

SENATE, No. 2461

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED APRIL 12, 2018

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Prohibits drug manufacturers and distributors from advertising prescription drug products in New Jersey.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning prescription drug advertisements by
2 pharmaceutical companies, supplementing Title 24 of the
3 Revised Statutes, and repealing section 3 of P.L.1977, c.240.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. a. The advertisement of prescription drug products to
9 members of the public shall be prohibited in this State. No drug
10 manufacturing business registered pursuant to P.L.1961, c.52
11 (C.24:6B-1 et seq.) or authorized distributor licensed pursuant to
12 P.L.2005, c.206 (C.24:6B-14 et seq.) shall be authorized to engage
13 in advertising in this State as a means to promote the sale of any
14 prescription drug products that are manufactured or distributed by
15 the drug manufacturing business or authorized distributor.

16 b. If a drug manufacturing business or authorized distributor
17 violates the provisions of subsection a. of this section, either
18 directly or indirectly through the actions of its officers or
19 employees, the commissioner shall order the violator, in writing, to
20 cease and desist the unlawful practice, or to take such affirmative
21 action as may be necessary to ensure future compliance with the
22 provisions of this section. An order issued pursuant to this
23 subsection shall identify: (1) the actions that constituted the
24 violation; (2) the date by which the unlawful actions are to be
25 ceased or otherwise corrected; and (3) the name of the individual or
26 individuals with administrative authority who will be responsible
27 for ensuring that the ordered action is timely undertaken by the
28 entity. The order shall be delivered, in person or by certified mail,
29 to an individual at the entity who has been designated to receive
30 service of the commissioner's orders.

31 c. If a drug manufacturing business or authorized distributor
32 fails to comply with an order of the commissioner, which is issued
33 pursuant to subsection b. of this section, the individual or
34 individuals who are named in the order as being responsible for
35 ensuring the entity's compliance therewith shall, in the case of a
36 first offense, be guilty of a disorderly persons offense, and in the
37 case of a second or subsequent offense, be guilty of a crime of the
38 fourth degree. The drug manufacturing business or authorized
39 distributor, as the case may be, shall also be liable to pay a civil
40 penalty as follows: in the case of a first offense, a penalty of not
41 less than \$200 or more than \$5,000, and in the case of a second or
42 subsequent offense, a penalty of not less than \$1,000 or more than
43 \$20,000. The penalties imposed pursuant to this subsection shall be
44 in addition to any other penalties provided by law, and shall be
45 enforced by the department in a summary proceeding brought under
46 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
47 10 et seq.).

1 d. Nothing in this section shall limit the powers of the Attorney
2 General with respect to the enforcement of prohibitions against
3 consumer fraud, as provided by P.L.1960, c.39 (C.56:8-1 et seq.), or
4 shall prevent the commissioner, the Division of Consumer Affairs
5 in the Department of Law and Public Safety, or any appropriate
6 board under the purview of the Division of Consumer Affairs from
7 taking any other action permitted by law against a person who
8 violates the provisions of this act.

9 e. As used in this section:

10 "Authorized distributor" means the same as that term is defined
11 by section 5 of P.L.2005, c.206 (C.24:6B-14).

12 "Commissioner" means the Commissioner of Health.

13 "Drug manufacturing business" means the same as that term is
14 defined by section 13 of P.L.1961, c.52 (C.24:6B-12).

15
16 2. The Commissioner of Health shall adopt rules and
17 regulations, pursuant to the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.) as may be necessary to
19 implement the provisions of this act.

20
21 3. Sections 3 of P.L.1977, c.240 (C.24:6E-2) is repealed.

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23 4. This act shall take effect immediately.
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26 STATEMENT
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28 This bill would prohibit the advertisement of prescription drug
29 products to members of the public in this State. Specifically, the
30 bill would provide that no drug manufacturing business registered
31 pursuant to P.L.1961, c.52 (C.24:6B-1 et seq.) or authorized drug
32 distributor licensed pursuant to P.L.2005, c.206 (C.24:6B-14 et
33 seq.) may engage in advertising in this State as a means to promote
34 the sale of any prescription drug products that are manufactured or
35 distributed thereby.

36 If a drug manufacturing business or authorized distributor
37 violates the bill's prohibition, either directly or indirectly through
38 the actions of its officers or employees, the Commissioner of Health
39 will be required to order the violator, in writing, to cease and desist
40 the unlawful practice, or to take such affirmative action as may be
41 necessary to ensure future compliance with the bill's provisions.
42 The commissioner's order would need to identify: 1) the actions
43 that constituted the violation; 2) the date by which the unlawful
44 actions are to be ceased or otherwise corrected; and 3) the name of
45 the individual or individuals with administrative authority who will
46 be responsible for ensuring that the ordered action is timely
47 undertaken by the entity.

1 If a drug manufacturing business or authorized distributor fails to
2 comply with an order of the commissioner, the individual or
3 individuals who are named in the commissioner's order as being
4 responsible for ensuring the entity's compliance therewith would, in
5 the case of a first offense, be guilty of a disorderly persons offense,
6 and, in the case of a second or subsequent offense, be guilty of a
7 crime of the fourth degree. The drug manufacturing business or
8 authorized distributor, as the case may be, would also be liable to
9 pay a civil penalty as follows: in the case of a first offense, a
10 penalty of not less than \$200 or more than \$5,000, and in the case
11 of a second or subsequent offense, a penalty of not less than \$1,000
12 or more than \$20,000. These penalties would be in addition to any
13 other penalties provided by law.

14 The bill would repeal section 3 of P.L.1977, c.240 (C.24:6E-2),
15 which authorizes the Director of the Division of Consumer Affairs
16 to adopt rules and regulations governing the advertisement of
17 prescription drugs.