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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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prescription Drug Fairness Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) It is difficult for some Americans, particularly senior citizens, to afford the prescription drugs they need to stay healthy;

(2) many American seniors cross the border to Canada or Mexico to buy prescription drugs developed, manufactured, and approved in the United States at lower prices than the same drugs are available for in the United States;

(3) according to the General Accounting Office, American consumers pay on average 43 percent more for prescription drugs than Canadian consumers;

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

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

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

SEC. 3. AMENDMENT TO THE CLAYTON ACT.

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

''(g)(1) For purposes of enforcing subsection (a), the sale of a prescription drug by a manufacturer outside the United States shall be deemed to be the sale of that prescription drug within the United States, and discrimination in price between wholesalers within the United States, and wholesalers outside the United States shall be deemed substantially to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

''(2) In this subsection:

''(A) The term 'manufacturer' means any person, including any affiliate of that person, that is engaged in—

''(i) the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

"(ii) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs.

"(B) The term 'prescription drug' means a drug—

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

"(ii) for which an application has been approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), or as applicable, under section 351 of the Public Health Service Act (942 U.S.C. 262).".

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

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