

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0139.01 Kristen Forrestal x4217

SENATE BILL 18-152

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SENATE SPONSORSHIP

**Aguilar**, Court, Guzman, Jones, Merrifield, Todd, Zenzinger

HOUSE SPONSORSHIP

**Lontine**,

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING A PROHIBITION AGAINST PRICE GOUGING ON CERTAIN  
102 PRESCRIPTION DRUGS.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill:

- ! Prohibits a pharmaceutical manufacturer or wholesaler from price gouging on sales of essential off-patent or generic drugs;
- ! Makes the practice of price gouging a deceptive trade practice under the "Colorado Consumer Protection Act";

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

and  
! Requires the state board of pharmacy and the executive director of the department of health care policy and financing to report suspected price gouging to the attorney general. The attorney general is authorized to seek subpoenas and file lawsuits with the appropriate district courts.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **add**  
3 (1)(kkk) as follows:

4 **6-1-105. Deceptive trade practices.** (1) A person engages in a  
5 deceptive trade practice when, in the course of the person's business,  
6 vocation, or occupation, the person:

7 (kkk) ENGAGES IN PRICE GOUGING AS DEFINED IN SECTION  
8 12-42.5-135.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 12-42.5-135 as  
10 follows:

11 **12-42.5-135. Price gouging prohibited - essential off-patent**  
12 **and generic drugs - definitions.** (1) (a) A MANUFACTURER OR  
13 WHOLESALER OF PRESCRIPTION DRUGS SHALL NOT ENGAGE IN PRICE  
14 GOUGING IN CONNECTION WITH THE SALE OF AN ESSENTIAL OFF-PATENT OR  
15 GENERIC DRUG.

16 (b) THIS SECTION DOES NOT PROHIBIT AN INCREASE IN THE PRICE  
17 OF AN ESSENTIAL OFF-PATENT OR GENERIC DRUG IF THE PRICE INCREASE  
18 IS DIRECTLY ATTRIBUTABLE TO ADDITIONAL COSTS FOR THE DRUG  
19 IMPOSED ON THE WHOLESALER OF PRESCRIPTION DRUGS BY THE  
20 MANUFACTURER.

21 (2) THE BOARD SHALL NOTIFY THE ATTORNEY GENERAL OF ANY  
22 INCREASE IN THE PRICE OF AN ESSENTIAL OFF-PATENT OR GENERIC DRUG

1 WHEN:

2 (a) THE PRICE INCREASE, BY ITSELF OR IN COMBINATION WITH  
3 OTHER PRICE INCREASES, WOULD RESULT IN AN INCREASE OF FIFTY  
4 PERCENT OR MORE IN THE DRUG'S WHOLESALE ACQUISITION COST WITHIN  
5 THE IMMEDIATELY PRECEDING ONE-YEAR PERIOD; AND

6 (b) (I) A THIRTY-DAY SUPPLY OF THE MAXIMUM RECOMMENDED  
7 DOSAGE OF THE DRUG FOR ANY INDICATION, ACCORDING TO THE  
8 FDA-APPROVED LABEL FOR THE DRUG, WOULD COST MORE THAN EIGHTY  
9 DOLLARS AT THE DRUG'S WHOLESALE ACQUISITION COST;

10 (II) A FULL COURSE OF TREATMENT OF THE DRUG WOULD COST  
11 MORE THAN EIGHTY DOLLARS AT THE DRUG'S WHOLESALE ACQUISITION  
12 COST; OR

13 (III) THE DRUG IS MADE AVAILABLE TO CONSUMERS ONLY IN  
14 QUANTITIES THAT DO NOT CORRESPOND TO A THIRTY-DAY SUPPLY, A FULL  
15 COURSE OF THE TREATMENT, OR A SINGLE DOSE AND WOULD COST MORE  
16 THAN EIGHTY DOLLARS AT THE DRUG'S WHOLESALE ACQUISITION COST TO  
17 OBTAIN A THIRTY-DAY SUPPLY OR A FULL COURSE OF TREATMENT.

18 (3) IN ADDITION TO THE POWERS GRANTED TO THE ATTORNEY  
19 GENERAL IN SECTIONS 6-1-107 AND 6-1-108, IF THE ATTORNEY GENERAL  
20 HAS REASONABLE CAUSE TO BELIEVE THAT A MANUFACTURER HAS  
21 VIOLATED SUBSECTION (1) OF THIS SECTION, THE ATTORNEY GENERAL MAY  
22 ISSUE A SUBPOENA TO THE MANUFACTURER REQUIRING THE  
23 MANUFACTURER TO SUBMIT THE FOLLOWING TO THE ATTORNEY GENERAL:

24 (a) AN ITEMIZATION OF THE COMPONENTS OF THE COST OF  
25 PRODUCING THE DRUG;

26 (b) A STATEMENT IDENTIFYING THE CIRCUMSTANCES AND TIMING  
27 OF ANY INCREASE IN THE PRICE OF THE DRUG WITHIN THE ONE-YEAR

1 PERIOD IMMEDIATELY PRECEDING THE DATE OF THE PRICE INCREASE;

2 (c) A STATEMENT IDENTIFYING THE CIRCUMSTANCES AND TIMING  
3 OF ANY EXPENDITURES MADE BY THE MANUFACTURER TO EXPAND ACCESS  
4 TO THE DRUG;

5 (d) AN EXPLANATION OF ANY IMPROVEMENT IN PUBLIC HEALTH  
6 ASSOCIATED WITH THE EXPENDITURES DESCRIBED IN SUBSECTION (3)(c)  
7 OF THIS SECTION; AND

8 (e) ANY OTHER INFORMATION THE MANUFACTURER BELIEVES TO  
9 BE RELEVANT TO A DETERMINATION OF WHETHER A VIOLATION OF THIS  
10 SECTION HAS OCCURRED.

11 (4) (a) THE ATTORNEY GENERAL MAY APPLY TO THE APPROPRIATE  
12 DISTRICT COURT FOR AN APPROPRIATE ORDER TO EFFECT THE PURPOSES OF  
13 THIS SECTION.

14 (b) IF THE DISTRICT COURT FINDS THAT A MANUFACTURER HAS  
15 VIOLATED THIS SECTION OR SECTION 6-1-105 (1)(kkk), THE COURT MAY  
16 ISSUE AN ORDER THAT:

17 (I) RESTRAINS OR ENJOINS THE ACT OF PRICE GOUGING;

18 (II) RESTORES MONEY ACQUIRED AS A RESULT OF PRICE GOUGING  
19 TO A CONSUMER OR THIRD-PARTY PAYER;

20 (III) REQUIRES A MANUFACTURER THAT HAS ENGAGED IN PRICE  
21 GOUGING TO MAKE THE DRUG AVAILABLE TO PERSONS COVERED BY A  
22 HEALTH BENEFIT PLAN AS DEFINED IN SECTION 10-16-102 (32), OR  
23 PERSONS ENROLLED AS RECIPIENTS IN THE "COLORADO MEDICAL  
24 ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5, FOR A PERIOD OF  
25 UP TO ONE YEAR AT THE PRICE AT WHICH THE DRUG WAS AVAILABLE  
26 IMMEDIATELY PRIOR TO THE MANUFACTURER'S VIOLATION OF THIS  
27 SECTION.

1 (5) AS USED IN THIS SECTION:

2 (a) (I) "ESSENTIAL OFF-PATENT OR GENERIC DRUG" MEANS AN  
3 FDA-APPROVED PRESCRIPTION DRUG FOR WHICH ALL EXCLUSIVE  
4 MARKETING RIGHTS UNDER THE FEDERAL ACT AND UNDER FEDERAL  
5 PATENT LAW HAVE EXPIRED; AND THAT:

6 (A) APPEARS ON THE MODEL LIST OF ESSENTIAL MEDICINES MOST  
7 RECENTLY ADOPTED BY THE WORLD HEALTH ORGANIZATION; OR

8 (B) HAS BEEN DESIGNATED BY THE SECRETARY OF THE UNITED  
9 STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AS AN ESSENTIAL  
10 MEDICINE DUE TO ITS EFFICACY IN TREATING A LIFE-THREATENING HEALTH  
11 CONDITION OR A CHRONIC HEALTH CONDITION THAT SUBSTANTIALLY  
12 IMPAIRS AN INDIVIDUAL'S ABILITY TO ENGAGE IN ACTIVITIES OF DAILY  
13 LIVING; OR

14 (C) IS ACTIVELY MANUFACTURED AND MARKETED FOR SALE IN THE  
15 UNITED STATES BY THREE OR FEWER MANUFACTURERS AND THAT IS MADE  
16 AVAILABLE FOR SALE IN THIS STATE.

17 (II) "ESSENTIAL OFF-PATENT OR GENERIC DRUG" ALSO MEANS A  
18 DRUG OR DEVICE COMBINATION PRODUCT USED FOR THE DELIVERY OF A  
19 DRUG FOR WHICH ALL EXCLUSIVE MARKETING RIGHTS UNDER THE FEDERAL  
20 ACT AND UNDER FEDERAL PATENT LAW HAVE EXPIRED.

21 (b) "FEDERAL ACT" MEANS THE "FEDERAL FOOD, DRUG, AND  
22 COSMETIC ACT", 42 U.S.C. SEC. 301 ET SEQ., AS AMENDED.

23 (c) "PRICE GOUGING" MEANS AN INCREASE IN THE PRICE OF A  
24 PRESCRIPTION DRUG THAT IS EXCESSIVE AND NOT JUSTIFIED BY THE COST  
25 OF PRODUCING THE DRUG, OR BY THE COST OF APPROPRIATE EXPANSION OF  
26 ACCESS TO THE DRUG TO PROMOTE PUBLIC HEALTH, AND THAT RESULTS IN  
27 CONSUMERS FOR WHOM THE DRUG HAS BEEN PRESCRIBED HAVING NO

1 MEANINGFUL CHOICE ABOUT WHETHER TO PURCHASE THE DRUG AT AN  
2 EXCESSIVE PRICE BECAUSE OF THE IMPORTANCE OF THE DRUG TO THEIR  
3 HEALTH AND INSUFFICIENT COMPETITION IN THE MARKETPLACE.

4 (d) "WHOLESALE ACQUISITION COST" HAS THE SAME MEANING AS  
5 SET FORTH IN 42 U.S.C. SEC. 1395w-3a.

6 **SECTION 3.** In Colorado Revised Statutes, **add 25.5-1-129** as  
7 follows:

8 **25.5-1-129. Report of prescription drug price gouging to**  
9 **attorney general - definitions.** (1) THE EXECUTIVE DIRECTOR SHALL  
10 NOTIFY THE ATTORNEY GENERAL OF ANY PRICE GOUGING IN WHICH THE  
11 INCREASE IN THE PRICE OF AN ESSENTIAL OFF-PATENT OR GENERIC DRUG  
12 WOULD RESULT IN AN INCREASE OF FIFTY PERCENT OR MORE OF THE PRICE  
13 PAID FOR OR REIMBURSED FOR UNDER THE "COLORADO MEDICAL  
14 ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF THIS TITLE 25.5, WITHIN THE  
15 IMMEDIATELY PRECEDING ONE-YEAR PERIOD.

16 (2) AS USED IN THIS SECTION:

17 (a) (I) "ESSENTIAL OFF-PATENT OR GENERIC DRUG" MEANS AN  
18 FDA-APPROVED PRESCRIPTION DRUG FOR WHICH ALL EXCLUSIVE  
19 MARKETING RIGHTS UNDER THE FEDERAL ACT AND UNDER FEDERAL  
20 PATENT LAW HAVE EXPIRED; AND THAT:

21 (A) APPEARS ON THE MODEL LIST OF ESSENTIAL MEDICINES MOST  
22 RECENTLY ADOPTED BY THE WORLD HEALTH ORGANIZATION; OR

23 (B) HAS BEEN DESIGNATED BY THE SECRETARY OF THE UNITED  
24 STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AS AN ESSENTIAL  
25 MEDICINE DUE TO ITS EFFICACY IN TREATING A LIFE-THREATENING HEALTH  
26 CONDITION OR A CHRONIC HEALTH CONDITION THAT SUBSTANTIALLY  
27 IMPAIRS AN INDIVIDUAL'S ABILITY TO ENGAGE IN ACTIVITIES OF DAILY

1 LIVING; OR

2 (C) IS ACTIVELY MANUFACTURED AND MARKETED FOR SALE IN THE  
3 UNITED STATES BY THREE OR FEWER MANUFACTURERS AND THAT IS MADE  
4 AVAILABLE FOR SALE IN THIS STATE.

5 (II) "ESSENTIAL OFF-PATENT OR GENERIC DRUG" ALSO MEANS A  
6 DRUG OR DEVICE COMBINATION PRODUCT USED FOR THE DELIVERY OF A  
7 DRUG FOR WHICH ALL EXCLUSIVE MARKETING RIGHTS UNDER THE FEDERAL  
8 ACT AND UNDER FEDERAL PATENT LAW HAVE EXPIRED.

9 (b) "FEDERAL ACT" MEANS THE "FEDERAL FOOD, DRUG, AND  
10 COSMETIC ACT", 42 U.S.C. SEC. 301 ET SEQ., AS AMENDED.

11 (c) "PRICE GOUGING" MEANS AN INCREASE IN THE PRICE OF A  
12 PRESCRIPTION DRUG THAT IS EXCESSIVE AND NOT JUSTIFIED BY THE COST  
13 OF PRODUCING THE DRUG, OR BY THE COST OF APPROPRIATE EXPANSION OF  
14 ACCESS TO THE DRUG TO PROMOTE PUBLIC HEALTH, AND THAT RESULTS IN  
15 CONSUMERS FOR WHOM THE DRUG HAS BEEN PRESCRIBED HAVING NO  
16 MEANINGFUL CHOICE ABOUT WHETHER TO PURCHASE THE DRUG AT AN  
17 EXCESSIVE PRICE BECAUSE OF THE IMPORTANCE OF THE DRUG TO THEIR  
18 HEALTH AND INSUFFICIENT COMPETITION IN THE MARKETPLACE.

19 **SECTION 4. Act subject to petition - effective date.** This act  
20 takes effect at 12:01 a.m. on the day following the expiration of the  
21 ninety-day period after final adjournment of the general assembly (August  
22 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
23 referendum petition is filed pursuant to section 1 (3) of article V of the  
24 state constitution against this act or an item, section, or part of this act  
25 within such period, then the act, item, section, or part will not take effect  
26 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.