



2003 ASSEMBLY BILL 509

September 11, 2003 - Introduced by Representatives KRUSICK, JESKEWITZ, ALBERS, HAHN, M. LEHMAN, MILLER, POCAN, SERATTI, STASKUNAS, TURNER and VAN ROY, cosponsored by Senator CARPENTER. Referred to Committee on Health.

1 **AN ACT** *to renumber and amend* 100.31 (1) (a) and 100.31 (1) (b); *to amend*
2 100.31 (title), 100.31 (1) (c), 100.31 (2) and 100.31 (4); and *to create* 100.31 (1)
3 (ae), 100.31 (1) (as) and 100.31 (2r) of the statutes; **relating to:** discrimination
4 in prescription drug prices and granting rule-making authority.

Analysis by the Legislative Reference Bureau

The bill changes a prohibition under current law against price discrimination that applies to a seller who trades in prescription drugs for resale. Under current law, the prohibition applies to a seller who sells prescription drugs directly to consumers. Under the bill, the prohibition applies to a seller who sells to a "dispenser," which the bill defines as a person who delivers a prescription drug to an ultimate user for outpatient use, including an insurer that issues certain types of managed health care plans. Also included under the definition of "dispenser" is a hospital that directly or indirectly bills a patient for prescription drugs.

The prohibition on price discrimination under current law applies to prescription drugs on a list of therapeutically equivalent drugs published by the federal Food and Drug Administration (FDA). This bill provides that the prohibition applies to drugs included in the most current version of either of the following: 1) the FDA list; or 2) another publication specified in rules promulgated by the Department of Agriculture, Trade and Consumer Protection that identifies drug products approved on the basis of safety and effectiveness by the FDA under the federal Food, Drug, and Cosmetic Act.

ASSEMBLY BILL 509

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.31 (title) of the statutes is amended to read:

2 **100.31** (title) ~~Unfair discrimination in~~ Prescription drug pricing.

3 **SECTION 2.** 100.31 (1) (a) of the statutes is renumbered 100.31 (1) (bm) and
4 amended to read:

5 100.31 (1) (bm) ~~“Drug”~~ “Prescription drug” means any substance subject to 21
6 USC 353 (b).

7 **SECTION 3.** 100.31 (1) (ae) of the statutes is created to read:

8 100.31 (1) (ae) “Consumer” means a person for whom a prescription drug is
9 prescribed.

10 **SECTION 4.** 100.31 (1) (as) of the statutes is created to read:

11 100.31 (1) (as) “Federal drug list” means the “Approved Drug Products with
12 Therapeutic Equivalence Evaluations” published by the federal food and drug
13 administration, or other publication specified in rules promulgated by the
14 department under sub. (2r).

15 **SECTION 5.** 100.31 (1) (b) of the statutes is renumbered 100.31 (1) (am) and
16 amended to read:

17 100.31 (1) (am) ~~“Purchaser”~~ “Dispenser” means any person who engages
18 ~~primarily in selling~~ dispensing, as defined in s. 450.01 (7), prescription drugs directly
19 to consumers for outpatient use. “Dispenser” includes a hospital that directly or
20 indirectly bills patients for prescription drugs, or an insurer that issues a defined

ASSEMBLY BILL 509

1 network plan, as defined in s. 609.01 (1b), and that provides prescription drugs or
2 prescription drug coverage to the enrollees of the plan.

3 **SECTION 6.** 100.31 (1) (c) of the statutes is amended to read:

4 100.31 (1) (c) "Seller" means any person who trades in prescription drugs for
5 resale to ~~purchasers~~ dispensers in this state.

6 **SECTION 7.** 100.31 (2) of the statutes is amended to read:

7 100.31 (2) PRICE DISCRIMINATION PROHIBITED. Every seller shall offer
8 prescription drugs from the most current federal drug list of ~~therapeutically~~
9 ~~equivalent drugs published by the federal food and drug administration~~ to every
10 ~~purchaser~~ dispenser in this state, with all rights and privileges offered or accorded
11 by the seller to the most favored ~~purchaser~~ dispenser, including purchase prices for
12 similar volume purchases, rebates, free merchandise, samples, and similar trade
13 concessions. Nothing in this subsection prohibits the giving of a discount for volume
14 purchases.

15 **SECTION 8.** 100.31 (2r) of the statutes is created to read:

16 100.31 (2r) RULES. The department may promulgate rules that, for purposes
17 of sub. (1) (as), specify a publication that identifies drug products approved on the
18 basis of safety and effectiveness by the federal food and drug administration under
19 the federal Food, Drug, and Cosmetic Act.

20 **SECTION 9.** 100.31 (4) of the statutes is amended to read:

21 100.31 (4) PENALTIES. For any violation of this section, the department or a
22 district attorney may commence an action on behalf of the state to recover a forfeiture
23 of not less than \$100 nor more than \$10,000 for each offense. Each delivery of a
24 prescription drug sold to a ~~purchaser~~ dispenser at a price in violation of this section

ASSEMBLY BILL 509

SECTION 9

1 and each separate day in violation of an injunction issued under this section is a
2 separate offense.

3 **SECTION 10. Effective date.**

4 (1) This act takes effect on the first day of the 3rd month beginning after
5 publication.

6 (END)