

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2308

Introduced by

Senators Watne, DeMers, Yockim

Representatives Oban, Wentz

1 A BILL for an Act relating to the pricing of drugs by manufacturers and sellers; and to provide a
2 penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "Charitable health care provider" means a health care provider exempt from
6 federal taxation as provided by section 501(c)(3) of the Internal Revenue Code and
7 which provides health care services to the public, a substantial portion of which are
8 provided at no charge or at a reduced charge based on the patient's ability to pay.
- 9 2. "Drug" has the same meaning as prescription drug in section 19-02.1-14.1.
- 10 3. "For own use" has the same meaning as when used in 52 Stat. 283 (1938) except
11 take-home medication for inpatients and emergency room patients not exceeding a
12 thirty-day supply or unit of issue is a reasonable and limited time, unless medical
13 necessity indicates otherwise.
- 14 4. "Manufacturer" means a person, other than a wholesaler, who trades in drugs for
15 resale to purchasers or sale to consumers either directly or through a wholesaler.
- 16 5. "Purchaser" means a person who sells or dispenses drugs to consumers.
- 17 6. "Wholesaler" means a person, other than a manufacturer, who sells drugs to
18 purchasers.

19 **SECTION 2. Favorable terms and conditions prohibited.** A manufacturer may not
20 sell drugs to any wholesaler or purchaser to which the manufacturer sells or distributes on less
21 favorable terms and conditions than those contemporaneously accorded to the manufacturer's
22 most favored wholesaler, purchaser, or consumer, including any transaction in which a
23 manufacturer sells to a purchaser through a contractual agreement implemented by one or
24 more wholesalers. Terms and conditions must include purchase prices for similar or blended

1 volume purchases, rebates, free merchandise, samples, payment terms, and related trade
2 concessions.

3 **SECTION 3. Volume discounts authorized.** A manufacturer may offer or provide a
4 discount to a wholesaler or purchaser related to volume purchases if the discount is made
5 available to all wholesalers or purchasers on proportionally equal terms. A discount is
6 authorized for any of the following reasons:

- 7 1. The discount is justified by the economies or efficiencies resulting from volume
8 purchases.
- 9 2. The discount represents reasonable value to the manufacturer for actual marketing
10 functions.
- 11 3. The discount meets in good faith the equally low prices or terms of a competitor.
- 12 4. The discount is provided for prompt payment.
- 13 5. The discount is provided for prompt delivery.
- 14 6. The discount is provided for opportunities available to all sellers on equal terms
15 through market share movement agreements.

16 **SECTION 4. Discounts based on class of trade prohibited.** A manufacturer may
17 not provide a discount to any purchaser or wholesaler based on the class of trade to which the
18 purchaser or wholesaler belongs.

19 **SECTION 5. Application of Act.** This Act applies to any purchase of drugs delivered
20 to a purchaser or purchaser's facility located in this state. Ownership of a wholesaler by a
21 manufacturer does not circumvent any provision of this Act.

22 **SECTION 6. Exceptions to application.** A governmental agency or political
23 subdivision is not a wholesaler or purchaser under this Act. A manufacturer or wholesaler of
24 drugs may accord any governmental agency or political subdivision pricing or related
25 arrangements that are not made available to other purchasers. This Act does not apply to
26 drugs purchased by a hospital for the hospital's own use, a discount required by federal law, a
27 rebate authorized by federal law, and drugs purchased by a charitable health care provider that
28 does not issue, offer, or administer a health insurance policy or an employee benefit plan.

29 **SECTION 7. Claim for relief - Damages.** Any purchaser damaged by a violation of
30 this Act may bring a claim for relief against a manufacturer to recover treble damages sustained
31 because of the violation and for the court costs and reasonable attorney's fees. Damages of

1 less than one thousand dollars may not be recovered by process of law. Proof of price
2 discrimination constitutes prima facie evidence of damage to a disfavored purchaser.

3 **SECTION 8. Purchasing sanctions for violation.** A governmental entity may not
4 purchase drugs from a manufacturer that is in violation of this Act.

5 **SECTION 9. Civil penalty.** A manufacturer that violates this Act or an order or
6 injunction to cease and desist from a violation shall pay a civil penalty of not less than one
7 thousand dollars nor more than fifty thousand dollars for each violation.