

LD2925364

HOUSE BILL NO. 842

Offered January 25, 1994

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 drugs; prohibition of discriminatory wholesale pricing; penalty.

Patrons—Morgan, Bennett, Cox, Cranwell, DeBoer, Forbes, Hall, Hargrove, Parrish, Plum, Putney, Shuler, Tata and Thomas; Senators: Calhoun, Holland, C.A., Trumbo and Woods

Referred to Committee on General Laws

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 DISCRIMINATORY DRUG PRICING ACT.

§ 59.1-460. Definitions.

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

"Drug" means any substance subject to section 201(g) of the Federal Food, Drug and Cosmetic Act.

"Manufacturer" means any person who sells drugs to sellers or purchasers.

"Purchaser" means any person who engages in selling or dispensing drugs directly to consumers.

"Seller" means any person who sells drugs to purchasers.

§ 59.1-461. Price discrimination prohibited.

A. Every manufacturer shall offer drugs to every seller with all rights and privileges offered or accorded by the manufacturer to the most favored seller, including purchase prices for similar volume purchases. Every manufacturer shall offer rebates, free merchandise, samples and similar trade concessions on proportionally equal terms to every seller. Nothing in this subsection prohibits the giving of a discount for volume purchases, so long as such discount is justified by the economies or efficiencies resulting from such volume purchases and such discount is made available to all sellers on proportionally equal terms.

B. Every manufacturer or seller shall offer drugs to every purchaser, with all rights and privileges offered or accorded by the manufacturer or seller to the most favored purchaser, including purchase prices for similar volume purchases. A manufacturer or seller shall offer rebates, free merchandise, samples or similar trade concessions on proportionally equal terms to every purchaser. Nothing in this subsection prohibits the giving of a discount for volume purchases, so long as such discount is justified by the economies or efficiencies resulting from such volume purchases and such discount is made available to all purchases on proportionally equal terms.

C. This section shall apply to any purchase of drugs which shall be delivered to a purchaser or purchaser's facility located in this Commonwealth.

§ 59.1-462. Purchases by Commonwealth prohibited in certain instances.

No agency of the Commonwealth shall purchase any drugs from any manufacturer or seller that engages in any price discrimination prohibited by this chapter.

§ 59.1-463. Civil action; treble damages.

Any purchaser damaged by a violation of this chapter may bring an action against the seller to recover treble damages sustained by reason of such violation. Proof of price discrimination shall constitute prima facie evidence of damage to a disfavored purchaser.

§ 59.1-464. Injunctions; civil penalties.

A. The Attorney General, an attorney for the Commonwealth, or an attorney for any city, county or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of a county, city or town to enjoin any violation of this chapter.

B. If any person violates any injunction to cease and desist from any violation of this chapter, the Attorney General, an attorney for the Commonwealth, or an attorney for any city, county or town may, upon petition to the court, recover for the literary fund a civil penalty of not less than \$1,000 and not more than \$100,000.

C. The circuit court may make such additional orders or decrees as may be necessary to enforce the provisions of this chapter.

INTRODUCED

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