

106TH CONGRESS
2D SESSION

H. R. 4869

To amend the Clayton Act to protect American consumers from foreign drug price discrimination.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2000

Mrs. CHENOWETH-HAGE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act to protect American consumers from foreign drug price discrimination.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prescription Drug
5 Fairness Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) It is difficult for some Americans, particu-
9 larly senior citizens, to afford the prescription drugs
10 they need to stay healthy;

1 (2) many American seniors cross the border to
2 Canada or Mexico to buy prescription drugs devel-
3 oped, manufactured, and approved in the United
4 States at lower prices than the same drugs are avail-
5 able for in the United States;

6 (3) according to the General Accounting Office,
7 American consumers pay on average 43 percent
8 more for prescription drugs than Canadian con-
9 sumers;

10 (4) forty-five percent of the new drugs devel-
11 oped in the last 25 years were developed in the
12 United States;

13 (5) other countries should pay a fair share of
14 the cost of research and development of new drugs
15 that benefit everyone, not just Americans; and

16 (6) since 1936 the Clayton Act, as amended by
17 the Act commonly known as the Robinson-Patman
18 Antidiscrimination Act, has prohibited price dis-
19 crimination among like buyers in the United States,
20 and has established as a legal norm the concept of
21 fair dealing in pricing. These same principles of fair
22 dealing should be applied to prescription drug sales
23 to wholesalers in foreign countries.

1 **SEC. 3. AMENDMENT TO THE CLAYTON ACT.**

2 (a) PRESCRIPTION DRUG PRICING.—Section 2 of the
3 Clayton Act (15 U.S.C. 13)) is amended by adding at the
4 end the following:

5 “(g)(1) For purposes of enforcing subsection (a), the
6 sale of a prescription drug by a manufacturer outside the
7 United States shall be deemed to be the sale of that pre-
8 scription drug within the United States, and discrimina-
9 tion in price between wholesalers within the United States,
10 and wholesalers outside the United States shall be deemed
11 substantially to injure, destroy, or prevent competition
12 with any person who either grants or knowingly receives
13 the benefit of such discrimination, or with customers of
14 either of them.

15 “(2) In this subsection:

16 “(A) The term ‘manufacturer’ means any per-
17 son, including any affiliate of that person, that is en-
18 gaged in—

19 “(i) the production, preparation, propaga-
20 tion, compounding, conversion, or processing of
21 prescription drugs, either directly or indirectly
22 by extraction from substances of natural origin,
23 or independently by means of chemical syn-
24 thesis, or by a combination of extraction and
25 chemical synthesis; or

1 “(ii) in the packaging, repackaging, label-
2 ing, relabeling, or distribution of prescription
3 drugs.

4 “(B) The term ‘prescription drug’ means a
5 drug—

6 “(i) that is described in section 503(b)(1)
7 of the Federal Food, Drug, and Cosmetic Act
8 (21 U.S.C. 353 (b)(1)); and

9 “(ii) for which an application has been ap-
10 proved under section 505 of the Federal Food,
11 Drug, and Cosmetic Act (21 U.S.C. 355), or as
12 applicable, under section 351 of the Public
13 Health Service Act (942 U.S.C. 262).”.

14 (b) EFFECTIVE DATE.—This Act shall take effect
15 180 days after the date of enactment of this section.

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