

Amendment No. 644

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| Senate Amendment to Assembly Bill No. 250 First Reprint | (BDR 40-782) |
| Proposed by: Senate Committee on Commerce and Labor | |
| Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes | |

| ASSEMBLY ACTION | | | Initial and Date | SENATE ACTION | | | Initial and Date | | |
|-----------------|--------------------------|------|--------------------------|---------------|--------------|--------------------------|------------------|--------------------------|-------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

JDK/EWR



Date: 5/22/2023

A.B. No. 250—Establishes provisions governing prescription drugs. (BDR 40-782)



ASSEMBLY BILL NO. 250—ASSEMBLYWOMEN CONSIDINE
AND ANDERSON

MARCH 7, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Establishes provisions governing prescription drugs. (BDR 40-782)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; prohibiting certain actions related to pricing and reimbursement for certain drugs; creating a cause of action for violating such prohibitions; ~~requiring certain entities to maintain a registered agent and office in this State;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law establishes the Medicare program, which is a public health insurance program for persons 65 years of age and older and specified persons with disabilities who are under 65 years of age. (42 U.S.C. §§ 1395 et seq.) Existing federal law requires the United States Secretary of Health and Human Services to negotiate with the manufacturers of certain drugs and to establish the maximum fair price for certain drugs, which is the maximum price at which such drugs may be sold to a recipient of Medicare. (42 U.S.C. §§ 1320f-2, 1320f-3) Existing federal law requires the Secretary of Health and Human Services to publish those maximum fair prices. (42 U.S.C. § 1320f-4) **Section 1** of this bill prohibits a person or entity that: (1) purchases a drug which is subject to a maximum fair price in this State from paying a price that is higher than the maximum fair price; or (2) seeks reimbursement for a drug subject to a maximum fair price which is delivered, dispensed or administered to a person in this State from seeking reimbursement at a rate which is higher than the maximum fair price. ~~[Section 1 also requires any such person or entity to maintain a registered agent and an office or base of operations in this State.]~~

Existing law: (1) prohibits certain trade practices which are deemed to be deceptive trade practices; and (2) provides for the enforcement of the prohibition on engaging in deceptive trade practices, including by prescribing criminal penalties to be imposed against a person who engages in a deceptive trade practice. (NRS 598.0903-598.0999) **Section 1** makes it a deceptive trade practice for any person to violate ~~[1- (1)]~~ the prohibition on purchasing or seeking reimbursement for a drug at a price higher than the maximum fair price. ~~[1- or (2) the requirement to maintain a registered agent and an office or base of operations in this State when engaging in certain activity relating to drugs subject to a maximum fair price.]~~ **Sections 1 and 3** of this bill provide that a person who violates the provisions of **section 1** is not subject to any criminal penalty set forth in existing law for engaging in a deceptive trade practice, meaning such a person is subject only to the various civil enforcement measures, including civil penalties, set forth in existing law for engaging in a deceptive trade practice. (NRS 598.097-598.0999)

Existing law authorizes any person who is a victim of consumer fraud, including a deceptive trade practice, to bring a civil action. (NRS 41.600) **Section 2** of this bill provides

that a violation of **section 1** constitutes consumer fraud, and **sections 1 and 2** authorize a victim of such a violation to bring a civil action.

WHEREAS, In the 2019 Legislative Session, Senate Bill No. 276 directed the Legislative Commission to appoint a committee to conduct an interim study concerning the cost of prescription drugs in this State and the impact of rebates, reductions in price and other remuneration from manufacturers on prescription drug prices; and

WHEREAS, In reporting on the findings of the Committee to Conduct an Interim Study Concerning the Costs of Prescription Drugs, LCB Bulletin No. 21-9, published in January 2021, stated that “[i]n 2018, Americans paid an average of \$1,229 for prescription drugs, the highest amount per capita in any developed country in the world”; and

WHEREAS, LCB Bulletin No. 21-9 also stated that “[i]ncreasing drug prices disproportionately affect uninsured and underinsured patients, while insured patients covered by high-deductible, commercial, or government-sponsored health insurance plans tend to pay more through premium and copay increases”; and

WHEREAS, The Nevada Spending and Government Efficiency Commission noted in its final report, “Final Report of the Nevada Spending and Government Efficiency Commission to Governor Jim Gibbons,” published January 7, 2010, that the State of Nevada would realize significant savings on Medicaid, mental health, corrections and other programs if the cost of prescription drugs were better controlled; and

WHEREAS, Excessive prices negatively affect the ability of residents of this State to obtain prescription drugs, thereby endangering the health and safety of such residents; and

WHEREAS, Excessive prices of prescription drugs threaten the economic well-being of residents of this State, thereby inhibiting their ability to pay for necessary and essential goods and services including housing, food and utilities; and

WHEREAS, Excessive costs of prescription drugs contribute significantly to increasing costs of health care and health insurance that threaten the ability of residents of this State to obtain affordable health coverage and maintain or achieve good health; and

WHEREAS, Excessive costs of prescription drugs contribute significantly to rising costs for health care provided and paid for through health insurance programs for public employees, including employees of the State, municipalities, counties, school districts, institutions for higher education and retirees whose health costs are funded by taxpayer dollars, thereby threatening the ability of the State and local governments to fund other programs necessary for the public good and safety, such as public safety, police, fire and education; and

WHEREAS, To protect residents of this State from the negative effects from excessive costs of prescription drugs, and to protect the safety, health and economic well-being of Nevadans, the Legislature finds that legislation regarding affordable access to prescription drugs is necessary for residents of this State to achieve and maintain good health; now therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 439B of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~Except as otherwise provided in subsection 8, a~~ A person or entity that purchases a referenced drug in this State shall not pay a price for the referenced drug that, excluding any fee paid to a pharmacy for dispensing the referenced drug, is higher than the maximum fair price for that referenced drug during the price applicability period.

2. ~~Except as otherwise provided in subsection 8, a~~ A person or entity that seeks reimbursement for a referenced drug which is delivered, dispensed or administered to a person in this State shall not seek reimbursement for the referenced drug at a rate which, excluding any fee paid to a pharmacy for dispensing the referenced drug, is higher than the maximum fair price for that referenced drug during the price applicability period.

3. ~~Except as otherwise provided in subsection 8, a person or entity that sells, offers for sale, distributes or delivers any referenced drug to a person or entity in this State or seeks reimbursement for a referenced drug which is delivered, dispensed or administered to a person in this State shall maintain in this State a registered agent and an office or base of operations.~~

~~4.~~ 4. Except as otherwise provided in subsection ~~5~~ 4, a violation of subsection 1 ~~or 2~~ or 2 by any person constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive. Each such violation of subsection 1 or 2 ~~for sale, offer for sale or distribution or delivery of a quantity of a referenced drug in violation of subsection 3~~ constitutes a separate deceptive trade practice.

~~5.~~ 4. A person who violates the provisions of subsection 1 ~~or 2~~ or 2 is not subject to any criminal penalty set forth in subsection 3 of NRS 598.0999.

~~6.~~ 5. A person aggrieved by a violation of subsection 1 ~~or 2~~ or 2 may bring an action for consumer fraud pursuant to NRS 41.600.

~~7.~~ 6. The Department may adopt any regulations necessary to carry out the provisions of this section.

~~8. A provider of health coverage for federal employees, a provider of health coverage that is subject to the Employee Retirement Income Security Act of 1974 or a Taft Hartley trust formed pursuant to 29 U.S.C. § 186(e)(5):~~

~~(a) Is not required to comply with the requirements of this section.~~

~~(b) May elect to be subject to the provisions of this section by notifying the Director in writing on or before January 1 of each year in which the plan elects to participate.~~

~~9.~~ 7. As used in this section:

(a) "Manufacturer" has the meaning ascribed to it in NRS 639.009.

(b) "Maximum fair price" means the maximum fair price for a drug published by the United States Secretary of Health and Human Services pursuant to 42 U.S.C. § 1320f-4.

(c) "Price applicability period" has the meaning ascribed to it in 42 U.S.C. § 1320f(b)(2).

(d) "Referenced drug" means a drug subject to a maximum fair price.

(e) "Wholesaler" has the meaning ascribed to it in NRS 639.016.

Sec. 2. NRS 41.600 is hereby amended to read as follows:

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

- 1 (a) An unlawful act as defined in NRS 119.330;
- 2 (b) An unlawful act as defined in NRS 205.2747;
- 3 (c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;
- 4 (d) An act prohibited by NRS 482.351;
- 5 (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925,
- 6 inclusive; ~~or~~
- 7 (f) A violation of NRS 417.133 or 417.135 ~~or~~; *or*
- 8 *(g) A violation of section 1 of this act.*
- 9 3. If the claimant is the prevailing party, the court shall award the claimant:
- 10 (a) Any damages that the claimant has sustained;
- 11 (b) Any equitable relief that the court deems appropriate; and
- 12 (c) The claimant's costs in the action and reasonable attorney's fees.
- 13 4. Any action brought pursuant to this section is not an action upon any
- 14 contract underlying the original transaction.

15 **Sec. 3.** NRS 598.0999 is hereby amended to read as follows:

16 598.0999 1. Except as otherwise provided in NRS 598.0974, a person who
17 violates a court order or injunction issued pursuant to the provisions of NRS
18 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner,
19 the Director, the district attorney of any county of this State or the Attorney General
20 shall forfeit and pay to the State General Fund a civil penalty of not more than
21 \$10,000 for each violation. For the purpose of this section, the court issuing the
22 order or injunction retains jurisdiction over the action or proceeding. Such civil
23 penalties are in addition to any other penalty or remedy available for the
24 enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

25 2. Except as otherwise provided in NRS 598.0974, in any action brought
26 pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court
27 finds that a person has willfully engaged in a deceptive trade practice, the
28 Commissioner, the Director, the district attorney of any county in this State or the
29 Attorney General bringing the action may recover a civil penalty not to exceed
30 \$5,000 for each violation. The court in any such action may, in addition to any
31 other relief or reimbursement, award reasonable attorney's fees and costs.

32 3. ~~(A)~~ *Except as otherwise provided in section 1 of this act,* a natural person,
33 firm, or any officer or managing agent of any corporation or association who
34 knowingly and willfully engages in a deceptive trade practice:

35 (a) For an offense involving a loss of property or services valued at \$1,200 or
36 more but less than \$5,000, is guilty of a category D felony and shall be punished as
37 provided in NRS 193.130.

38 (b) For an offense involving a loss of property or services valued at \$5,000 or
39 more but less than \$25,000, is guilty of a category C felony and shall be punished
40 as provided in NRS 193.130.

41 (c) For an offense involving a loss of property or services valued at \$25,000 or
42 more but less than \$100,000, is guilty of a category B felony and shall be punished
43 by imprisonment in the state prison for a minimum term of not less than 1 year and
44 a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

45 (d) For an offense involving a loss of property or services valued at \$100,000
46 or more, is guilty of a category B felony and shall be punished by imprisonment in
47 the state prison for a minimum term of not less than 1 year and a maximum term of
48 not more than 20 years, and by a fine of not more than \$15,000.

49 (e) For any offense other than an offense described in paragraphs (a) to (d),
50 inclusive, is guilty of a misdemeanor.

51 ➤ The court may require the natural person, firm, or officer or managing agent of
52 the corporation or association to pay to the aggrieved party damages on all profits

1 derived from the knowing and willful engagement in a deceptive trade practice and
2 treble damages on all damages suffered by reason of the deceptive trade practice.

3 4. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive,
4 598.100 to 598.2801, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787,
5 inclusive, 598.840 to 598.966, inclusive, or 598.9701 to 598.9718, inclusive, fails
6 to comply with a judgment or order of any court in this State concerning a violation
7 of such a provision, or fails to comply with an assurance of discontinuance or other
8 agreement concerning an alleged violation of such a provision, the Commissioner
9 or the district attorney of any county may bring an action in the name of the State of
10 Nevada seeking:

11 (a) The suspension of the person's privilege to conduct business within this
12 State; or

13 (b) If the defendant is a corporation, dissolution of the corporation.

14 ➤ The court may grant or deny the relief sought or may order other appropriate
15 relief.

16 5. If a person violates any provision of NRS 228.500 to 228.640, inclusive,
17 fails to comply with a judgment or order of any court in this State concerning a
18 violation of such a provision, or fails to comply with an assurance of
19 discontinuance or other agreement concerning an alleged violation of such a
20 provision, the Attorney General may bring an action in the name of the State of
21 Nevada seeking:

22 (a) The suspension of the person's privilege to conduct business within this
23 State; or

24 (b) If the defendant is a corporation, dissolution of the corporation.

25 ➤ The court may grant or deny the relief sought or may order other appropriate
26 relief.

27 6. In an action brought by the Commissioner or the Attorney General
28 pursuant to subsection 4 or 5, process may be served by an employee of the
29 Consumer Affairs Unit of the Department of Business and Industry or an employee
30 of the Attorney General.

31 7. As used in this section:

32 (a) "Property" has the meaning ascribed to it in NRS 193.0225.

33 (b) "Services" has the meaning ascribed to it in NRS 205.0829.

34 (c) "Value" means the fair market value of the property or services at the time
35 the deceptive trade practice occurred. The value of a written instrument which does
36 not have a readily ascertainable market value is the greater of the face amount of
37 the instrument less the portion satisfied or the amount of economic loss to the
38 owner of the instrument resulting from the deprivation of the instrument. The trier
39 of fact shall determine the value of all other property whose value is not readily
40 ascertainable, and may, in making that determination, consider all relevant
41 evidence, including evidence of the value of the property to its owner.

42 **Sec. 4.** The provisions of this act do not apply to any contract for the sale of
43 or reimbursement for a drug entered into before January 1, 2024, but do apply to
44 any renewal or extension of such a contract.

45 **Sec. 5.** 1. This section becomes effective upon passage and approval.

46 2. Sections 1 to 4, inclusive, of this act become effective:

47 (a) Upon passage and approval for the purpose of adopting any regulations and
48 performing any other preparatory administrative tasks that are necessary to carry
49 out the provisions of this act; and

50 (b) On January 1, 2024, for all other purposes.