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**HOUSE BILL 1610**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representative Walsh

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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