

106TH CONGRESS  
2D SESSION

# S. 2464

To amend the Robinson-Patman Anti-discrimination Act to protect American consumers from foreign drug price discrimination.

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IN THE SENATE OF THE UNITED STATES

APRIL 26, 2000

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Robinson-Patman Anti-discrimination 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) recognizing that the development of new  
11          drugs is important because the use of such drugs en-  
12          ables people to live longer and lead healthier, more  
13          productive lives, the United States has made a  
14          strong commitment to supporting the research and  
15          development of new drugs through taxpayer-sup-  
16          ported funding of the National Institutes of Health,  
17          through the Research and Development tax credit  
18          and through other means;

19          (5) forty-five percent of the new drugs devel-  
20          oped in the last 25 years were developed in the  
21          United States;

22          (6) other countries should pay a fair share of  
23          the cost of research and development of new drugs  
24          that benefit everyone, not just Americans; and

1           (7) since 1936, the Robinson-Patman Act has  
2           prohibited price discrimination among like buyers in  
3           the United States, and has established as a legal  
4           norm the concept of fair dealing in pricing. These  
5           same principles of fair dealing should be applied to  
6           prescription drug sales to wholesalers in different  
7           countries.

8   **SEC. 3. AMENDMENT TO THE ROBINSON-PATMAN ANTI-DIS-**  
9                                   **CRIMINATION ACT.**

10          (a) PRESCRIPTION DRUG PRICING.—Section 2 of the  
11 Clayton Act (as amended by the Robinson-Patman Anti-  
12 discrimination Act (15 U.S.C. 13)) is amended by adding  
13 at the end the following:

14          “(g)(1) For purposes of enforcing subsection (a), the  
15 sale of a prescription drug by a manufacturer outside the  
16 United States shall be deemed to be the sale of that pre-  
17 scription drug within the United States, and discrimina-  
18 tion in price between wholesalers within the United States,  
19 and wholesalers outside the United States shall be deemed  
20 substantially to injure, destroy, or prevent competition  
21 with any person who either grants or knowingly receives  
22 the benefit of such discrimination, or with customers of  
23 either of them.

24          “(2) In this subsection:

1           “(A) The term ‘manufacturer’ means any enti-  
2           ty, including any affiliate of that entity, that is en-  
3           gaged in—

4                   “(i) the production, preparation, propaga-  
5                   tion, compounding, conversion, or processing of  
6                   prescription drugs, either directly or indirectly  
7                   by extraction from substances of natural origin,  
8                   or independently by means of chemical syn-  
9                   thesis, or by a combination of extraction and  
10                  chemical synthesis; or

11                  “(ii) in the packaging, repackaging, label-  
12                  ing, relabeling, or distribution of prescription  
13                  drugs.

14           “(B) The term ‘prescription drug’ means a  
15           drug—

16                   “(i) that is described in section 503(b)(1)  
17                   of the Federal Food, Drug, and Cosmetic Act  
18                   (21 U.S.C. 353 (b)(1));

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

1           (b) EFFECTIVE DATE.—This Act shall take effect 6  
2 months after the date of enactment of this section.

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