

ASSEMBLY, No. 961

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman FELICE

1 AN ACT concerning certain sales of prescription drugs in this State
2 and supplementing Title 56 of the Revised Statutes.

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

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7 1. As used in this act:

8 "Drug" means any substance subject to paragraph 1 of subsection
9 (b) of 21 U.S.C. §353.

10 "In-patient use" means the dispensing of drugs by a health care
11 facility to care for its in-patients and not the sale of drugs to
12 out-patients by the health care facility pharmacy.

13 "Manufacturer" means any person engaged in the manufacture or
14 processing of a drug or drugs and does not include a wholesale
15 distributor of drugs or a retail pharmacy licensed in this State, except
16 that if a manufacturer has an ownership interest in a wholesale
17 distributor, that wholesale distributor shall be a manufacturer.

18 "Purchaser" means any person who purchases a drug or drugs for
19 resale directly to consumers in this State or for dispensing directly to
20 consumers in this State.

21 "Wholesale distributor" means any person, other than a
22 manufacturer, who purchases drugs for resale to purchasers.

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24 2. A manufacturer shall offer a drug it manufactures or processes
25 to purchasers and wholesale distributors on the terms and conditions
26 offered or accorded to the manufacturer's most favored purchaser or
27 wholesale distributor, including, but not limited to, any transaction in
28 which a manufacturer sells to a purchaser through a contractual
29 arrangement implemented by one or more wholesale distributors,
30 except for variations because of the actual costs of distribution of the
31 drug by the manufacturer; discounts for volume purchases of the drug
32 and prompt payment for purchases of the drug, which discounts shall
33 be made available to all purchasers and wholesale distributors on equal
34 terms and be directly proportional to the economies and efficiencies
35 realized by the manufacturer; and discounts for reasonable

1 reimbursement for the value to the manufacturer of a purchaser's or
2 wholesale distributor's actual marketing functions, provided that these
3 discounts shall be available to every purchaser or wholesale distributor
4 which performs these functions in this State.

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6 3. a. An action may be maintained in any court of competent
7 jurisdiction to prevent, restrain or enjoin a violation, or potential
8 violation, of this act. The action may be instituted by any person
9 injured by a violation or potential violation of this act or by the
10 Attorney General. If a violation or potential violation of this act is
11 established in the action, the court shall enjoin and restrain, or
12 otherwise prohibit, that violation or potential violation. In the action
13 it shall not be necessary that actual damages to the plaintiff be alleged
14 or proved, but if alleged and proved, the plaintiff in the action, in
15 addition to such injunctive relief and costs of suit, including filing fees,
16 reasonable attorneys' fees and reasonable expenses of discovery and
17 document reproduction, shall be entitled to recover from the defendant
18 the actual damages sustained by the plaintiff. Proof of a violation of
19 this act shall constitute prima facie evidence of damage to the plaintiff.
20 Actual damages to the plaintiff may be determined by loss of
21 prescription activity, diminished profit or any other legally recognized
22 formula.

23 b. If no injunctive relief is sought or required, any person injured
24 by a violation of this act may maintain an action for damages and costs
25 of suit, including filing fees, reasonable attorneys' fees and reasonable
26 expenses of discovery and document reproduction, in any court of
27 competent jurisdiction. Proof of a violation of this act shall constitute
28 prima facie evidence of damage to the plaintiff. Actual damages to the
29 plaintiff may be determined by loss of prescription activity, diminished
30 profit or any other legally recognized formula.

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32 4. The provisions of this act shall not apply to;

33 a. the sale of drugs by a manufacturer to any federal agency or
34 institution or to a health care facility as defined in the "Health Care
35 Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) if those
36 drugs are only dispensed on the premises of the health care facility for
37 in-patient use;

38 b. rebates provided by a manufacturer pursuant to the provisions
39 of the "Pharmaceutical Rebate Act," P.L.1992, c.83 (C.30:4D-35.1 et
40 seq.) ; or

41 c. the sale of drugs by a manufacturer to a purchaser which is
42 exempt from federal taxation pursuant to section 501(c)(3) of the
43 Internal Revenue Code (26 U.S.C. §501(c)(3)), and which dispenses
44 those drugs free of charge or at a reduced fee based on the patient's
45 ability to pay, except that the sale of drugs to a purchaser which is a
46 health insurer, hospital, medical or health service corporation, health

1 maintenance organization or employee benefit plan subject to
2 regulation by the Department of Insurance or the Department of
3 Health shall not be exempt pursuant to this subsection.

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5 5. This act shall take effect on the 30th day after enactment and
6 shall apply to sales of drugs on or after that 30th day.

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9 STATEMENT

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11 This bill requires a prescription drug manufacturer to offer a drug
12 it manufactures or processes to any purchasers or wholesale
13 distributors on the terms and conditions offered or accorded to the
14 manufacturer's most favored purchaser or wholesale distributor, except
15 for variations because of the manufacturer's actual distribution costs;
16 volume and payment discounts, which discounts must be made
17 available to all purchasers or wholesale distributors on equal terms;
18 and reasonable purchaser or wholesale distributor margins.

19 An injured party or the Attorney General may seek injunctive relief
20 for violations of the provisions of this bill. An injured party may also
21 sue for damages caused by such violations.

22 The provisions of the bill do not apply to purchases of drugs by
23 federal agencies or institutions or to purchases of drugs by health care
24 facilities if the drugs are only dispensed on the premises for in-patient
25 use. The provisions of the bill also do not apply to rebates pursuant
26 to the "Pharmaceutical Rebate Act."

27 If a manufacturer has an ownership interest in a wholesale
28 distributor, that wholesale distributor shall be deemed a manufacturer
29 for the purposes of the bill.

30 In addition, the bill exempts from its provisions the sale of drugs
31 by a manufacturer to a purchaser which is exempt from federal
32 taxation pursuant to section 501(c)(3) of the Internal Revenue Code
33 (26 U.S.C. §501(c)(3)), and which dispenses those drugs free of
34 charge or at a reduced fee based on the patient's ability to pay, except
35 that the sale of drugs to a purchaser which is a health insurer, hospital,
36 medical or health service corporation, health maintenance organization
37 or employee benefit plan subject to regulation by the Department of
38 Insurance or the Department of Health is not subject to exemption.

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43 Prohibits discrimination by a manufacturer or wholesale distributor
44 owned in full or in part by a manufacturer in the pricing of drugs.