

SENATE BILL NO. 313

INTRODUCED BY

*Memo* *Bohlinger* *Att* *Wagner*  
*Clark* *Rehbein* *Peck* *Hugne* *Wagner* *Rehbein* *Clark*

A BILL FOR AN ACT ENTITLED: "AN ACT ENSURING EQUAL ACCESS FOR PURCHASERS TO DRUG MANUFACTURERS' DISCOUNTS; PROVIDING EXCEPTIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF COMMERCE; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill grants rulemaking authority to the department of commerce.

The legislature intends to promote, ensure, and enforce competition among purchasers of drug products by eliminating price discounts that are based solely on "class of trade" designations used by drug manufacturers.

The legislature intends that retail pharmacies be provided equal access to the price discounts currently provided to mail order pharmacies, health maintenance organizations, and other purchasers that compete with retail pharmacies.

The legislature intends that manufacturers be encouraged to develop a variety of marketing programs. The legislature does not intend to establish a single price for prescription drugs or to eliminate existing price reduction programs that adhere to the provisions of this bill.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Charitable health care provider" means a health care provider that is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code and that provides a substantial portion of its health care services to the public free of charge or at a reduced fee based on the patient's ability to pay.

(2) "Covered transaction" means a sale of a drug to a purchaser in this state in which a manufacturer negotiates, establishes, determines, or otherwise controls the price, terms, or conditions of sale, whether by direct sale to a purchaser or through a contractual arrangement implemented by one or

1 more wholesalers.

2 (3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

3 (4) "Drug" means any substance subject to section 503(b)(1) of the Federal Food, Drug, and  
4 Cosmetic Act.

5 (5) "Manufacturer" means a person other than a wholesaler who sells drugs to purchasers.

6 (6) "Purchaser" means a person who sells or dispenses drugs directly to consumers in this state.

7 (7) "Wholesaler" means a person other than a manufacturer who sells drugs to purchasers.

8

9 **NEW SECTION. Section 2. Price discrimination prohibited.** (1) In a covered transaction, a  
10 manufacturer shall sell a drug, during the same time period, to all purchasers in this state on the same  
11 terms and conditions.

12 (2) This section does not prohibit a manufacturer from offering a price reduction or program as long  
13 as it is made available to all purchasers on the same terms and conditions, including:

14 (a) a reduction justified by economies or efficiencies realized through volume purchases;

15 (b) a reduction available through market share movement agreements;

16 (c) a reduction for placing a drug on a formulary;

17 (d) a reduction for prompt payment;

18 (e) a reduction for limited site delivery; or

19 (f) an opportunity involving free merchandise, samples, and similar trade concessions.

20 (3) A manufacturer may not provide a price reduction to a purchaser based solely on the class of  
21 trade to which the purchaser belongs.

22 (4) This section applies to any purchase of a drug delivered to a purchaser for sale to a consumer  
23 in this state.

24

25 **NEW SECTION. Section 3. Government purchases from manufacturer engaged in discriminatory**  
26 **pricing prohibited.** An entity of state government or of any political subdivision of this state may not  
27 purchase a drug from a manufacturer that engages in price discrimination prohibited in [section 2].

28

29 **NEW SECTION. Section 4. Civil action for damages.** A purchaser may bring a civil action against  
30 a manufacturer for damages suffered as a result of the manufacturer's violation of [sections 1 through 7],

1 a rule promulgated under [sections 1 through 7], or an order or injunction to cease and desist from either  
2 type of violation. Damages awarded to the purchaser must be trebled.

3  
4 **NEW SECTION. Section 5. Enforcement -- penalty.** (1) The department shall enforce the  
5 provisions of [sections 1 through 7] pursuant to the procedures established in 30-14-220 through  
6 30-14-223.

7 (2) A county attorney or the attorney general may enter an action to enforce [sections 1 through  
8 7].

9 (3) A person who violates [sections 1 through 7], a rule promulgated under [sections 1 through  
10 7], or an order or injunction to cease and desist from either violation:

11 (a) shall pay a civil penalty of not less than \$1,000 or more than \$50,000 for each violation; and

12 (b) except in a case in which a unique and necessary drug is not available from a person other than  
13 the person who has committed the violation, may not sell drugs in this state.

14

15 **NEW SECTION. Section 6. Exceptions.** [Sections 1 through 7] do not apply to:

16 (1) a hospital or related facility licensed under Title 50, chapter 5;

17 (2) a federal, state, or local government program that purchases drugs directly;

18 (3) a discount required by federal law or a rebate authorized by federal law;

19 (4) a charitable health care provider, except a provider that issues, offers, or administers a health  
20 insurance policy or an employee benefit plan.

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22 **NEW SECTION. Section 7. Rulemaking authority.** The department shall adopt, amend, or repeal  
23 rules necessary for the implementation, continuation, and enforcement of [sections 1 through 7] in  
24 accordance with the Montana Administrative Procedure Act.

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26 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be  
27 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to  
28 [sections 1 through 7].

29

30 **NEW SECTION. Section 9. Applicability.** [This act] applies to sales made or effected on or after

1 October 1, 1995.

2

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0313, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: AN ACT ENSURING EQUAL ACCESS FOR PURCHASERS TO DRUG MANUFACTURERS' DISCOUNTS; PROVIDING EXCEPTIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF COMMERCE; AND PROVIDING AN APPLICABILITY DATE.

ASSUMPTIONS:

Department of Commerce

1. 300 retail pharmacies exist in Montana and the Department of Commerce (DOC) estimates that it will receive 150 complaints to investigate annually regarding violations of equal access to price discounts. DOC estimates that 35 complaints will require formal two day show cause hearings requiring court reporters and hearing examiners.
2. DOC estimates that 3.00 FTE would be required to implement the proposed legislation, 1.00 grade 17 attorney, 1.00 grade 14 investigator, and 1.00 grade 12 compliance specialist. Estimated costs \$97,610 in FY96 and \$98,584 in FY97.
3. Estimated Operating Expenses are \$104,809 in FY96 and \$104,887 in FY97 include Other Services, Supplies and Materials, Communications, Travel, Rent, and Other Expenses.
4. Estimated Equipment Expenses are \$15,500 for FY96 only and include three personal computers, printer, fax machine, desks, chairs, calculators, and file cabinets.

Department of Social and Rehabilitation services

1. Any reduction for volume pharmaceutical purchases is done through an agreement between the pharmaceutical manufacturer and the retailer.
2. There are several different categories of discounts, depending on the type of retailer and volume of drugs purchased. This information is not available to SRS.
3. There may be a cost savings to Medicaid if the retail pharmacies passed on the discounts they receive under this legislation.
4. Potential cost savings may decrease the rebates now made to the Medicaid program.
5. Measurable estimates of potential savings due to volume purchases cannot be determined.

FISCAL IMPACT:

Expenditures:

Department of Commerce:	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	3.00	3.00
Personal Services	97,610	98,584
Operating Expenses	104,809	104,887
Equipment	<u>15,500</u>	<u>0</u>
Total	217,919	203,471
DOC General Fund (01)	217,919	203,471

Department of Social and Rehabilitation Services:

The fiscal impact to the Medicaid Program due to SB313 cannot be determined.

Net Impact: Department of Commerce:

DOC General Fund (01)	(217,919)	(203,471)
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The favorably priced in-state mail order services provided by Buttrey Mail Order to the State Employee Benefit Plan may no longer be available after the expiration of the current three year contract. This could occur if Buttrey is unable to receive discounts provided to mail order pharmacies and it cannot compete with out-of-state mail order businesses who would receive such discounts.

TECHNICAL NOTES:

The proposed legislation needs to clarify jurisdictional and constitutional areas.

*David Lewis* 2-15-95  
 DAVID LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

\_\_\_\_\_  
 KEN MESAROS, PRIMARY SPONSOR      DATE

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3. Estimated Operating Expenses are \$104,809 in FY96 and \$104,887 in FY97 include Other Services, Supplies and Materials, Communications, Travel, Rent, and Other Expenses.
4. Estimated Equipment Expenses are \$15,500 for FY96 only and include three personal computers, printer, fax machine, desks, chairs, calculators, and file cabinets.

Department of Social and Rehabilitation services

1. During calendar year 1993 medicaid reimbursed prescription drug expenditures totalling \$21,656,221. Rebates received from drug manufacturers during this period totalled \$4,625,116 making the net cost of prescription drugs \$17,031,105.
2. Manufacturers are required by federal law to extend approximately a 15% rebate to state medicaid programs. The current total rebate percentage being received is approximately 20%.
3. If manufacturers or wholesalers are required to sell prescription drugs to all qualified parties at the most favored price, prices for the most favored customers will rise.
4. Current rebate amounts of 20% will continue if legislation is not passed.
5. Rebates are calculated based on the national "best price" which will be relatively unaffected if Montana alone were to enact this legislation due to Montana's small size relative to the national market. However if many states enact similar legislation the national "best price" may be expected to increase.
6. The increase in the "best price" would, at a maximum, reduce the rebates to Medicaid by 5% or more each year and, at a minimum, have no effect on rebates.
7. Medicaid rebates for FY96 and FY97 are currently estimated to total \$6,784,553 and \$8,205,687 respectively. Based on a reduction in rebates of 5%, it is estimated that Montana medicaid would receive \$1,696,138 less in FY96 and \$2,051,421 less in FY97 in rebates. If rebates are not reduced there would be no effect.
8. Medicaid expenditures are funded with a mix of 30.26%/69.74% general fund/federal funds in FY96 and 31.00%/69.00% in FY97.
9. The reduction in rebates would increase general fund costs \$513,251 in FY96 and \$635,941 in FY97 if rebates are reduced 5%.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
Department of Commerce:	<u>Difference</u>	<u>Difference</u>
FTE	3.00	3.00
Personal Services	97,610	98,584
Operating Expenses	104,809	104,887
Equipment	<u>15,500</u>	<u>0</u>
Total	217,919	203,471
DOC General Fund (01)	217,919	203,471
Department of Social and Rehabilitation Services (maximum effect):		
Benefits and Claims	1,696,138	2,051,421
SRS Federal Medicaid (03)	1,182,887	1,415,480
General Fund (01)	<u>513,251</u>	<u>635,941</u>
Total	1,696,138	2,051,421

*Dave Lewis* 2-18-95  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

KEN MESAROS, PRIMARY SPONSOR DATE  
 Fiscal Note for SB0313, as introduced

SB 313 #2

(continued)

Net Impact:

Maximum (see assumption #5)

General Fund (01)	(830,770)	(866,412)
Federal Fund (03)	(1,182,887)	(1,415,480)

Minimum (see assumption #5)

General Fund (01)	(217,519)	(230,471)
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The favorably priced in-state mail order services provided by Buttrey Mail Order to the State Employee Benefit Plan may no longer be available after the expiration of the current three year contract. This could occur if Buttrey is unable to receive discounts provided to mail order pharmacies and it cannot compete with out-of-state mail order businesses who would receive such discounts.

TECHNICAL NOTES:

The proposed legislation needs to clarify jurisdictional and constitutional areas.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0313, second reading

DESCRIPTION OF PROPOSED LEGISLATION: AN ACT ENSURING EQUAL ACCESS FOR PURCHASERS TO DRUG MANUFACTURERS' DISCOUNTS; PROVIDING EXCEPTIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF COMMERCE; AND PROVIDING AN APPLICABILITY DATE.


ASSUMPTIONS:

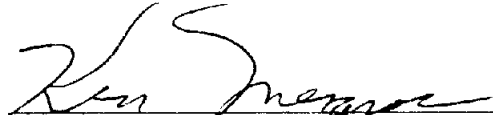
Department of Justice

1. 300 retail pharmacies exist in Montana and the Department of Justice estimates that it will receive 150 complaints to investigate annually regarding violations of equal access to price discounts. The department estimates that 35 complaints will require formal two day show cause hearings requiring court reporters and hearing examiners.
2. The Department of Justice will adopt rules under section 7 of the bill and may bring an action in court if there is evidence of a violation.
3. Since the bill has been amended to remove administrative enforcement options under MCA sections 30-14-220 through 30-14-223, the state of Montana will not conduct administrative investigations or issue cease and desist orders for violations under the new law.
4. The Dept. of Justice will require a complaining party to submit evidence of a violation before pursuing any investigation of an alleged violation. If possible, the investigation will be referred to local authorities; however, it is assumed that most local law enforcement entities and county attorneys will have insufficient resources to conduct investigations or to pursue enforcement actions.
5. The Dept. of Justice (DOJ) cannot perform the services with current resources. DOJ estimates that 1.25 FTE will be required to implement the proposed legislation, consisting of .50 FTE grade 16 investigator, .50 FTE grade 18 attorney, and .25 FTE grade 10 administrative support. Personal services cost for the FTE are \$51,750 in FY96 and \$51,932 in FY97. Operating costs are estimated at \$5,425 in FY96 and \$5,443 in FY97. These costs cover additional rent (assume in state building), supplies, phone, etc. One time only equipment costs of \$3,625 (1.25 FTE x \$2,900 each) would be incurred in FY96 only for desks, personal computers, chairs, and calculators.
6. Litigation is not expected during this biennium. However, if an enforcement action is brought under section 5 of the bill, additional resources would be necessary for legal and investigative services. These additional resources include one additional FTE grade 19 attorney and an additional .50 FTE grade 16 investigator.
7. The DOJ submitted a fiscal note in HB509 for 2.50 FTE. HB509 would impose responsibilities on the DOJ similar to those imposed by SB313. If both bills pass, the collective fiscal impact may be reduced. For example, the DOJ would not need the .25 FTE administrative support position for SB313.

Department of Social and Rehabilitation services

8. During calendar year 1993 medicaid reimbursed prescription drug expenditures totalling \$21,656,221. Rebates received from drug manufacturers during this period totalled \$4,625,116 making the net cost of prescription drugs \$17,031,105.
9. Manufacturers are required by federal law to extend approximately a 15% rebate to state medicaid programs. The current total rebate percentage being received is approximately 20%.
10. If manufacturers or wholesalers are required to remove the "class of trade" discount methodology and provide discounts to all qualified parties ie. by volume discounts, the price extended to a existing entity may rise to offset the additional discounts.
11. Current rebate amounts of 20% will continue if legislation is not passed.
12. Rebates are calculated based on the national "best price" which will be relatively unaffected if Montana alone were to enact this legislation due to Montana's small size relative to the national market. However if many states enact similar legislation the national "best price" may be expected to increase.
13. The increase in the "best price" would, at a maximum, reduce the rebates to Medicaid from 20% to 15% and, at a minimum, have no effect on rebates.

 3-4-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 3-6-95  
KEN MESAROS, PRIMARY SPONSOR      DATE



(continued)

7. Medicaid rebates for FY96 and FY97 are currently estimated to total \$6,784,553 and \$8,205,687 respectively. Based on a reduction in rebates from 20% to 15%, it is estimated that Montana medicaid would receive \$1,696,138 less in FY96 and \$2,051,421 less in FY97 in rebates. If rebates are not reduced there would be no effect.
8. Medicaid expenditures are funded with a mix of 30.26%/69.74% general fund/federal funds in FY96 and 31.00%/69.00% in FY97.
9. The reduction in rebates would increase general fund costs \$513,251 in FY96 and \$635,941 in FY97 if rebates are reduced 5%.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
Department of Justice:		
FTE	1.25	1.25
Personal Services	51,750	51,932
Operating Expenses	5,425	5,443
Equipment	<u>3,625</u>	<u>0</u>
Total	60,800	57,375
DOJ General Fund (01)	60,800	57,375

Department of Social and Rehabilitation Services:

Under favorable circumstances the Department would experience no additional cost however under the least favorable circumstances Montana medicaid would receive \$1,696,138 less in FY96 and \$2,051,421 less in FY97 in rebates. Medicaid expenditures are funded with a mix of 30.26%/69.74% general fund/federal funds in FY96 and 31.00%/69.00% in FY97. Under the least favorable circumstances the reduction in rebates would increase general fund costs \$513,251 in FY96 and \$635,941 in FY97 if rebates are reduced from 20% to 15%.

Net Impact: Due to the significant uncertainty regarding SB0313's effect on pharmaceutical rebates received by the state medicaid program two cost estimates are presented.

Maximum (see SRS assumption #5)		
General Fund (01)	(574,051)	(693,316)
Federal Fund (03)	(1,182,887)	(1,415,480)
Minimum (see SRS assumption #5)		
General Fund (01)	(60,800)	(57,375)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The favorably priced in-state mail order services provided by Buttrey Mail Order to the State Employee Benefit Plan may no longer be available after the expiration of the current three year contract. This could occur if Buttrey is unable to receive discounts provided to mail order pharmacies and it cannot compete with out-of-state mail order businesses who would receive such discounts.

TECHNICAL NOTES:

1 SENATE BILL NO. 313

2 INTRODUCED BY MESAROS, BOHLINGER, ELLIOTT, BAER, MILLS, ELLIS, KOTTEL, BERGMAN, PECK,  
3 HAYNE, HAGENER, REHBEIN, CLARK, MENAHAN, BENEDICT, HARP, GRADY, KEATING, KLAMPE,  
4 GROSFIELD, BISHOP, ESTRADA, BECK, PAVLOVICH, VAN VALKENBURG, BROWN, DEBRUYCKER,  
5 HERTEL, BURNETT, SIMPKINS

6  
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9 AUTHORITY TO THE DEPARTMENT OF ~~COMMERCE~~ JUSTICE; AND PROVIDING AN APPLICABILITY  
10 DATE."

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12 STATEMENT OF INTENT

13 A statement of intent is required because this bill grants rulemaking authority to the department of  
14 ~~commerce~~ JUSTICE.

15 The legislature intends to promote, ensure, and enforce competition among purchasers of drug  
16 products by eliminating price discounts that are based solely on "class of trade" designations used by drug  
17 manufacturers.

18 The legislature intends that retail pharmacies be provided equal access to the price discounts  
19 currently provided to mail order pharmacies, health maintenance organizations, and other purchasers that  
20 compete with retail pharmacies.

21 The legislature intends that manufacturers be encouraged to develop a variety of marketing  
22 programs. The legislature does not intend to establish a single price for prescription drugs or to eliminate  
23 existing price reduction programs that adhere to the provisions of this bill.

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25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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27 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 7], the following definitions  
28 apply:

29 ~~(1) "Charitable health care provider" means a health care provider that is exempt from federal~~  
30 ~~taxation under section 501(c)(3) of the Internal Revenue Code and that provides a substantial portion of~~

1 ~~its health care services to the public free of charge or at a reduced fee based on the patient's ability to pay.~~

2 ~~(2)(1)~~ "Covered transaction" means a sale of a drug to a purchaser in this state in which a  
3 manufacturer negotiates, establishes, determines, or otherwise controls the price, terms, or conditions of  
4 sale, whether by direct sale to a purchaser or through a contractual arrangement implemented by one or  
5 more wholesalers.

6 ~~(3)(2)~~ "Department" means the department of ~~commerce provided for in Title 2, chapter 15, part~~  
7 ~~48~~ JUSTICE.

8 ~~(4)(3)~~ "Drug" means any substance subject to section 503(b)(1) of the Federal Food, Drug, and  
9 Cosmetic Act.

10 ~~(5)(4)~~ "Manufacturer" means a person other than a wholesaler who sells drugs to purchasers.

11 ~~(6)(5)~~ "Purchaser" means a person who sells or dispenses drugs directly to consumers in this state.

12 ~~(7)(6)~~ "Wholesaler" means a person other than a manufacturer who sells drugs to purchasers.

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14 NEW SECTION. **Section 2. Price discrimination prohibited.** (1) In a covered transaction, a  
15 manufacturer shall sell a drug, during the same time period, to all purchasers in this state on the same  
16 terms and conditions.

17 (2) This section does not prohibit a manufacturer from offering a price reduction or program as long  
18 as it is made available to all purchasers on the same terms and conditions, including:

19 (a) a reduction justified by economies or efficiencies realized through volume purchases;

20 (b) a reduction available through market share movement agreements;

21 (c) a reduction for placing a drug on a formulary;

22 (d) a reduction for prompt payment;

23 (e) a reduction for limited site delivery; or

24 (f) an opportunity involving free merchandise, samples, and similar trade concessions.

25 (3) A manufacturer may not provide a price reduction to a purchaser based solely on the class of  
26 trade to which the purchaser belongs.

27 (4) This section applies to any purchase of a drug delivered to a purchaser for sale to a consumer  
28 in this state.

29  
30 NEW SECTION. **Section 3. Government purchases from manufacturer engaged in discriminatory**

1 **pricing prohibited.** An entity of state government or of any political subdivision of this state may not  
 2 purchase a drug from a manufacturer that engages in price discrimination prohibited in [section 2].

3  
 4 NEW SECTION. Section 4. Civil action for damages. A purchaser may bring a civil action against  
 5 a manufacturer for damages suffered as a result of the manufacturer's violation of [sections 1 through 7],  
 6 OR a rule promulgated under [sections 1 through 7], ~~or an order or injunction to cease and desist from~~  
 7 ~~either type of violation.~~ Damages awarded to the purchaser must be trebled.

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 9 NEW SECTION. Section 5. Enforcement -- penalty. ~~(1) The department shall enforce the~~  
 10 ~~provisions of [sections 1 through 7] pursuant to the procedures established in 30-14-220 through~~  
 11 ~~30-14-223.~~

12 ~~(2)(1)~~ A county attorney or the attorney general may enter **BRING** an action to enforce [sections  
 13 1 through 7]. IF THE ACTION IS BROUGHT BY:

14 (A) THE DEPARTMENT, ONE-HALF OF THE AMOUNT OF THE PENALTY MUST BE DEPOSITED IN  
 15 THE GENERAL FUND OF THE COUNTY WHERE THE ACTION WAS BROUGHT AND THE REMAINDER IN  
 16 THE STATE GENERAL FUND; OR

17 (B) A COUNTY ATTORNEY, THE ENTIRE AMOUNT OF THE PENALTY MUST BE DEPOSITED IN  
 18 THE GENERAL FUND OF THE COUNTY WHERE THE ACTION WAS BROUGHT.

19 ~~(3)(2)~~ A person who violates [sections 1 through 7], OR a rule promulgated under [sections 1  
 20 through 7], ~~or an order or injunction to cease and desist from either violation:~~

21 (a) shall pay a civil penalty of not less than \$1,000 or more than \$50,000 for each violation; and

22 (b) except in a case in which a unique and necessary drug is not available from a person other than  
 23 the person who has committed the violation, may not sell drugs in this state.

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 25 NEW SECTION. Section 6. Exceptions. [Sections 1 through 7] do not apply to:

26 (1) a hospital or ~~related~~ HEALTH CARE facility ~~licensed~~ AS DEFINED under Title 50, chapter 5,  
 27 EXCEPT FOR HEALTH MAINTENANCE ORGANIZATIONS;

28 (2) a federal, state, or local government program that purchases drugs directly;

29 (3) a discount required by federal law or a rebate authorized by federal law;\_

30 ~~(4) a charitable health care provider, except a provider that issues, offers, or administers a health~~

1 ~~insurance policy or an employee benefit plan.~~

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3 NEW SECTION. **Section 7. Rulemaking authority.** The department ~~shall~~ MAY adopt, amend, or  
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6 ~~(3)~~(2) "Department" means the department of ~~commerce provided for in Title 2, chapter 15, part~~  
7 ~~18~~ JUSTICE.

8 ~~(4)~~(3) "Drug" means any substance subject to section 503(b)(1) of the Federal Food, Drug, and  
9 Cosmetic Act.

10 ~~(5)~~(4) "Manufacturer" means a person other than a wholesaler who sells drugs to purchasers.

11 ~~(6)~~(5) "Purchaser" means a person who sells or dispenses drugs directly to consumers in this state.

12 ~~(7)~~(6) "Wholesaler" means a person other than a manufacturer who sells drugs to purchasers.

13  
14 NEW SECTION. Section 2. Price discrimination prohibited. (1) In a covered transaction, a  
15 manufacturer shall sell a drug, during the same time period, to all purchasers in this state on the same  
16 terms and conditions.

17 (2) This section does not prohibit a manufacturer from offering a price reduction or program as long  
18 as it is made available to all purchasers on the same terms and conditions, including:

19 (a) a reduction justified by economies or efficiencies realized through volume purchases;

20 (b) a reduction available through market share movement agreements;

21 (c) a reduction for placing a drug on a formulary;

22 (d) a reduction for prompt payment;

23 (e) a reduction for limited site delivery; or

24 (f) an opportunity involving free merchandise, samples, and similar trade concessions.

25 (3) A manufacturer may not provide a price reduction to a purchaser based solely on the class of  
26 trade to which the purchaser belongs.

27 (4) This section applies to any purchase of a drug delivered to a purchaser for sale to a consumer  
28 in this state.

29  
30 NEW SECTION. Section 3. Government purchases from manufacturer engaged in discriminatory

1 pricing prohibited. An entity of state government or of any political subdivision of this state may not  
2 purchase a drug from a manufacturer that engages in price discrimination prohibited in [section 2].

3  
4 NEW SECTION. Section 4. Civil action for damages. A purchaser may bring a civil action against  
5 a manufacturer for damages suffered as a result of the manufacturer's violation of [sections 1 through 7];  
6 OR a rule promulgated under [sections 1 through 7]; ~~or an order or injunction to cease and desist from~~  
7 ~~either type of violation.~~ Damages awarded to the purchaser must be trebled.

8  
9 NEW SECTION. Section 5. Enforcement -- penalty. ~~(1) The department shall enforce the~~  
10 ~~provisions of [sections 1 through 7] pursuant to the procedures established in 30-14-220 through~~  
11 ~~30-14-223.~~

12 ~~(2)(1)~~ A county attorney or the attorney general may ~~enter~~ BRING an action to enforce [sections  
13 1 through 7]. IF THE ACTION IS BROUGHT BY:

14 (A) THE DEPARTMENT, ONE-HALF OF THE AMOUNT OF THE PENALTY MUST BE DEPOSITED IN  
15 THE GENERAL FUND OF THE COUNTY WHERE THE ACTION WAS BROUGHT AND THE REMAINDER IN  
16 THE STATE GENERAL FUND; OR

17 (B) A COUNTY ATTORNEY, THE ENTIRE AMOUNT OF THE PENALTY MUST BE DEPOSITED IN  
18 THE GENERAL FUND OF THE COUNTY WHERE THE ACTION WAS BROUGHT.

19 ~~(3)(2)~~ A person who violates [sections 1 through 7]; OR a rule promulgated under [sections 1  
20 through 7]; ~~or an order or injunction to cease and desist from either violation:~~

21 (a) shall pay a civil penalty of not less than \$1,000 or more than \$50,000 for each violation; and

22 (b) except in a case in which a unique and necessary drug is not available from a person other than  
23 the person who has committed the violation, may not sell drugs in this state.

24  
25 NEW SECTION. Section 6. Exceptions. [Sections 1 through 7] do not apply to:

26 (1) a hospital or ~~related~~ HEALTH CARE facility ~~licensed~~ AS DEFINED under Title 50, chapter 5,  
27 EXCEPT FOR HEALTH MAINTENANCE ORGANIZATIONS;

28 (2) a federal, state, or local government program that purchases drugs directly;

29 (3) a discount required by federal law or a rebate authorized by federal law;\_

30 ~~(4) a charitable health care provider, except a provider that issues, offers, or administers a health~~



1 ~~insurance policy or an employee benefit plan.~~

2

3 NEW SECTION. **Section 7. Rulemaking authority.** The department ~~shall~~ MAY adopt, amend, or  
4 repeal rules necessary for the implementation, continuation, and enforcement of [sections 1 through 7] in  
5 accordance with the Montana Administrative Procedure Act.

6

7 NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be  
8 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to  
9 [sections 1 through 7].

10

11 NEW SECTION. **Section 9. Applicability.** [This act] applies to sales made or effected on or after  
12 October 1, 1995.

13

-END-



## HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 313** (third reading copy -- blue) be concurred in as amended.

Signed:

A handwritten signature in cursive script, appearing to read "Bruce Simon".

*Bruce Simon, Chair*

**And, that such amendments read:**

**Carried by: Rep. Bohlinger**

1. Title, line 10.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

2. Page 1, line 27.

Page 3, lines 5, 6, 13, 19, 20, and 25

Page 4, lines 4, 7, and 9

Following: "through"

Strike: "7"

Insert: "6"

3. Page 2, following line 26.

Insert: "(4) A pharmacy or pharmacist may not charge a dispensing or ingredient fee based solely on the class of trade to which the purchaser belongs."

4. Page 2, line 27.

Strike: "(4)"

Insert: "(5)"

5. Page 2, line 30 through page 3, line 2.

Strike: section 3 in its entirety

Committee Vote:  
Yes 12, No 5.

**SB 313**  
**HOUSE**

660804SC.Hdh

Renumber: subsequent sections

6. Page 3, line 14.

Following: "DEPARTMENT," on line 14

Strike: "ONE-HALF OF THE AMOUNT OF"

7. Page 3, lines 15 and 16.

Strike: "GENERAL" on line 15 through "THE" on line 16

8. Page 3, line 17.

Strike: "THE ENTIRE AMOUNT OF"

9. Page 4, line 13.

Insert: "NEW SECTION. Section 9. Termination. [This act]  
terminates July 1, 1997."

-END-