
SENATE BILL 5596

State of Washington

68th Legislature

2023 Regular Session

By Senators J. Wilson, Fortunato, Rivers, McCune, and Short

Read first time 01/27/23. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to restoring trust in public health through
2 consumer protection; amending RCW 19.86.010, 9.04.010, 9.04.050,
3 9.04.060, 9.04.070, 9.04.080, 69.04.004, 69.04.007, and 69.04.019;
4 adding new sections to chapter 19.86 RCW; adding a new section to
5 chapter 9.04 RCW; adding new sections to chapter 69.04 RCW; creating
6 new sections; providing an effective date; and declaring an
7 emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

10 (a) Trust in government communications regarding drugs and
11 medical devices is critical to public safety, and trust is built upon
12 accurate information that is void of conflicts of interest and the
13 perception of conflicts of interest;

14 (b) The COVID-19 pandemic brought to light inconsistencies
15 between the communication requirements of the federal food, drug, and
16 cosmetic act including emergency use authorization and communications
17 promulgated by government offices and agencies regarding drugs and
18 medical devices made available in Washington. Inconsistent
19 communications have eroded public trust of government;

20 (c) Government agencies purchase, store, distribute, promote, and
21 mandate various drug and medical device products. Because of their

1 ability to reach all consumers through various means, government
2 agencies often have greater influence on consumer decisions than do
3 the product manufacturers;

4 (d) Real or perceived conflicts of interest exist when government
5 agencies or their employees are members of organizations that
6 collaborate with or are directly or indirectly sponsored by drug and
7 product manufacturers for which products the government is
8 responsible for creating or implementing policy; and

9 (e) Only the federal government has the authority to enforce the
10 food, drug, and cosmetic act. When the federal government does not
11 enforce federal laws, Washington consumers are exposed to
12 communications that jeopardize critical consumer protections and
13 undermine trust in public health.

14 (2) The legislature, therefore, intends to protect consumers and
15 rebuild trust in public health by preventing certain conflicts of
16 interest, and by requiring government agencies in Washington to
17 adhere to state consumer protection laws and federal labeling and
18 advertising laws that apply to drug and medical device manufacturers
19 and their products.

20 **Sec. 2.** RCW 19.86.010 and 1961 c 216 s 1 are each amended to
21 read as follows:

22 As used in this chapter:

23 (1) "Assets" shall include any property, tangible or intangible,
24 real, personal, or mixed, wherever situated, and any other thing of
25 value.

26 (2) "Communication" or "promotion" means the publication,
27 dissemination, or display by any means including, but not limited to,
28 in-person, mail, telephone, major media, social media, website,
29 webinar, and electronic communication.

30 (3) "Drugs" has the same meaning as in RCW 69.04.009 and includes
31 mRNA and DNA vaccines.

32 (4) "False, misleading, and deceptive communication or promotion"
33 means communication and promotion that fails to reveal material
34 facts, the omission of which is likely to induce, directly or
35 indirectly, the public to utilize a product they may not have
36 otherwise utilized, or would not have utilized in the manner
37 suggested by the communication and promotion.

38 (5) "Government agency" means:

39 (a) State offices and entities;

1 (b) State officers, state employees, and volunteers acting in the
2 capacity of a state officer or state employee;

3 (c) Local governmental entities and offices, as defined in RCW
4 4.96.010; and

5 (d) Local government officers, local government employees, and
6 volunteers.

7 (6) "Medical devices" has the same meaning as "device" in RCW
8 69.04.010 and includes personal protective equipment.

9 (7) "Person" shall include, where applicable, natural persons,
10 corporations, trusts, unincorporated associations ((and)),
11 partnerships, and government agencies.

12 ~~((2))~~ (8) "Trade" and "commerce" shall include the sale of
13 assets or services, and any commerce directly or indirectly affecting
14 the people of the state of Washington.

15 ~~((3) "Assets" shall include any property, tangible or~~
16 ~~intangible, real, personal, or mixed, and wherever situate, and any~~
17 ~~other thing of value.))~~

18 NEW SECTION. Sec. 3. A new section is added to chapter 19.86
19 RCW to read as follows:

20 (1) Government agency communication and promotion of drugs and
21 medical devices shall constitute "trade" and "commerce" for the
22 purposes of this chapter, regardless of whether the government agency
23 directly or indirectly offers a product to the public or whether the
24 product is available at no cost to the consumer.

25 (2) All government agency communication and promotion relating to
26 a drug or medical device must adhere to the requirements and
27 limitations for the product's labeling, promotion, and advertising as
28 set forth for product manufacturers in the following:

29 (a) The product's food and drug administration emergency use
30 authorization, or licensing agreement, if any; and

31 (b) Title 21 U.S.C. Sec. 352(a) and (n) and any implementing
32 regulations of the federal food and drug administration, except those
33 regulations relating to reminder advertisements.

34 (3) Government agencies may not use coercion or undue influence
35 to promote the use of a drug or medical device.

36 (4) Government agencies may not use false, misleading, or
37 deceptive communication or promotion regarding a drug or medical
38 device, and shall be subject to the requirements of this chapter and
39 chapters 9.04 and 69.04 RCW.

1 (5) A government agency may not hold membership in an
2 organization that collaborates with or is directly or indirectly
3 sponsored by manufacturers of products for which the agency is
4 responsible for creating or implementing policy.

5 (6) Government agencies that refer or direct consumers to
6 entities that provide information about drugs or medical devices that
7 are not subject to this chapter shall provide an oral or written
8 warning with the referral or direction.

9 (7) Government agencies shall establish, implement, and enforce
10 reasonable guidelines and controls to assure adherence to and
11 compliance with this chapter.

12 (8) When the state attorney general or a county prosecuting
13 attorney becomes aware of or is notified of a violation of this
14 chapter, the attorney shall commence an action to seek all available
15 legal remedies against the violator.

16 (9) To prevail in an action under this section, the party seeking
17 relief is not required to demonstrate that the government agency
18 acted with intent to harm the public.

19 (10) Nothing in this section shall be construed or implied to
20 limit or impair the right of a person to pursue a legal action under
21 another law.

22 (11) Nothing in this section shall be construed to deny,
23 abrogate, or impair any statutory or common law right, remedy, or
24 prohibition otherwise available to a party.

25 (12) Because trust in government agency communication is
26 necessary for public safety, it is the intent of the legislature
27 that, in construing this act, the courts are guided by applicable
28 federal statutes pertaining to the same or similar matters including
29 the criminal fines for violations of the federal food, drug, and
30 cosmetic act (21 U.S.C. Sec. 301 et seq.). To this end, this act
31 shall be liberally construed, that its beneficial purposes of
32 protecting Washington citizens and consumers and restoring trust in
33 government may be served.

34 (13) All relevant materials and information distributed prior to
35 the effective date of this section shall be removed, retracted, and
36 otherwise withdrawn as soon as reasonably practical, no later than
37 September 1, 2023.

38 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.86
39 RCW to read as follows:

1 Nothing in this chapter shall be construed to mean that
2 government agencies are prohibited from publicly expressing
3 disagreement with product authorization and approval decisions of
4 federal agencies regarding drugs or medical devices.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.04 RCW
6 to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Advertisement" includes, in the context of a government
10 agency, any communication or promotion regarding a drug or medical
11 device product, regardless of whether the agency directly or
12 indirectly offers the product to the public or whether the product is
13 available at no cost to the consumer.

14 (2) "Communication" or "promotion" means the publication,
15 dissemination, or display by any means including, but not limited to,
16 in-person, mail, telephone, major media, social media, website,
17 webinar, and electronic communication.

18 (3) "Drugs" has the same meaning as in RCW 69.04.009 and includes
19 mRNA and DNA vaccines.

20 (4) "Government agency" means:

21 (a) State offices and entities;

22 (b) State officers, state employees, and volunteers acting in the
23 capacity of a state officer or state employee;

24 (c) Local governmental entities and offices, as defined in RCW
25 4.96.010; and

26 (d) Local government officers, local government employees, and
27 volunteers.

28 (5) "Medical devices" has the same meaning as "device" in RCW
29 69.04.010 and includes personal protective equipment.

30 **Sec. 6.** RCW 9.04.010 and 1913 c 34 s 1 are each amended to read
31 as follows:

32 Any person, firm, government agency, corporation or association
33 who, with intent to sell or in any wise dispose of merchandise,
34 securities, service, or anything offered by such person, firm,
35 corporation or association, directly or indirectly, to the public for
36 sale or distribution, or with intent to increase the consumption
37 thereof, or to induce the public in any manner to enter into any
38 obligation relating thereto, or to acquire title thereto, or an

1 interest therein, makes, publishes, disseminates, circulates, or
2 places before the public, or causes, directly or indirectly, to be
3 made, published, disseminated, circulated, or placed before the
4 public in this state, in a newspaper or other publication, or in the
5 form of a book, notice, hand-bill, poster, bill, circular, pamphlet,
6 or letter, or in any other way, an advertisement of any sort
7 regarding merchandise, securities, service, or anything so offered to
8 the public, which advertisement contains any assertion,
9 representation or statement of fact which is untrue, deceptive or
10 misleading, shall be guilty of a misdemeanor: PROVIDED, That the
11 provisions of this section shall not apply to any owner, publisher,
12 agent, or employee of a newspaper for the publication of such
13 advertisement published in good faith and without knowledge of the
14 falsity thereof.

15 **Sec. 7.** RCW 9.04.050 and 2000 c 33 s 1 are each amended to read
16 as follows:

17 It shall be unlawful for any person or government agency to
18 publish, disseminate or display, or cause directly or indirectly, to
19 be published, disseminated or displayed in any manner or by any
20 means, including solicitation or dissemination by mail, telephone,
21 electronic communication, or door-to-door contacts, any false,
22 deceptive or misleading advertising, with knowledge of the facts
23 which render the advertising false, deceptive or misleading, for any
24 business, trade or commercial purpose or for the purpose of inducing,
25 or which is likely to induce, directly or indirectly, the public to
26 purchase, consume, lease, dispose of, utilize or sell any property or
27 service, or to enter into any obligation or transaction relating
28 thereto: PROVIDED, That nothing in this section shall apply to any
29 radio or television broadcasting station which broadcasts, or to any
30 publisher, printer or distributor of any newspaper, magazine,
31 billboard or other advertising medium who publishes, prints or
32 distributes, such advertising in good faith without knowledge of its
33 false, deceptive or misleading character.

34 **Sec. 8.** RCW 9.04.060 and 1961 c 189 s 2 are each amended to read
35 as follows:

36 The attorney general or the prosecuting attorneys of the several
37 counties may bring an action in the superior court to restrain and

1 prevent any person or government agency from violating any provision
2 of RCW 9.04.050 through 9.04.080.

3 **Sec. 9.** RCW 9.04.070 and 1999 c 143 s 1 are each amended to read
4 as follows:

5 Any person (~~who~~) or government agency that violates any order
6 or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall
7 be subject to a fine of not more than five thousand dollars or
8 imprisonment for not more than ninety days or both.

9 **Sec. 10.** RCW 9.04.080 and 2011 c 336 s 288 are each amended to
10 read as follows:

11 In the enforcement of RCW 9.04.050 through 9.04.080 the official
12 enforcing RCW 9.04.050 through 9.04.080 may accept an assurance of
13 discontinuance of any act or practice deemed in violation of RCW
14 9.04.050 through 9.04.080, from any person or government agency
15 engaging in, or who has engaged in such act or practice. Any such
16 assurance shall be in writing and be filed with and subject to the
17 approval of the superior court of the county in which the alleged
18 violator resides or has his or her principal place of business, or in
19 Thurston county. A violation of such assurance shall constitute prima
20 facie proof of a violation of RCW 9.04.050 through 9.04.080:
21 PROVIDED, That after commencement of any action by a prosecuting
22 attorney, as provided herein, the attorney general may not accept an
23 assurance of discontinuance without the consent of the prosecuting
24 attorney.

25 **Sec. 11.** RCW 69.04.004 and 1945 c 257 s 5 are each amended to
26 read as follows:

27 The term "intrastate commerce" means any and all commerce within
28 the state of Washington and subject to the jurisdiction thereof; and
29 includes the operation of any business or service establishment. With
30 respect to a government agency, "intrastate commerce" includes any
31 communication or promotion regarding a drug or medical device
32 product, regardless of whether the agency directly or indirectly
33 offers the product to the public or whether the product is available
34 at no cost to the consumer.

35 **Sec. 12.** RCW 69.04.007 and 1945 c 257 s 8 are each amended to
36 read as follows:

1 The term "person" includes individual, partnership, corporation,
2 ((and)) association, and government agency.

3 **Sec. 13.** RCW 69.04.019 and 1945 c 257 s 20 are each amended to
4 read as follows:

5 The term "advertisement" means all representations, other than by
6 labeling, for the purpose of inducing, or which are likely to induce,
7 directly or indirectly, the purchase of food, drugs, devices, or
8 cosmetics. With respect to a government agency, the term
9 "advertisement" means any communication or promotion regarding a drug
10 or medical device product, regardless of whether the agency directly
11 or indirectly offers the product to the public or whether the product
12 is available at no cost to the consumer.

13 NEW SECTION. **Sec. 14.** A new section is added to chapter 69.04
14 RCW to read as follows:

15 The terms "communication" and "promotion" mean the publication,
16 dissemination, or display by any means, including, but not limited to
17 in-person, mail, telephone, major media, social media, website,
18 webinar, and electronic communication.

19 NEW SECTION. **Sec. 15.** A new section is added to chapter 69.04
20 RCW to read as follows:

21 The term "government agency" means:

22 (1) State offices and entities;

23 (2) State officers, state employees, and volunteers acting in the
24 capacity of a state officer or state employee;

25 (3) Local governmental entities and offices, as defined in RCW
26 4.96.010; and

27 (4) Local government officers, local government employees, and
28 volunteers.

29 NEW SECTION. **Sec. 16.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect June 1, 2023.

3 NEW SECTION. **Sec. 18.** This act shall be known and may be cited
4 as the improving consumer protection to restore trust in public
5 health act.

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