

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Generic Drug Pricing Fairness Act.

6 Section 5. Definitions. As used in this Act:

7 "Essential off-patent or generic drug" means any
8 prescription drug sold within the State:

9 (1) for which all exclusive marketing rights, if any,
10 granted under the Federal Food, Drug, and Cosmetic Act,
11 Section 351 of the federal Public Health Service Act, and
12 federal patent law have expired;

13 (2) that appears on the model list of essential
14 medicines most recently adopted by the World Health
15 Organization or that has been designated by the United
16 States Secretary of Health and Human Services as an
17 essential medicine due to its efficacy in treating a
18 life-threatening health condition or a chronic health
19 condition that substantially impairs an individual's
20 ability to engage in activities of daily living; and

21 (3) that is actively manufactured and marketed for sale
22 in the United States by 3 or fewer manufacturers.

23 "Essential off-patent or generic drug" includes any

1 drug-device combination product used for the delivery of a drug
2 for which all exclusive marketing rights, if any, granted under
3 the Federal Food, Drug, and Cosmetic Act, Section 351 of the
4 federal Public Health Service Act, and federal patent law have
5 expired.

6 "Manufacturer" has the meaning provided in Section 15 of
7 the Wholesale Drug Distribution Licensing Act.

8 "Price gouging" means an unconscionable increase in a
9 prescription drug's price that:

10 (1) would result in an increase in the wholesale
11 acquisition cost of the essential off-patent or generic
12 drug of 30% or more within the preceding year, 50% or more

13 within the preceding 3 years, or 75% or more within the
14 preceding 5 years; or

15 (2) is otherwise excessive and unduly burdens
16 consumers because of the importance of the essential
17 off-patent or generic drug to their health and because of
18 insufficient competition in the marketplace.

19 "Price gouging" does not include a price increase that can
20 be reasonably justified by:

21 (1) an increase in the cost of producing the essential
22 off-patent or generic drug; or

23 (2) the cost of appropriate expansion of access to the
24 essential off-patent or generic drug to promote public
25 health.

26 "State health plan" means the program of health benefits

1 under the State Employees Group Insurance Act of 1971.

2 "Wholesale acquisition cost" has the meaning provided in 42
3 U.S.C. 1395w-3a.

4 "Wholesale drug distributor" has the meaning provided in
5 Section 15 of the Wholesale Drug Distribution Licensing Act.

6 Section 10. Price gouging prohibited.

7 (a) A manufacturer or wholesale drug distributor shall not
8 engage in price gouging in the sale of an essential off-patent
9 or generic drug.

10 It is not a violation of this Act for a wholesale
11 distributor to increase the price of an essential off-patent or
12 generic drug if the price increase is directly attributable to
13 additional costs for the essential off-patent or generic drug
14 imposed on the wholesale drug distributor by the manufacturer
15 of the drug.

16 For the purpose of the enforcement of this Act:

17 (1) the Director of Healthcare and Family Services may
18 notify the Attorney General of any increase in the price of
19 any essential off-patent or generic drug under the Medical
20 Assistance Program under Section V of the Illinois Public
21 Aid Code that amounts to price gouging; and

22 (2) the Director of Central Management Services may
23 notify the Attorney General of any increase in the price of
24 any essential off-patent or generic drug under the State
25 health plan that amounts to price gouging.

1 (b) If the Attorney General has reason to believe that a
2 manufacturer or wholesale drug distributor of an essential
3 off-patent or generic drug has violated this Act, then the
4 Attorney General shall send a notice to the manufacturer or the
5 wholesale drug distributor requesting a statement:

6 (1) itemizing the components of the cost of producing
7 the essential off-patent or generic drug;

8 (2) identifying the circumstances and timing of an
9 increase in materials or manufacturing costs that caused an
10 increase in the price of the essential off-patent or
11 generic drug within the 5-year period preceding the date of
12 the price increase;

13 (3) identifying the circumstances and timing of any
14 expenditures made by the manufacturer to expand access to
15 the essential off-patent or generic drug and explaining any
16 improvement in public health associated with those
17 expenditures; and

18 (4) providing any other information that the
19 manufacturer or wholesale drug distributor believes to be
20 relevant to a determination of whether a violation of this
21 Act has occurred.

22 Within 45 days after receipt of the request, the
23 manufacturer or wholesale drug distributor shall submit the
24 statement to the Attorney General.

25 To accomplish the objectives and carry out the duties
26 prescribed in this Act, the Attorney General may issue

1 subpoenas or examine under oath any person to determine whether
2 a manufacturer or wholesale drug distributor has violated this
3 Act.

4 (c) Upon petition of the Attorney General, a circuit court
5 may issue an order:

6 (1) compelling a manufacturer or a wholesale drug
7 distributor:

8 (A) to provide a statement required under
9 subsection (b); or

10 (B) to produce specific records or other documents
11 requested by the Attorney General that may be relevant
12 to a determination of whether a violation of this Act
13 has occurred;

14 (2) restraining or enjoining a violation of this Act;

15 (3) restoring to any consumer, including a third-party

16 payor, any money acquired as a result of a price increase
17 that violates this Act;

18 (4) requiring a manufacturer or wholesale drug
19 distributor that has engaged in price gouging in the sale
20 of an essential off-patent or generic drug to make the drug
21 available to participants in the State health plan or
22 Medical Assistance Program under Section V of the Illinois
23 Public Aid Code for a period of up to one year at the price
24 at which the drug was made available to participants in
25 Illinois immediately before the violation of this Act;

26 (5) imposing a civil penalty of up to \$10,000 for each

1 violation of this Act; or

2 (6) granting any other relief.

3 In response to any petition brought by the Attorney General
4 under this Section, a manufacturer or wholesale drug
5 distributor who is alleged to have violated this Act may not
6 assert as a defense that the manufacturer or wholesale drug
7 distributor did not directly sell a product to a consumer
8 residing in Illinois.

9 (d) Any financial information provided by a manufacturer or
10 a wholesale drug distributor to the Attorney General in
11 accordance with this Section may not be disclosed to the public
12 by the Attorney General. The financial information, while in
13 the possession of the Attorney General, shall be exempt from
14 disclosure by the Attorney General under the Freedom of
15 Information Act. Notwithstanding the other provisions of this
16 subsection, if it appears to the Attorney General that a
17 manufacturer or wholesale drug distributor has engaged in or is
18 engaging in any practice declared to be in violation of this
19 Act and that legal proceedings would be in the public interest,
20 then the Attorney General may disclose any financial
21 information provided in accordance with this Section in support
22 of the filing of an action in the circuit court.

23 Section 99. Effective date. This Act takes effect January
24 1, 2019.