

By Senator Fasano

11-01199-12

20121412

1                                   A bill to be entitled  
2           An act relating to prescription drugs; providing a  
3           short title; providing legislative findings and  
4           intent; providing definitions; prohibiting a person  
5           engaged in distribution of prescription drugs from  
6           selling prescription drugs below wholesale cost to a  
7           pharmacy provider at an outlet if such sale injures  
8           competition; prohibiting a pharmacy benefits manager,  
9           third-party payer, qualified plan, or Medicaid  
10          provider from selling prescription drugs in an outlet  
11          if such sale injures competition; prohibiting an  
12          affiliate of a qualified plan from acting as a member  
13          of a provider network for the qualified plan;  
14          prohibiting a pharmacy benefits manager or an  
15          affiliate from acting also as a member of a provider  
16          network established or administered by the pharmacy  
17          benefits manager; prohibiting a prescription drug  
18          wholesaler or distributor from selling a prescription  
19          drug to a retail pharmacy at a price that is below the  
20          price charged by the wholesaler or distributor under  
21          written contract of a like brand and quality of the  
22          prescription drug under certain circumstances;  
23          providing that an isolated, inadvertent incident  
24          involving certain prohibited activities is not a  
25          violation of the act; prohibiting a person engaged in  
26          distributing prescription drugs from reselling or  
27          knowingly receiving for resale any prescription drugs  
28          at a price lower than the price at which the seller  
29          contemporaneously sells prescription drugs of like

11-01199-12

20121412

30 brand and quality to another retail outlet on the same  
31 level of distribution, in the same class of trade, and  
32 within the same relevant geographic market as the  
33 purchaser; providing that a sale of prescription drugs  
34 of like brand and quality at different prices to  
35 persons at the same level of distribution is not an  
36 unlawful discriminatory practice; prohibiting a  
37 prescription drug wholesaler or distributor from  
38 fixing or maintaining the retail price of prescription  
39 drugs at a retail outlet supplied by the wholesaler or  
40 distributor; providing a civil penalty that may be  
41 assessed and recovered in a civil action brought by a  
42 pharmacy provider; authorizing the court to award  
43 attorney fees; providing for disqualification from the  
44 Medicaid program for a violation of the act; providing  
45 an effective date.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. (1) SHORT TITLE.—This act may be cited as the  
50 “Prescription Drug Access and Pricing Protection Act.”

51 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
52 that fair and healthy competition in the wholesaling and  
53 distribution of prescription drugs and medical equipment  
54 benefits patients in this state and that certain marketing and  
55 distribution practices that impair such competition are contrary  
56 to the public interest. Predatory practices and, under certain  
57 conditions, discriminatory practices are unfair trade practices  
58 and restraints that adversely affect access to quality and

11-01199-12

20121412

59 affordable health care. It is the intent of the Legislature to  
60 encourage competition and promote the general welfare of  
61 residents of this state by prohibiting such unfair practices.

62 (3) DEFINITIONS.—In addition to the definitions contained  
63 in s. 409.962, Florida Statutes, the following definitions apply  
64 to this section:

65 (a) "Affiliate" means any person whose stock or ownership  
66 interest is more than 50 percent owned by, or who, regardless of  
67 stock ownership, is controlled by, or who, regardless of stock  
68 ownership, is under common control with, any pharmacy benefits  
69 manager, third-party payer, pharmacy provider, qualified plan,  
70 or Medicaid provider.

71 (b) "Competition" means the vying for the opportunity to  
72 sell at wholesale or to distribute prescription drug or medical  
73 equipment by any two pharmacy providers in the same relevant  
74 geographic market.

75 (4) PREDATORY PRACTICES UNLAWFUL; EXCEPTIONS.—

76 (a)1. A person engaged in distribution of prescription  
77 drugs, as defined in s. 499.003(17), Florida Statutes, may not  
78 sell prescription drugs in this state to any pharmacy provider  
79 at an outlet below wholesale cost if the effect or intent is to  
80 injure competition.

81 2. A pharmacy benefits manager, third-party payer,  
82 qualified plan, or Medicaid provider in this state may not sell  
83 prescription drugs in an outlet if the effect is to injure  
84 competition.

85 3. An affiliate of a qualified plan may not also act as a  
86 member of a provider network for the qualified plan.

87 4. A pharmacy benefits manager or affiliate of a pharmacy

11-01199-12

20121412

88 benefits manager may not also act as a member of a provider  
89 network established or administered by the pharmacy benefits  
90 manager.

91 (b) Notwithstanding any other provision of law to the  
92 contrary, a prescription drug wholesaler or distributor,  
93 including any affiliate or agent thereof, may not sell a  
94 prescription drug to a retail pharmacy at a price that is below  
95 the price charged by that wholesaler or distributor under  
96 written contract for a like brand and quality of the  
97 prescription drug to the extent that the wholesaler or  
98 distributor resells in the relevant geographic market where the  
99 wholesaler's or distributor's wholesale price is in effect.

100 (c) An isolated, inadvertent incident involving activity  
101 prohibited under paragraph (a) or paragraph (b) is not a  
102 violation of this section.

103 (5) DISCRIMINATORY PRACTICES UNLAWFUL; EXCEPTIONS.—

104 (a) A person engaged in distributing prescription drugs in  
105 this state may not:

106 1. Sell for resale prescription drugs at a price lower than  
107 the price at which the seller contemporaneously sells  
108 prescription drugs of like brand and quality to another retail  
109 outlet on the same level of distribution, in the same class of  
110 trade, and within the same relevant geographic market as the  
111 purchaser, if the intent or effect is to injure competition.

112 2. Knowingly receive for resale prescription drugs at a  
113 price lower than the price at which the seller from which the  
114 prescription drugs is purchased or received contemporaneously  
115 sells prescription drugs of like brand and quality to another  
116 person on the same level of distribution, in the same class of

11-01199-12

20121412

117 trade, and within the same relevant geographic market as the  
118 purchaser, if the intent or effect is to injure competition.

119 (b) A sale of prescription drugs of like brand and quality  
120 at different prices to persons at the same level of distribution  
121 is not a violation of this section if the difference in price is  
122 due to a difference in the cost of sale or delivery resulting  
123 from differing methods or quantities in which the prescription  
124 drugs are sold or delivered.

125 (6) UNLAWFUL PRACTICES.—A prescription drug wholesaler or  
126 distributor may not fix or maintain the retail price of  
127 prescription drugs at a retail outlet supplied by the wholesaler  
128 or distributor.

129 (7) ENFORCEMENT; CIVIL PENALTIES; EXCLUSION FROM PROGRAM.—

130 (a) Any person who knowingly violates any provision of this  
131 section is subject to a civil penalty not to exceed \$10,000 per  
132 violation. Each day that a violation occurs is considered a  
133 separate violation, but a civil penalty may not exceed \$250,000.  
134 Any such person is also liable for attorney fees and is subject  
135 to an action for injunctive relief.

136 (b) The civil penalty imposed under this section may be  
137 assessed and recovered in a civil action brought by a pharmacy  
138 provider in a court of competent jurisdiction. If the pharmacy  
139 provider prevails in the civil action, the court may award  
140 reasonable attorney fees as it deems appropriate.

141 (c) Any Medicaid provider or qualified plan that violates  
142 any provision of this section is subject to disqualification  
143 from participating in the Medicaid program.

144 Section 2. This act shall take effect July 1, 2012.