

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1389

By: Morrissette

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Drug Price Disclosure Act; defining terms; providing for certain reports; providing for certain calculations; describing certain methodologies; providing for certification; providing for confidentiality; creating exceptions to confidentiality; providing for violations; providing for prosecution by the Attorney General; amending 15 O.S. 2001, Section 753, as last amended by Section 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2004, Section 753), which relates to Oklahoma Consumer Protection Act; expanding unlawful practices; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5100 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Oklahoma Drug Price Disclosure Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5101 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Drug Price Disclosure Act:

1. "Average manufacturer price" means the price is the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to retail pharmacies, after deducting customary discounts;

2. "Average wholesale price" means the price at which wholesalers sell drugs to physicians, pharmacies and other customers and commonly reported by commercial publishers of drug pricing data;

3. "Best price" means the lowest price available to any customer as further defined in division C of subparagraph 1 of paragraph C of Section 19396r-8 of Title 42 of the United States Code;

4. "National drug code" means the unique number for each drug product which identifies the following:

- a. the labeler or vendor,
- b. the product, and
- c. the true package size; and

5. "Wholesale acquisition cost" means the list price of the manufacturer to wholesalers or direct purchasers not including rebates, discounts and other price concessions.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5102 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. On a quarterly basis, a manufacturer of prescription drugs dispensed under a federal or state program in Oklahoma shall submit a written report to the Chief Executive Officer of the Oklahoma Health Care Authority containing the following pharmaceutical pricing criteria for each drug:

1. The average wholesale price;
2. The wholesale acquisition price;
3. The average manufacturer price; and
4. The best price.

The report shall list the drugs by their National Drug Code.

B. The calculation of the average wholesale price and wholesale acquisition cost must be the net of all volume discounts, prompt payment discounts, charge-backs, short-dated product discounts, cash discounts, free goods, rebates and all other price concessions or

incentives provided to a purchaser that result in a reduction in the ultimate cost to the purchaser.

C. When reporting the average wholesale price, wholesale acquisition cost, average manufacturer price and best price, a manufacturer of prescription drugs dispensed in this state under a federal or state program shall also include a detailed description of the methodologies which were used for the price calculations.

D. On a form provided by the Oklahoma Health Care Authority, the president or chief executive officer of the manufacturing company shall certify to the Authority that the reported prices by a manufacturer of prescription drugs dispensed in this state under a federal or state program are accurate.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5103 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as provided by this section, all information provided to the Oklahoma Health Care Authority by a manufacturer of prescription drugs as required by the Oklahoma Drug Price Disclosure Act shall be confidential and may not be disclosed by any person or by the Authority to any person without the written consent of the manufacturer.

B. Disclosure may be made by the Authority to an entity providing services to the Authority under this act.

C. Disclosure may be ordered by a court of competent jurisdiction for good cause shown or made in a court filing under seal if ordered by a court of competent jurisdiction.

D. Nothing in this section limits the use of civil investigative demand authority under the Oklahoma Consumer Protection Act by the Office of the Attorney General to investigate violations of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5104 of Title 63, unless there is created a duplication in numbering, reads as follows:

A violation of the Oklahoma Drug Price Disclosure Act shall be a violation of the Oklahoma Consumer Protection Act, Section 753 of Title 15 of the Oklahoma Statutes. This violation shall be enforced by the Attorney General pursuant to Section 756.1 of Title 15 of the Oklahoma Statutes. Prosecution of persons under the Oklahoma Drug Price Disclosure Act shall be made pursuant to Section 761.1 of Title 15 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 15 O.S. 2001, Section 753, as last amended by Section 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2004, Section 753), is amended to read as follows:

Section 753. A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act, ~~Section 751 et seq. of this title,~~ when, in the course of the person's business, the person:

1. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular make or brand, when it is of another;
2. Makes a false or misleading representation, knowingly or with reason to know, as to the source, sponsorship, approval, or certification of the subject of a consumer transaction;
3. Makes a false or misleading representation, knowingly or with reason to know, as to affiliation, connection, association with, or certification by another;
4. Makes a false or misleading representation or designation, knowingly or with reason to know, of the geographic origin of the subject of a consumer transaction;
5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction

or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;

6. Represents, knowingly or with reason to know, that the subject of a consumer transaction is original or new if the person knows that it is reconditioned, reclaimed, used, or secondhand;

7. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another;

8. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;

9. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity;

10. Advertises under the guise of obtaining sales personnel when in fact the purpose is to sell the subject of a consumer transaction to the sales personnel applicants;

11. Makes false or misleading statements of fact, knowingly or with reason to know, concerning the price of the subject of a consumer transaction or the reason for, existence of, or amounts of price reduction;

12. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:

- a. refusal to show the subject of a consumer transaction advertised,
- b. disparagement of the advertised subject of a consumer transaction or the terms of sale,
- c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction,

- d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time,
- e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement,
- f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item, or
- g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in ~~this act, Section 751 et seq. of this title~~ the Oklahoma Consumer Protection Act;

14. Resumes the business for which the closing out sale was conducted within one (1) year from the expiration date of the closing out sale license;

15. Falsely states, knowingly or with reason to know, that services, replacements or repairs are needed;

16. Violates any provision of the Oklahoma Health Spa Act, ~~Section 2000 et seq. of Title 59 of the Oklahoma Statutes;~~

17. Violates any provision of the Home Repair Fraud Act, ~~Section 765.1 et seq. of this title;~~

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act, ~~Section 996.1 et seq. of Title 21 of the Oklahoma Statutes;~~

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title;

21. Violates any provision of Section 169.1 of Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act;

22. Misrepresents a mail solicitation as an invoice or as a billing statement;

23. Offers to purchase a mineral or royalty interest through an offer that resembles an oil and gas lease and that the consumer believed was an oil and gas lease;

24. Refuses to honor gift certificates, warranties, or any other merchandise offered by a person in a consumer transaction executed prior to the closing of the business of the person without providing a purchaser a means of redeeming such merchandise or ensuring the warranties offered will be honored by another person;

25. Knowingly causes a charge to be made by any billing method to a consumer for services which the person knows was not authorized in advance by the consumer;

26. Knowingly causes a charge to be made by any billing method to a consumer for a product or products which the person knows was not authorized in advance by the consumer;

27. Violates Section 752A of this title;

28. Makes deceptive use of another's name in notification or solicitation, as defined in Section 752 of this title;

29. Falsely states or implies that any person, product or service is recommended or endorsed by a named third person; ~~or~~

30. Falsely states that information about the consumer, including but not limited to, the name, address or phone number of the consumer has been provided by a third person, whether that person is named or unnamed; or

31. Sells or offers for sale a prescription drug at a price that is in excess of the best price for that drug that has been reported to the Oklahoma Health Care Authority pursuant to the Oklahoma Drug Price Disclosure Act.

SECTION 7. This act shall become effective November 1, 2005.

50-1-6166          SBH          12/29/04