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SENATE BILL 555

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

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

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, as amended;

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 or through a contractual arrangement implemented by one or more

1 wholesalers, negotiates, establishes, determines or otherwise
2 controls the price, terms or conditions of sale, including
3 rebates, free merchandise, samples and similar trade
4 concessions;

5 C. "drug" or "prescription drug" means a drug or
6 device, which may be dispensed only upon a prescription as those
7 terms are defined in the New Mexico Drug, Device and Cosmetic
8 Act;

9 D. "manufacturer" or "seller" means a person, other
10 than a wholesaler, that trades in prescription drugs for resale,
11 either directly or through a wholesaler, to purchasers in this
12 state;

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

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

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

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

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1 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 sells
13 to a purchaser through a contractual arrangement with one or
14 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 do
20 not prohibit a seller from offering or providing a discount,
21 provided the discount is made available to all purchasers on
22 equal terms. This includes allowing discounts for:

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

25 (2) opportunities available to purchasers on

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1 equal terms through market share movement agreements;

2 (3) prompt payment; and

3 (4) prompt delivery.

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

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

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

15 Section 4. ENFORCEMENT. --

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

23 B. Any purchaser may bring a civil action against
24 any seller to recover damages suffered as a result of a
25 violation of a provision of the Prescription Drug Fair Pricing

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

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