



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0681/P1
KP:cdc

DOA:.....Lessner, BB0212 - Prescription drug marketing and advertising

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

Unfair drug pricing practices and fraudulent drug advertising

The bill prohibits unfair drug pricing practices, which are defined as drug pricing practices that cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or to competition. Under the bill, DATCP and district attorneys may seek injunctions in circuit court to restrain violations of the prohibition, and DATCP may investigate alleged violations and promulgate rules related to the prohibition.

The bill also authorizes DATCP to promulgate rules to enforce prohibitions against fraudulent drug advertising. Current law generally prohibits a person from making untrue, deceptive, or misleading representations about the effects of a drug or making representations about the effects of a drug unless it is lawfully marketed under federal law.

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

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

SECTION 1. 100.182 (4m) of the statutes is created to read:

100.182 (4m) The department may promulgate rules to implement this section.

SECTION 2. 100.311 of the statutes is created to read:

100.311 Unfair drug pricing practices. (1) In this section:

(a) “Drug” has the meaning given in s. 450.01 (10).

(b) “Unfair drug pricing practice” means a drug pricing practice that causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

(2) No person may engage in unfair drug pricing practices.

***NOTE: These provisions are based on 15 USC s. 45 (a) and (n), also referred to as Sections 5 (a) and (n) of the FTC Act. If you'd like any changes please let me know.

(3) The department may promulgate rules to implement this section.

(4) Any district attorney, after informing the department, or the department may seek a temporary or permanent injunction in circuit court to restrain any violation of this section. Prior to entering a final judgment the court may award damages to any person suffering monetary loss because of a violation. The department may subpoena any person or require the production of any document to aid in investigating alleged violations of this section.

***NOTE: This enforcement provision is based on s. 100.182 (5) (a); if you would like changes, please let me know.

***NOTE: No penalty is specifically prescribed for violations of the prohibition in s. 100.311; therefore, under s. 100.26 (1), any person who violates the prohibition is

subject to a fine of up to \$200, or imprisonment in the county jail for up to six months, or both.

(END)