

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:

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

17 Existing law: (1) prohibits certain trade practices which are deemed to be
18 deceptive trade practices; and (2) provides for the enforcement of the prohibition on
19 engaging in deceptive trade practices, including by prescribing criminal penalties to
20 be imposed against a person who engages in a deceptive trade practice. (NRS
21 598.0903-598.0999) **Section 1** makes it a deceptive trade practice for any person to
22 violate: (1) the prohibition on purchasing or seeking reimbursement for a drug at a



23 price higher than the maximum fair price; or (2) the requirement to maintain a
24 registered agent and an office or base of operations in this State when engaging in
25 certain activity relating to drugs subject to a maximum fair price. **Sections 1 and 3**
26 of this bill provide that a person who violates the provisions of **section 1** is not
27 subject to any criminal penalty set forth in existing law for engaging in a deceptive
28 trade practice, meaning such a person is subject only to the various civil
29 enforcement measures, including civil penalties, set forth in existing law for
30 engaging in a deceptive trade practice. (NRS 598.097-598.0999)
31 Existing law authorizes any person who is a victim of consumer fraud,
32 including a deceptive trade practice, to bring a civil action. (NRS 41.600) **Section 2**
33 of this bill provides that a violation of **section 1** constitutes consumer fraud, and
34 **sections 1 and 2** authorize a victim of such a violation to bring a civil action.

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

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

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

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

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

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

31 WHEREAS, Excessive costs of prescription drugs contribute
32 significantly to increasing costs of health care and health insurance



1 that threaten the ability of residents of this State to obtain affordable
2 health coverage and maintain or achieve good health; and

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

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

18
19 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
20 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
21

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

24 *1. A person or entity that purchases a referenced drug in this*
25 *State shall not pay a price for the referenced drug that, excluding*
26 *any fee paid to a pharmacy for dispensing the referenced drug, is*
27 *higher than the maximum fair price for that referenced drug.*

28 *2. A person or entity that seeks reimbursement for a*
29 *referenced drug which is delivered, dispensed or administered to a*
30 *person in this State shall not seek reimbursement for the*
31 *referenced drug at a rate which, excluding any fee paid to a*
32 *pharmacy for dispensing the referenced drug, is higher than the*
33 *maximum fair price for that referenced drug.*

34 *3. Any person or entity that sells, offers for sale, distributes or*
35 *delivers any referenced drug to a person or entity in this State or*
36 *seeks reimbursement for a referenced drug which is delivered,*
37 *dispensed or administered to a person in this State shall maintain*
38 *in this State a registered agent and an office or base of operations.*

39 *4. Except as otherwise provided in subsection 5, a violation of*
40 *subsection 1, 2 or 3 by any person constitutes a deceptive trade*
41 *practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*
42 *Each such violation of subsection 1 or 2 or sale, offer for sale or*
43 *distribution or delivery of a quantity of a referenced drug in*
44 *violation of subsection 3 constitutes a separate deceptive trade*
45 *practice. A claim that a manufacturer or wholesaler has refused to*



1 *negotiate in good faith is an affirmative defense in any proceeding*
2 *seeking enforcement of the provisions of subsection 1 or 2.*

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

6 6. *A person aggrieved by a violation of subsection 1, 2 or 3*
7 *may bring an action for consumer fraud pursuant to NRS 41.600.*

8 7. *The Department may adopt any regulations necessary to*
9 *carry out the provisions of this section.*

10 8. *As used in this section:*

11 (a) *“Manufacturer” has the meaning ascribed to it in*
12 *NRS 639.009.*

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

16 (c) *“Referenced drug” means a drug subject to a maximum*
17 *fair price.*

18 (d) *“Wholesaler” has the meaning ascribed to it in*
19 *NRS 639.016.*

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

21 41.600 1. An action may be brought by any person who is a
22 victim of consumer fraud.

23 2. As used in this section, “consumer fraud” means:

24 (a) An unlawful act as defined in NRS 119.330;

25 (b) An unlawful act as defined in NRS 205.2747;

26 (c) An act prohibited by NRS 482.36655 to 482.36667,
27 inclusive;

28 (d) An act prohibited by NRS 482.351;

29 (e) A deceptive trade practice as defined in NRS 598.0915 to
30 598.0925, inclusive; ~~for~~

31 (f) A violation of NRS 417.133 or 417.135 ~~H~~; *or*

32 (g) *A violation of section 1 of this act.*

33 3. If the claimant is the prevailing party, the court shall award
34 the claimant:

35 (a) Any damages that the claimant has sustained;

36 (b) Any equitable relief that the court deems appropriate; and

37 (c) The claimant’s costs in the action and reasonable attorney’s
38 fees.

39 4. Any action brought pursuant to this section is not an action
40 upon any contract underlying the original transaction.

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

42 598.0999 1. Except as otherwise provided in NRS 598.0974,
43 a person who violates a court order or injunction issued pursuant to
44 the provisions of NRS 598.0903 to 598.0999, inclusive, upon a
45 complaint brought by the Commissioner, the Director, the district



1 attorney of any county of this State or the Attorney General shall
2 forfeit and pay to the State General Fund a civil penalty of not more
3 than \$10,000 for each violation. For the purpose of this section, the
4 court issuing the order or injunction retains jurisdiction over the
5 action or proceeding. Such civil penalties are in addition to any
6 other penalty or remedy available for the enforcement of the
7 provisions of NRS 598.0903 to 598.0999, inclusive.

8 2. Except as otherwise provided in NRS 598.0974, in any
9 action brought pursuant to the provisions of NRS 598.0903 to
10 598.0999, inclusive, if the court finds that a person has willfully
11 engaged in a deceptive trade practice, the Commissioner, the
12 Director, the district attorney of any county in this State or the
13 Attorney General bringing the action may recover a civil penalty not
14 to exceed \$5,000 for each violation. The court in any such action
15 may, in addition to any other relief or reimbursement, award
16 reasonable attorney's fees and costs.

17 3. ~~1A~~ *Except as otherwise provided in section 1 of this act, a*
18 natural person, firm, or any officer or managing agent of any
19 corporation or association who knowingly and willfully engages in a
20 deceptive trade practice:

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

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

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

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

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

40 ➤ The court may require the natural person, firm, or officer or
41 managing agent of the corporation or association to pay to the
42 aggrieved party damages on all profits derived from the knowing
43 and willful engagement in a deceptive trade practice and treble
44 damages on all damages suffered by reason of the deceptive trade
45 practice.



1 4. If a person violates any provision of NRS 598.0903 to
2 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.405 to
3 598.525, inclusive, 598.741 to 598.787, inclusive, 598.840
4 to 598.966, inclusive, or 598.9701 to 598.9718, inclusive, fails to
5 comply with a judgment or order of any court in this State
6 concerning a violation of such a provision, or fails to comply with
7 an assurance of discontinuance or other agreement concerning an
8 alleged violation of such a provision, the Commissioner or the
9 district attorney of any county may bring an action in the name of
10 the State of Nevada seeking:

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

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

15 ➔ The court may grant or deny the relief sought or may order other
16 appropriate relief.

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

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

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

28 ➔ The court may grant or deny the relief sought or may order other
29 appropriate relief.

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

34 7. As used in this section:

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

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

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



1 determination, consider all relevant evidence, including evidence of
2 the value of the property to its owner.

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

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

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

- 10 (a) Upon passage and approval for the purpose of adopting any
11 regulations and performing any other preparatory administrative
12 tasks that are necessary to carry out the provisions of this act; and
13 (b) On January 1, 2024, for all other purposes.

