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HOUSE BILL 339

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JOSE R. ABEYTA

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 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 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 the sale, including
3 rebates, free merchandise, samples and similar trade
4 concessions;

5 C. "drug" or "prescription drug" means a drug or
6 device that may be dispensed only upon a prescription pursuant
7 to provisions of the New Mexico Drug, Device and Cosmetic Act;

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

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

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

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

23 (3) charitable health care providers, except
24 those that offer, issue or administer a health insurance policy
25 or an employee benefit plan; and

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

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

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

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

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

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

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

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

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

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1 (3) prompt payment; and

2 (4) prompt delivery.

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

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

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

14 Section 4. ENFORCEMENT. --

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

22 B. Any purchaser may bring a civil action against
23 any seller to recover damages suffered as a result of a
24 violation of a provision of the Prescription Drug Fair Pricing
25 Act. Proof of price discrimination shall constitute prima facie

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