

SENATE No. 2590

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Text of the Senate amendment (Ways and Means) to the House Bill relative to manufacturer rebates and discount programs, House, No. 4689.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3 of chapter 175H of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by inserting before the word “Any”, in line 1, the following:-
3 (a).

4 SECTION 2. Said section 3 of said chapter 175H, as so appearing, is hereby further
5 amended by inserting after word “rebate”, in line 7, the following words:- , except as provided in
6 subsection (b).

7 SECTION 3. Said section 3 of said chapter 175H, as so appearing, is hereby further
8 amended by adding the following 3 subsections:-

9 (b)(1) This section shall not apply to any discount or free product vouchers that a retail
10 pharmacy provides to a consumer in connection with a pharmacy service, item or prescription
11 transfer offer or to any discount, rebate, product voucher or other reduction in an individual’s
12 out-of-pocket expenses, including co-payments and deductibles, on a prescription drug, biologic
13 or vaccine, for which there does not exist a clinically proven generic equivalent, provided by a

14 pharmaceutical manufacturing company, as defined in section 1 of chapter 111N, that is made
15 available to an individual if the discount, rebate, product voucher or other reduction is provided
16 directly or electronically to the individual or through a point of sale or mail-in rebate, or through
17 similar means; provided, however, that a pharmaceutical manufacturing company shall not
18 exclude nor favor any pharmacy in the redemption of such discount, rebate, product voucher or
19 other expense reduction offer to a consumer.

20 (2) If a discount, rebate, product voucher or other reduction in an individual's out-of-
21 pocket expenses is applied to a consumer's prescription, the discount, rebate, product voucher or
22 other cost reduction shall be made available for all renewals thereof. Any consumer alleging a
23 violation of this clause shall contact the department of public health or the office of consumer
24 affairs and business regulation to report the violation. If a violation of this clause is found to
25 have occurred, the pharmaceutical manufacturer or any intermediary which interfered with the
26 availability of the discount, rebate, product voucher or other cost reduction shall make the
27 discount, rebate, product voucher or other cost reduction available to the consumer for the life of
28 the prescription and pay a fine not more than \$1,000 to the department of public health.

29 (c) Subsection (b) shall not: (i) restrict a pharmaceutical manufacturing company with
30 regard to how it distributes a prescription drug, biologic or vaccine; or (ii) restrict a carrier or a
31 health maintenance organization, as defined in section 1 of chapter 118G, with regard to how its
32 plan design will treat such discounts, rebates, product voucher or other reduction in out-of-
33 pocket expenses.

34 (d) For purposes of the federal Health Insurance Portability and Accountability Act of
35 1996, hereinafter referred to as HIPAA, and regulations promulgated under HIPAA, nothing in

36 this section shall be deemed to require or allow the use or disclosure of health information in any
37 manner that does not otherwise comply with HIPAA or regulations promulgated under HIPAA.

38 SECTION 4. The division of health care finance and policy, in consultation with the
39 department of public health shall conduct an analysis of the impact of impact on health care costs
40 of the use of discounts, rebate, product voucher or other reduction for prescription drugs. The
41 report shall include, but not be limited to, an analysis of the impact on commercial health
42 insurance premiums and on premiums associated with the group insurance commission, and a
43 comparison of any change in utilization of generic versus brand name prescription drugs. The
44 division shall file a report of its findings with the clerks of the senate and house of
45 representatives, the house and senate committees on ways and means and the joint committee on
46 health care financing by not later than November 1, 2012.