

By Mr. White, a petition (accompanied by bill, Senate, No. 1645) of W. Paul White and Daniel E. Bosley for legislation to amend the Massachusetts Antitrust Act. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT AMENDING THE MASSACHUSETTS ANTITRUST ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 93 of the General Laws, as appearing in
2 the 1992 Official Edition, is hereby amended by striking section 2
3 and inserting in place thereof the following new section:—

4 Section 2. For the purpose of this chapter, the following words
5 and terms shall have the following meanings:

6 “Attorney General”, the attorney general of the commonwealth
7 and individuals designated by him in writing to act on his behalf
8 in carrying out the purposes of this chapter.

9 “Demand”, a civil investigative demand issued pursuant to
10 section eight of this chapter.

11 “Drug”, any substance subject to Section 503 (b)(1) of the
12 Federal Food, Drug, and Cosmetic Act.

13 “Manufacturer of drugs”, any person other than a wholesaler of
14 drugs, who trades in drugs for resale to purchasers or sale to
15 consumers, either directly or through a wholesaler of drugs, in the
16 commonwealth.

17 “Natural person”, not proprietorships, partnerships or any
18 commercial entity.

19 “New England”, the states of Connecticut, Maine, Massachu-
20 setts, New Hampshire, Rhode Island and Vermont.

21 “Person”, natural persons, corporations and other legal entities.

22 “Purchaser of drugs”, any person who engages in selling or
23 dispensing drugs directly to consumers.

24 “Purchaser’s facility”, a facility for the receiving, storage,
25 distribution, or dispensing of drugs.

26 “Trade or commerce”, the advertising, offering for sale, rent or
27 lease, or the sale, rent, lease, furnishing or distribution of any
28 service or any article, commodity or property, tangible or intan-
29 gible, which directly and substantially affects the people of the
30 commonwealth; provided, however, that trade or commerce shall
31 not include the conveyance, transfer or use of real property.

32 “Trade secrets”, anything which constitutes, represents evi-
33 dences, or records secret or confidential scientific, technical, mer-
34 chandising, production, management or commercial information.

35 “Wholesaler of drugs”, any person, other than a manufacturer
36 of drugs, who sells drugs to a purchaser of drugs.

1 SECTION 2. Chapter 93 of the General Laws, as appearing in
2 the 1992 Official Edition, is hereby amended by inserting after
3 section 13 the following new sections:—

4 Section 13A. Every manufacturer of drugs legally engaged in
5 the practice of selling drugs in the Commonwealth shall offer the
6 drugs to every wholesaler of drugs or purchaser of drugs it sells to
7 with all rights and privileges offered or accorded by the manufac-
8 turer of drugs to the most favored purchaser of drugs or consumer,
9 including any transaction in which a manufacturer of drugs sells
10 to a purchaser of drugs through contractual arrangement imple-
11 mented by one or more wholesalers of drugs and including pur-
12 chase prices for similar volume purchases. Every manufacturer of
13 drugs shall offer rebates, free merchandise, samples and similar
14 trade concessions on proportionally equal terms to every seller.
15 Nothing in this subsection shall prohibit the giving of a discount
16 for volume purchases, so long as the discount is justified by the
17 economics or efficiencies realized by the manufacturer of drugs
18 resulting from the volume purchases and the discount is made
19 available to all sellers on proportionally equal terms to increase
20 their volume buying through influencing physician-prescribing
21 practices or increasing their volume buying resulting from agree-
22 ments to place drugs on a formulary, or through prompt payment,
23 or prompt delivery.

24 Section 13B. No manufacturer of drugs shall provide discounts
25 to any purchaser of drugs or wholesaler of drugs based on the
26 class of trade to which the purchaser of drugs or wholesaler of
27 drugs belongs.

28 Section 13C. The provisions of sections 13A and 13B shall
29 apply to any purchase of drugs which shall be delivered to a
30 purchaser of drugs or purchaser's facility located in the
31 Commonwealth.

32 Section 13D. No entity of the state government shall purchase
33 any drugs from a manufacturer of drugs that engages in any price
34 discrimination prohibited by sections 13A or 13B.

35 Section 13E. Agencies of government and political subdivi-
36 sions are not wholesalers of drugs or purchasers of drugs under
37 this chapter, and manufacturers of drugs and wholesalers of drugs
38 are not prohibited from according to them pricing or related
39 arrangements which are not made available to other purchasers of
40 drugs in this state.

41 Section 13F. Any purchaser of drugs or wholesaler of drugs
42 damaged by violation of sections 13A or 13B may bring an action
43 against the seller to recover treble damages sustained by reason of
44 this violation.

45 Section 13G. Any person who violates any provision of
46 section 13A or 13B, or any order or injunction to cease and desist
47 from any violation of said sections, shall be required to pay a civil
48 penalty of not less than one thousand dollars (\$1,000) nor more
49 than one hundred thousand dollars (\$100,000) per violation. Each
50 violation shall constitute a separate offense.

