

Amendment No. 439

Assembly Amendment to Assembly Bill No. 250	(BDR 40-782)
<b>Proposed by:</b> Assembly Committee on Commerce and Labor	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

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.





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) the prohibition on purchasing or seeking reimbursement for a drug at a price higher than the maximum fair price; 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

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

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

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

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

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

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

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

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

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

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

1 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
2 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:  
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4 **Section 1.** Chapter 439B of NRS is hereby amended by adding thereto a new  
5 section to read as follows:

6 1. ~~1.1~~ Except as otherwise provided in subsection 8, a person or entity that  
7 purchases a referenced drug in this State shall not pay a price for the referenced  
8 drug that, excluding any fee paid to a pharmacy for dispensing the referenced  
9 drug, is higher than the maximum fair price for that referenced drug ~~1.1~~ during  
10 the price applicability period.

11 2. ~~1.2~~ Except as otherwise provided in subsection 8, a person or entity that  
12 seeks reimbursement for a referenced drug which is delivered, dispensed or  
13 administered to a person in this State shall not seek reimbursement for the  
14 referenced drug at a rate which, excluding any fee paid to a pharmacy for  
15 dispensing the referenced drug, is higher than the maximum fair price for that  
16 referenced drug ~~1.2~~ during the price applicability period.

17 3. ~~1.3~~ Except as otherwise provided in subsection 8, a person or entity  
18 that sells, offers for sale, distributes or delivers any referenced drug to a person  
19 or entity in this State or seeks reimbursement for a referenced drug which is  
20 delivered, dispensed or administered to a person in this State shall maintain in  
21 this State a registered agent and an office or base of operations.

22 4. Except as otherwise provided in subsection 5, a violation of subsection 1,  
23 2 or 3 by any person constitutes a deceptive trade practice for the purposes of  
24 NRS 598.0903 to 598.0999, inclusive. Each such violation of subsection 1 or 2 or  
25 sale, offer for sale or distribution or delivery of a quantity of a referenced drug in  
26 violation of subsection 3 constitutes a separate deceptive trade practice. ~~1.4~~ ~~claim~~  
27 that a manufacturer or wholesaler has refused to negotiate in good faith is an  
28 affirmative defense in any proceeding seeking enforcement of the provisions of  
29 subsection 1 or 2.

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

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

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

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

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

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

43 9. As used in this section:

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

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

48 (c) "Price applicability period" has the meaning ascribed to it in 42 U.S.C. §  
49 1320f(b)(2).

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

51 ~~1.5~~ (e) "Wholesaler" has the meaning ascribed to it in NRS 639.016.

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

2       41.600 1. An action may be brought by any person who is a victim of  
3 consumer fraud.

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

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

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

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

8       (d) An act prohibited by NRS 482.351;

9       (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925,  
10 inclusive; ~~(e)~~

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

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

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

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

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

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

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

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

20       598.0999 1. Except as otherwise provided in NRS 598.0974, a person who  
21 violates a court order or injunction issued pursuant to the provisions of NRS  
22 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner,  
23 the Director, the district attorney of any county of this State or the Attorney General  
24 shall forfeit and pay to the State General Fund a civil penalty of not more than  
25 \$10,000 for each violation. For the purpose of this section, the court issuing the  
26 order or injunction retains jurisdiction over the action or proceeding. Such civil  
27 penalties are in addition to any other penalty or remedy available for the  
28 enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

29       2. Except as otherwise provided in NRS 598.0974, in any action brought  
30 pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court  
31 finds that a person has willfully engaged in a deceptive trade practice, the  
32 Commissioner, the Director, the district attorney of any county in this State or the  
33 Attorney General bringing the action may recover a civil penalty not to exceed  
34 \$5,000 for each violation. The court in any such action may, in addition to any  
35 other relief or reimbursement, award reasonable attorney’s fees and costs.

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

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

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

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

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

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

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

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

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

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

18 ➤ The court may grant or deny the relief sought or may order other appropriate  
19 relief.

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

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

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

29 ➤ The court may grant or deny the relief sought or may order other appropriate  
30 relief.

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

35 7. As used in this section:

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

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

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

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

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

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

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

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