conditions for the drugs in a
10 covered transaction to any other purchaser. This provision
11 applies to:

12 (1) transactions in which a manufacturer
13 sells to a purchaser through a contractual arrangement with
14 one or more wholesalers;

15 (2) purchase prices for similar volume
16 purchases; and

17 (3) rebates, free merchandise, samples and
18 similar trade concessions.

19 B. The provisions in Subsection A of this section
20 do not prohibit a seller from offering or providing a
21 discount, provided the discount is made available to all
22 purchasers on equal terms. This includes allowing discounts
23 for:

24 (1) economies or efficiencies based on volume
25 purchases;

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1 (2) opportunities available to purchasers on
2 equal terms through market share movement agreements;

3 (3) prompt payment; and

4 (4) prompt delivery.

5 C. No seller shall provide discounts to any
6 purchaser based on the class of trade to which the purchaser
7 belongs.

8 D. The provisions of this section apply to any
9 covered transaction for the purchase of prescription drugs
10 delivered to a purchaser or a purchaser's facility for sale to
11 consumers in this state.

12 E. Nothing in this section is intended to require
13 a single price for prescription drugs or to eliminate existing
14 discount programs that conform with the provisions of this
15 section.

16 Section 4. ENFORCEMENT. --

17 A. A seller that violates a provision of the
18 Prescription Drug Fair Pricing Act shall pay a civil penalty
19 of not less than one thousand dollars (\$1,000) and not more
20 than fifty thousand dollars (\$50,000) for each violation. The
21 attorney general shall bring an action in district court to
22 enforce the provisions of the Prescription Drug Fair Pricing
23 Act.

24 B. Any purchaser may bring a civil action against
25 any seller to recover damages suffered as a result of a

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1 violation of a provision of the Prescription Drug Fair Pricing
2 Act. Proof of price discrimination shall constitute prima
3 facie evidence that damages have been sustained. When damages
4 are proved, the court shall award the purchaser three times
5 the actual damages caused by the seller's violation of the
6 Prescription Drug Fair Pricing Act.

7 Section 5. APPROPRIATION.--Fifty thousand dollars
8 (\$50,000) is appropriated from the general fund to the office
9 of the attorney general for expenditure in fiscal year 2003
10 for the purpose of enforcing the Prescription Drug Fair
11 Pricing Act. Any unexpended or unencumbered balance remaining
12 at the end of fiscal year 2003 shall revert to the general
13 fund.