
SENATE BILL 5995

State of Washington

65th Legislature

2018 Regular Session

By Senators Keiser, Pedersen, Rolfes, Van De Wege, Llias, Hunt, Conway, Chase, Saldaña, Kuderer, and Hasegawa

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1 AN ACT Relating to protecting consumers and purchasers from
2 excessive increases in generic prescription drug prices; and adding a
3 new chapter to Title 69 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that excessive price
6 increases to prescription drugs that lack justification based on
7 market forces create a public health risk to consumers who rely on
8 prescription drugs. In order to prevent a manufacturer from taking
9 unfair advantage of consumers who rely upon and may lose access to
10 the prescription drugs if the medication has a sudden and excessive
11 price increase, the legislature declares that unjustified and
12 excessive price increases of generic drugs are considered violations
13 of the consumer protection act.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires
16 otherwise.

17 (1) "Drug manufacturer" means a facility licensed by the pharmacy
18 quality assurance commission under chapter 18.64 RCW that engages in
19 the manufacture of generic drugs.

1 (2) "Excessive" means an increase to the wholesale acquisition
2 cost of a generic drug by a percent equal to or greater than one
3 hundred percent at any one time or in the aggregate in any twelve-
4 month period that the prescription drug program determines is not
5 justified based on their review under section 6 of this act.

6 (3) "Price increase notification form" or "form" means the price
7 increase notification form produced and distributed by the
8 prescription drug program under section 4 of this act.

9 (4) "Wholesale acquisition cost" means the price for each dosage,
10 size, or concentration of the generic drug offered or sold by the
11 manufacturer.

12 NEW SECTION. **Sec. 3.** (1) If a drug manufacturer increases the
13 wholesale acquisition cost of a generic drug by a percent equal to or
14 greater than one hundred percent at any one time or in the aggregate
15 in any twelve-month period, the drug manufacturer must use the price
16 increase notification form established under section 4 of this act to
17 notify the office of the insurance commissioner and the prescription
18 drug program of the increase. This notice must be provided to the
19 insurance commissioner and the prescription drug program at least
20 thirty days before the increase takes effect.

21 (2) Failure to provide the notice required under this section may
22 result in the attorney general taking action under section 6 of this
23 act.

24 NEW SECTION. **Sec. 4.** The prescription drug program must produce
25 and make available to drug manufacturers a price increase
26 notification form. The form must require drug manufacturers to
27 disclose:

28 (1) The most recent wholesale acquisition cost of the generic
29 drug before an increase equal to or greater than one hundred percent
30 at any one time or in the aggregate in any twelve-month period in
31 either pricing measure;

32 (2) The wholesale acquisition cost of the generic drug when
33 exceeding the one hundred percent threshold;

34 (3) Any material change in ingredient, production, or
35 manufacturing costs resulting in the price increase;

36 (4) Whether the drug is a sole source drug;

37 (5) Changes to the drug manufacturer's corporate structure within
38 the last two years including, but not limited to, whether the drug

1 manufacturer has been or is in the process of merging with or
2 acquiring another company; and

3 (6) Any other information the drug manufacturer deems relevant to
4 the prescription drug program's review.

5 NEW SECTION. **Sec. 5.** Upon receipt of a price increase
6 notification form, the insurance commissioner must direct all
7 insurance plans to require prior authorization for the drug listed on
8 the form. This prior authorization requirement goes into effect as of
9 the date of the price increase and will continue until the
10 prescription drug program makes the determination required under
11 section 6 of this act.

12 NEW SECTION. **Sec. 6.** (1) Upon receipt of a price notification
13 form, the prescription drug program must review the price increase
14 and make a determination as to whether the price increase is
15 excessive. In making a determination, the board must consider:

16 (a) The wholesale acquisition cost of the drug in comparison to
17 any generic equivalent or therapeutically equivalent drug;

18 (b) The United States food and drug administration's approved or
19 compendium supported use of the drug and critical need to the
20 patient;

21 (c) Any known market factors justifying the price increase
22 including, but not limited to:

23 (i) Whether the drug has been absent from the market for any
24 period of time; and

25 (ii) Changes in manufacturing or regulatory requirements or
26 costs;

27 (d) Any material change in the prevalence or severity of the
28 disease or medical condition or conditions that the drug is approved
29 to treat;

30 (e) Any changes to the corporate structure of the drug
31 manufacturer in the last two years including, but not limited to,
32 whether the drug manufacturer has been or is in the process of
33 merging with or acquiring another company; and

34 (f) Whether the drug is a sole source drug.

35 (2) If the prescription drug program finds that the price
36 increase instituted by the drug manufacturer is not excessive, the
37 prior authorization requirement under section 5 of this act must
38 cease.

1 (3) If the prescription drug program finds that the price
2 increase instituted by the drug manufacturer is excessive:

3 (a) The prior authorization requirement under section 5 of this
4 act must continue until the prescription drug program determines
5 otherwise or the drug manufacturer successfully appeals the decision.
6 The drug manufacturer may appeal the decision by filing with the
7 office of administrative hearings a notice of appeal within thirty
8 days of receiving the program's decision. Appeals must be conducted
9 in accordance with chapter 34.05 RCW; and

10 (b) If the drug manufacturer does not file an appeal or does not
11 prevail upon appeal, the prescription drug program must refer the
12 matter to the attorney general to take action under chapter 19.86
13 RCW. The legislature finds that the practices covered by this chapter
14 are unfair methods of competition and unfair or deceptive acts or
15 practices in the conduct of any trade or commerce and vitally affect
16 the public interest for the purpose of the attorney general's
17 application of the consumer protection act, chapter 19.86 RCW. A
18 price increase instituted by a drug manufacturer that is determined
19 to be excessive is not reasonable in relation to the development and
20 preservation of business and is injurious to the public interest for
21 the purpose of the attorney general's application of the consumer
22 protection act, chapter 19.86 RCW.

23 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act
24 constitute a new chapter in Title 69 RCW.

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