

LD6092364

HOUSE BILL NO. 2303

Offered January 23, 1995

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 38, consisting of sections numbered 59.1-460 through 59.1-464, relating to the Virginia Equal Access to Drug Discounts Act; civil penalties.

Patrons—Morgan, Callahan, Cooper, Cunningham, Darner, Davies, Dudley, Grayson, Hargrove, Jones, D.C., Parrish and Plum; Senators: Hawkins and Trumbo

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 38, consisting of sections numbered 59.1-460 through 59.1-464 as follows:

CHAPTER 38.

VIRGINIA EQUAL ACCESS TO DRUG DISCOUNTS ACT.

§ 59.1-460. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Charitable health care provider" means any provider that is exempted from federal taxation as provided in Section 501 (c) (3) of the Internal Revenue Code and that provides health care services, including the outpatient distribution of drugs to the public, a majority of which health care services and drugs are provided free or at a reduced fee based on the patient's ability to pay.

"Covered transaction" means any sale of a drug to a purchaser in this Commonwealth in which a manufacturer negotiates, establishes, determines or otherwise controls the price, terms or conditions of sale, whether by direct sale to a purchaser or through a contractual arrangement implemented by one or more wholesalers.

"Drug" means any substance subject to Section 501 (b) (1) of the Federal Food, Drug and Cosmetic Act.

"Manufacturer" means every person as defined in § 54.1-3401, other than a wholesaler, who trades in drugs for resale to purchasers or sale to consumers, either directly or through a wholesaler, in this state.

"Purchaser" means any person who acquires drugs for the purpose of lawfully selling or dispensing them directly to consumers in this state, including, but not limited to, retail pharmacies and any buying group or purchasing cooperative which arranges for the purchase of drugs by other purchasers.

"Wholesaler" means any person other than a manufacturer that sells drugs to purchasers. "Wholesaler" shall not include a buying group or purchasing cooperative which arranges for the purchase of drugs by other purchasers or any person or entity which is directly or indirectly owned in whole or in part by a manufacturer.

§ 59.1-461. Equal access to drug discounts.

A. A manufacturer shall sell drugs in a covered transaction to any purchaser doing business in this Commonwealth to whom it sells on the same terms and conditions offered or accorded by the manufacturer to the most favored purchaser doing business in Virginia, including, but not limited to, purchase prices for similar volume purchases and rebates, free merchandise, samples, and similar trade concessions.

B. This section shall not prohibit a manufacturer from offering or providing a discount, so long as the discount is made available to all purchasers on equal terms. Such discounts may be premised on one or more of the following:

1. The economics of, or efficiencies resulting from, volume purchases;
2. The opportunities available to all purchasers on equal terms through market share movement agreements;

3. The placing of drugs on a formulary;

4. The tender of prompt payment;

5. The express terms of delivery.

C. No manufacturer shall provide discounts to any purchaser based on the class of trade to which the purchaser belongs, except as set forth in § 59.1-462.

D. This chapter shall apply to any purchase of drugs to be delivered to a purchaser or purchaser's facility for sale to consumers in this Commonwealth.

E. This section shall not be deemed to discourage the development of different marketing programs by manufacturers, nor shall it be deemed to create a single price for prescription drugs or to eliminate

INTRODUCED

HB2303

60 existing discount programs so long as such existing programs adhere to the conditions of this section.

61 § 59.1-462. Exceptions.

62 For the purposes of this chapter, the following shall not be "purchasers," as defined in § 59.1-460:

63 1. The Department of Veteran's Affairs, the Department of Defense, covered entities under Section
64 340 (b) of the Public Health Services Act, the Virginia Department of Medical Assistance Services, and
65 any other federal, state or local government program that directly procures drugs;

66 2. Hospitals which purchase drugs for their inpatients' own use and not for resale or outpatient use;

67 3. Charitable health care providers, except those which issue, offer or administer a health insurance
68 policy or an employee benefit plan;

69 4. Purchasers who are pharmacy providers who sell exclusively to long-term care facilities for use
70 by the residents of such long-term care facilities, but who do not sell any products for resale or
71 nonresident use.

72 § 59.1-463. Purchases by Commonwealth prohibited in certain circumstances.

73 The Commonwealth and its political subdivisions shall not purchase any drugs from a manufacturer
74 engaging in acts prohibited by this chapter, including, but not limited to, covered transactions in which
75 a seller sells to the Commonwealth or one of its political subdivisions through a contractual
76 arrangement implemented by one or more wholesalers. Beginning July 1, 1995, a manufacturer selling
77 drugs within this Commonwealth shall submit to the Secretary of Health and Human Resources before
78 July 1 of each year an affidavit stating that such manufacturer will not engage in conduct prohibited by
79 this chapter.

80 § 59.1-464. Civil action; treble damages.

81 The following remedies shall apply to violations of this chapter and shall be cumulative:

82 1. Any manufacturer who violates this chapter shall pay a civil penalty of not less than \$1,000 nor
83 more than \$50,000 for each violation. The Attorney General may bring an action in the circuit court of
84 the jurisdiction in which the violation occurred to enforce the provisions of this chapter.

85 2. Any purchaser may bring a civil action against any manufacturer to recover damages suffered as
86 the result of a violation of this chapter. Proof of price discrimination shall constitute prima facie
87 evidence of damage. Damages awarded to any such purchaser shall be trebled.