

SENATE, No. 974

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1996

By Senator CARDINALE

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.

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

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

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22 2. a. A manufacturer shall sell a drug it manufactures or processes
23 at the same price to purchasers and wholesale distributors, except that
24 the price may vary because of the actual costs of distribution of the
25 drug by the manufacturer; discounts for volume purchases of the drug
26 and prompt payment for purchases of the drug, which discounts shall
27 be made available to all purchasers on equal terms and be directly
28 proportional to the economies and efficiencies realized by the
29 manufacturer; and reasonable reimbursement for the value to the
30 manufacturer of a wholesale distributor's actual marketing functions,
31 which reimbursement shall be available to every wholesale distributor
32 which performs these functions in this State.

33 b. A wholesale distributor shall sell a drug it distributes at the same
34 price to purchasers, except that the price may vary because of the
35 actual costs of distribution of the drug by the wholesale distributor and
36 discounts for volume purchases of the drug and prompt payment for
37 purchases of the drug, which discounts shall be made available to all

1 purchasers on equal terms and be directly proportional to the
2 economies and efficiencies realized by the wholesale distributor.

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

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

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30 4. The provisions of this act shall not apply to the sale of drugs by
31 a manufacturer to any federal agency or institution or to a health care
32 facility as defined in the "Health Care Facilities Planning Act,"
33 P.L.1971, c.136 (C.26:2H-1 et seq.) if those drugs are only dispensed
34 on the premises of the health care facility for in-patient use. The
35 provisions of this act shall not apply to rebates provided by a
36 manufacturer pursuant to the provisions of the "Pharmaceutical Rebate
37 Act," P.L.1992, c.83 (C.30:4D-35.1 et seq.).

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

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43 STATEMENT

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45 This bill requires a prescription drug manufacturer to sell a drug it
46 manufactures or processes at the same price to any purchaser or

1 wholesale distributor for delivery in this State, except that price may
2 vary because of the manufacturer's actual distribution costs; volume
3 and payment discounts, which discounts must be made available to all
4 purchasers on equal terms; and reasonable wholesale distributor
5 margins. The bill also requires a wholesale distributor to sell a drug
6 it distributes at the same price to any purchaser for delivery in this
7 State, except that price may vary because of the distributor's actual
8 distribution costs and volume and payment discounts, which discounts
9 must be made available to all purchasers on equal terms.

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

13 The provisions of the bill do not apply to purchases of drugs by
14 federal agencies or institutions or to purchases of drugs by health care
15 facilities if the drugs are only dispensed on the premises for in-patient
16 use. The provisions of the bill also do not apply to rebates pursuant
17 to the "Pharmaceutical Rebate Act."

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22 Prohibits discrimination by a manufacturer or wholesale distributor in
23 the pricing of drugs.