

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2523

S.P. 980

In Senate, February 8, 2000

An Act to Establish Fair Pricing for Prescription Drugs.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PINGREE of Knox.
Cosponsored by Representative QUINT of Portland and
Senators: President LAWRENCE of York, PARADIS of Aroostook, RAND of Cumberland,
RUHLIN of Penobscot, Representatives: DUGAY of Cherryfield, GAGNON of Waterville.

Be it enacted by the People of the State of Maine as follows:

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

Sec. 1. 5 MRSA §12004-E, sub-§4 is enacted to read:

<u>4. Fair Drug</u>	<u>Expenses:</u>	<u>22 MRSA §2682</u>
<u>Pricing Board</u>	<u>Legislative</u>	
	<u>per diem for</u>	
	<u>Legislators:</u>	
	<u>\$35 per day for</u>	
	<u>nonstate</u>	
	<u>employees</u>	

Sec. 2. 10 MRSA §1105, 2nd ¶ is amended to read:

The term "necessities of life" ~~shall include~~ includes food for human consumption, food for domestic animals, prescription drugs, wearing apparel, shoes, building materials, gas and electricity for light, heat and power, ice, fuel of all kinds, fertilizer and fertilizer ingredients, together with tools, utensils, implements, machinery and equipment required for the actual production or manufacture of the same.

Sec. 3. 22 MRSA c. 603 is enacted to read:

CHAPTER 603

MAINE PRESCRIPTION DRUG FAIR PRICING ACT

§2681. Short title

This chapter may be known and cited as the "Maine Prescription Drug Fair Pricing Act."

§2682. Fair Drug Pricing Board

The Fair Drug Pricing Board, referred to in this chapter as the "board," is established.

1. Membership. The board consists of the following 11 members:

A. One Senator, appointed by the President of the Senate;

B. One Representative, appointed by the Speaker of the House of Representatives;

C. Three members of the public, appointed jointly by the President of the Senate and the Speaker of the House of Representatives, one each representing the interests of the following:

- 2 (1) Senior citizens;
4 (2) Disabled citizens; and
6 (3) Low-income citizens.

8 Members appointed pursuant to this paragraph must be
10 residents of this State and be at least 21 years of age;

12 D. Two members of the medical community, appointed jointly
14 by the President of the Senate and the Speaker of the House
 of Representatives, representing the interests of senior
 citizens;

16 E. Two pharmacists, appointed by the Governor. The
18 pharmacists must meet the following qualifications in order
20 to be appointed to and remain on the board. Neither
 pharmacist may be a member of the Maine Board of Pharmacy.
 Each pharmacist must:

22 (1) Be licensed to practice pharmacy in this State and
24 in good standing to do so;

26 (2) Be engaged in the practice of pharmacy in this
 State;

28 (3) Have at least 5 years of experience in this State
30 as a licensed pharmacist; and

32 (4) Be a resident of this State; and

34 F. The Director of the Bureau of Health within the
36 department and the Commissioner of Professional and
 Financial Regulation, both who serve as ex officio,
 nonvoting members.

38 2. Terms. Members of the board serve for terms of 3 years
40 and may be reappointed.

42 3. Meetings. The board shall meet at least once per month.

44 4. Director; staffing. The Director of the Bureau of
46 Health within the department shall appoint a director who shall
48 perform the duties delegated by the board, including the
 administration of other staff to the board. The department shall
 provide appropriate levels of staffing to assist the board.

50 5. Cooperation. In performing its duties, the board shall
 cooperate and work with the department, the Maine Board of

2 Pharmacy and the Department of Professional and Financial
3 Regulation.

4 **§2683. Prescription drug pricing**

6 The board shall adopt rules establishing the maximum price
7 for prescription drugs pursuant to this section. Maximum prices
8 established by the board are provisionally adopted pending
9 approval by the Legislature.

10
11
12 1. **Manufacturers.** The maximum price for a prescription
13 drug sold in the State by a manufacturer must be the lower of the
14 price listed in the federal supply schedule for pharmaceuticals
15 and drugs maintained by the United States Department of Veterans
16 Affairs or the price listed in the drug formulary maintained by
17 the Province of Quebec.

18 2. **Wholesalers.** The maximum price for a prescription drug
19 sold in the State by a wholesaler is the maximum manufacturer
20 price as determined by subsection 1 plus any usual and customary
21 wholesale markup.

22
23 3. **Retailers.** The maximum price for a prescription drug
24 sold in the State by a retailer is the maximum wholesale price as
25 determined by subsection 2 plus any usual and customary retail
26 markup.

27
28 **§2684. Prescription drug survey**

29
30 The board, to assist in the development of maximum drug
31 prices pursuant to section 2683, shall conduct a semiannual
32 survey of prescription drugs.

33
34 1. **Survey information.** The survey must include the
35 following information:

36
37 A. **Current manufacturer, wholesale and retail maximum**
38 prices of prescription drugs in Maine, as set by the board;

39
40 B. **Manufacturer, wholesale and retail maximum prices for**
41 prescription drugs for the previous 5 years at 6-month
42 intervals;

43
44 C. **The federal supply schedule for pharmaceuticals and**
45 drugs maintained by the United States Department of Veterans
46 Affairs;

47
48 D. **The drug formulary maintained by the Province of Quebec;**

49
50 E. **Current data regarding the elderly low-cost drug program**

2 and the Maine resident low-cost prescription drug program
4 conducted by the department pursuant to sections 254 and
6 254-B, respectively; and

8 F. Any other information concerning prescription drug
10 prices in the State that the board considers appropriate.

12 2. Reports. Semiannually, the board shall provide copies
14 of the results of the survey performed pursuant to subsection 1
16 to the Legislature, the department, the Maine Board of Pharmacy
18 and the Department of Professional and Financial Regulation.

20 3. Internet site. The board shall maintain a publicly
22 accessible site on the Internet containing the results of the
24 survey conducted pursuant to subsection 1.

26 §2685. Appeals

28 A manufacturer of prescription drugs may appeal the maximum
30 price of a prescription drug to the board.

32 1. Factors in appeal. Factors to be considered by the
34 board in an appeal include the cost of production, the profit
36 through sale and the price charged in other markets for the
38 prescription drug.

40 2. Appeals to Superior Court. Rulings on appeals by the
42 board may be appealed to the Superior Court in Kennebec County.

44 3. Disclosure. If a manufacturer of prescription drugs
46 appeals a price set by the board, the manufacturer shall fully
48 disclose to the board information regarding the production costs
50 of the drug and any other information pertinent to the appeal
requested by the board, notwithstanding any law protecting the
manufacturer from having to disclose such information.

4. Effect of appeal. The filing of an appeal may not delay
the implementation of the maximum price imposed by the board.

42 §2686. Violations; enforcement

44 1. Investigation. The Attorney General shall investigate
46 any violation by a manufacturer or wholesaler of prescription
48 drugs sold in this State of any of the following:

50 A. This chapter, Title 10, section 1105 or Title 32,
chapter 117;

B. Any other state or local law that prohibits
discriminatory rebates or discounts or other methods of
establishing prices for prescription drugs;

2 C. Any state or local law that prohibits the return of part
4 of the cost of a drug pursuant to a confidential agreement
 or coercion; or

6 D. Any state or local law that prohibits a drug
8 manufacturer or wholesaler from interfering with health care
 providers or retail pharmacies or the patients of health
10 care providers or retail pharmacies.

12 2. Enforcement. If the Attorney General determines that a
14 violation of subsection 1 or of any similar federal law has
16 occurred, in addition to any other penalties, the Attorney
18 General may recommend to the Maine Board of Pharmacy that the
20 manufacturer's certificate of registration issued pursuant to
 Title 32, chapter 117, subchapter V or VI be revoked or
 suspended. The Maine Board of Pharmacy may not revoke or suspend
 a manufacturer's certificate of registration if that action would
 cause the supply of prescription drugs to be restricted, as
 determined by the Fair Drug Pricing Board.

22 3. Petition. The Attorney General also may initiate an
24 investigation upon the written request of at least 50 residents
26 of this State alleging excessive manufacturer, wholesale or
 retail prescription drug prices.

28 **§2687. Agreements with other entities**

30 The board may enter into agreements with other states in the
32 Northeast and Canadian provinces for the purpose of maintaining
 fair and uniform prescription drug prices and ensuring maximum
 access to affordable prescription drugs.

34 **§2688. Fund established**

36 The Maine Prescription Drug Fair Pricing Fund, referred to
38 in this section as the "fund," is established. An amount equal
40 to any savings that are realized as a result of the
42 implementation of this Act due to a decrease in the costs of the
44 prescription drug insurance plan provided to state employees and
46 retirees, as recommended by the State Employee Health Commission
 pursuant to Title 5, chapter 13, subchapter II, must be placed in
 the fund and used to increase the funding levels of the elderly
 prescription drug program established in section 3174-G,
 subsection 1-A. Any unexpended amounts in the fund do not lapse
 but must be carried forward to be used for the same purpose.

48 **§2689. Emergency measures**

50 The board shall draft a plan that includes emergency
 measures to be implemented in the event that the board determines

2 that there is a severe limitation or shortage of or loss of
3 access to prescription drugs in the State that is threatening or
4 endangering the health or welfare of the public. If the board
5 determines that such an event is occurring, the board shall
6 provide the Governor with the plan and petition the Governor to
7 implement the emergency measures.

8 **§2690. Rulemaking**

10 The board shall adopt rules to carry out the purposes of
11 this chapter. Rules adopted pursuant to this chapter are major
12 substantive rules pursuant to Title 5, chapter 375, subchapter
13 II-A. The board shall submit rules to the joint standing
14 committee of the Legislature having jurisdiction over health and
15 human services matters.

16
17 **Sec. 4. 32 MRSA §13792**, as enacted by PL 1987, c. 710, §5, is
18 amended to read:

20 **§13792. Sale by certain methods prohibited**

22 It shall-be is unlawful for any person to sell, distribute,
23 vend or otherwise dispose of any drug, medicine or pharmaceutical
24 or medical preparation by means of the Internet or any public
25 exhibition, entertainment, performance, carnival or by vending
26 machines.

28 **Sec. 5. Findings; purpose.**

30 **1. Findings.** The Legislature makes the following findings.

32 A. The cost of many prescription drugs in this State is
33 excessive and in many cases prohibitive.

34 B. As a consequence of the excessive cost of prescription
35 drugs, far too many Maine citizens are forced to choose
36 between purchasing food, heating their homes or purchasing
37 their prescription drugs.

38 C. As a consequence of the excessive cost of prescription
39 drugs, many Maine citizens are forced into the
40 life-threatening practice of omitting or reducing doses of
41 their prescription medications due to the inability to
42 afford those medications.

43 D. Senior citizens and low-income citizens, the persons who
44 can least afford the excessive costs due to inadequate or
45 nonexistent insurance, are the persons who are most often
46 required to make these harsh choices.

2 **2. Purpose.** The purposes of this Act are to protect the
public health and safety and promote the public interest by
4 establishing prices for prescription drugs that more adequately
reflect the actual costs of those drugs.

6
8 **Sec. 6. Appointments to Fair Drug Pricing Board; meeting.** All
appointments to the Fair Drug Pricing Board, as established in
the Maine Revised Statutes, Title 22, section 2682, must be made
10 no later than August 15, 2000. The director of the board shall
call the first meeting of the board no later than September 1,
12 2000.

14 **Sec. 7. Initial rules.** The Fair Drug Pricing Board shall submit
all rules adopted pursuant to the Maine Revised Statutes, Title
16 22, chapter 603, including the schedule of prices for
prescription drugs, to the joint standing committee of the
18 Legislature having jurisdiction over health and human services
matters by January 1, 2001. All rules are provisionally adopted,
20 effective May 1, 2001, pending action by the Legislature.

22 **Sec. 8. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Act.

24
26
28
30
32
34
36
38
40
42
44

2000-01

**ATTORNEY GENERAL,
DEPARTMENT OF THE**

Administration - Attorney General

All Other \$500,000

Provides a one-time
appropriation for increased
staffing and other costs
related to enforcement of the
Maine Prescription Drug Fair
Pricing Act, as established
in the Maine Revised
Statutes, Title 22, chapter
603.

DEPARTMENT OF THE ATTORNEY GENERAL

TOTAL

\$500,000

HUMAN SERVICES, DEPARTMENT OF

2	Fair Drug Pricing Board	
4	Positions - Legislative Count	(1,000)
	Personal Services	\$37,500
6	All Other	7,500
8	TOTAL	<u>\$45,000</u>
10	Provides for the	
12	appropriation of funds to	
14	establish the position of	
16	Director of the Fair Drug	
18	Pricing Board and related	
	staffing pursuant to the	
	Maine Revised Statutes, Title	
	22, section 2682, subsection	
	4.	
20	Fair Drug Pricing Board	
22	All Other	\$5,000
24	Provides funds to allow the	
26	Fair Drug Pricing Board to	
28	perform a survey of	
30	prescription drug prices and	
32	publish the results of that	
	survey pursuant to the Maine	
	Revised Statutes, Title 22,	
	section 2684.	
34	DEPARTMENT OF HUMAN SERVICES	
	TOTAL	<u>\$50,000</u>
36	TOTAL APPROPRIATIONS	<u>\$550,000</u>

SUMMARY

42 In order to protect the public health and safety through the
44 establishment of prescription drug prices that more adequately
46 reflect the actual costs of those prescription drugs, this bill
 establishes the Maine Prescription Drug Fair Pricing Act. This
 bill accomplishes that purpose by doing the following.

48 1. It establishes the Fair Drug Pricing Board. The board,
50 with the approval of the Legislature, sets the maximum prices for
 prescription drugs based upon a specific formula. The board is

2 required to work with the Department of Human Services, the
3 Department of Professional and Financial Regulation and the Maine
4 Board of Pharmacy and to report regularly to those entities and
5 the Legislature. The board may enter into agreements with other
6 States or Canadian provinces to ensure uniform prices for
7 prescription drugs. The board is also required to maintain an
8 Internet site to give the public access to the price schedule
9 established by the board.

10 2. The Attorney General is given specific enforcement power
11 of the Act. If the Attorney General finds that a violation of
12 certain laws has occurred, the Attorney General may recommend the
13 suspension or revocation of a manufacturer's certificate of
14 registration. If 50 or more Maine citizens petition the Attorney
15 General alleging excessive prescription drug prices, the Attorney
16 General is required to investigate.

17 3. The sale of prescription drugs over the Internet is
18 prohibited.

19 4. The current prohibition against profiteering in
20 necessities is expanded to include prescription drugs.
21
22