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**FINAL
FISCAL NOTE**

Drafting Number: LLS 18-0139
Prime Sponsors: Sen. Aguilar
Rep. Lontine

Date: July 31, 2018
Bill Status: Postponed Indefinitely
Fiscal Analyst: Bill Zepernick | 303-866-4777
Bill.Zepernick@state.co.us

Bill Topic: PROHIBIT PRICE GOUGING ON PRESCRIPTION DRUGS

Summary of Fiscal Impact:

| | |
|---|--|
| <input checked="" type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill would have prohibited price gouging by pharmaceutical manufacturers and wholesalers and made pharmaceutical price gouging a deceptive trade practice. This bill would have increased state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, this bill would have required appropriations of \$154,164 to the Department of Regulatory Agencies and \$41,448 to the Department of Law.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under SB 18-152**

| | | FY 2018-19 | FY 2019-20 |
|---------------------|------------------------|------------------------|-----------------------|
| Revenue | General Fund | up to \$50,000 | up to \$50,000 |
| | Cash Funds | \$327,600 | \$31,500 |
| | Total | up to \$377,600 | up to \$81,500 |
| Expenditures | General Fund | \$41,448 | \$44,000 |
| | Cash Funds | \$154,164 | \$151,370 |
| | Centrally Appropriated | \$37,169 | \$41,603 |
| | Total | \$232,781 | \$236,973 |
| | Total FTE | 2.2 FTE | 2.5 FTE |
| Transfers | | - | - |

Summary of Legislation

This bill prohibits a pharmaceutical manufacturer or wholesaler from price gouging on sales of essential off-patent or generic drugs. The bill defines "price gouging" as price increases that result in an increase of fifty percent or more in the drug's wholesale acquisition cost within the preceding one-year period if certain other conditions are met. The State Board of Pharmacy in the Department of Regulatory Agencies (DORA) is required to notify the Attorney General of price gouging by pharmaceutical manufacturers and wholesalers operating in Colorado, and the executive director of the Department of Health Care Policy and Financing (HCPF) is required to report price gouging to the Attorney General if observed in the Medicaid program.

The bill makes price gouging a deceptive trade practice under the Colorado Consumer Protection Act. Under the bill, the Attorney General is granted additional subpoena powers to request cost and pricing information from drug manufacturers. If a court finds that a manufacturer or wholesaler has engaged in price gouging, it may restrain or enjoin the act of price gouging; restore money acquired as the result of price gouging to a consumer or third-party payer; or require the manufacturer or wholesaler to make the drug available to certain public and private health plans for a period of one year at the price prior to the price gouging violation.

State Revenue

The bill increases state revenue by up to \$377,600 in FY 2018-19 and up to \$81,500 in FY 2019-20. This revenue is from fees collected from registered pharmaceutical manufacturers and wholesalers and from civil penalties generated offenses under the bill. These impacts are discussed below.

Fee impact on pharmaceutical manufacturers and wholesalers. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fee amounts will be set administratively by the Department of Regulatory Agencies (DORA) based on cash fund balance, estimated program costs, and the estimated number of entities subject to the fee. Table 2 below identifies the fee impact of this bill. These fee estimates are based on 1,040 manufacturers and wholesalers with active registrations renewing during the next renewal period and 100 new registrations being issued in the following year. Registration for pharmaceutical manufacturers and wholesalers lasts two years and the current fee is \$450.

Table 2
Fee Impact on Pharmaceutical Manufacturers and Wholesalers.

| Fiscal Year | Type of Fee | Proposed Fee Increase | Number Affected | Total Fee Impact |
|--------------------|---------------------------|------------------------------|------------------------|-------------------------|
| FY 2018-19 | Registration Fee Increase | \$315 | 1,040 | \$327,600 |
| FY 2019-20 | Registration Fee Increase | \$315 | 100 | \$31,500 |

Civil penalties. To the extent that the Attorney General or district attorneys pursue actions related to the deceptive trade practice created by this bill, fine revenue to the General Fund may increase beginning in FY 2018-19. Fines may be assessed up to \$2,000 per violation. Additional fines may be levied for violations of a court order or injunction related to the deceptive trade practice. The frequency that price gouging, as defined by the bill, will occur is not known. The fiscal note assumes that any fine revenue will be less than \$50,000 per year.

TABOR Refund

The bill increases state revenue subject to TABOR by up to \$377,600 in FY 2018-19 and up to \$81,500 in FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

The bill increases state expenditures by \$232,781 and 2.2 FTE in FY 2018-19 and by \$236,973 and 2.5 FTE in FY 2019-20. Costs in DORA are paid from the Division of Professions and Occupations Cash Fund, and costs in the Department of Law are paid from the General Fund. These costs are discussed below and summarized in Table 3 on the following page.

Department of Regulatory Agencies. DORA will require 2.0 FTE to analyze pharmaceutical cost data, respond to consumer inquiries and complaints, make referrals to the Attorney General's Office for enforcement action. Costs for this staff, which are shown in Table 3 below, are prorated to reflect the August 8, 2018, effective date of the bill. DORA will also have costs for 100 hours of legal services in the first year and 50 hours in future years related to rulemaking and general counsel for the State Board of Pharmacy. Costs will also be incurred for an additional three meetings per year for the board to review pharmaceutical price information and to consider referrals to the Attorney General.

Department of Law. The Department of Law will require an additional 0.5 FTE for an assistant attorney general in the Consumer Protection Division to review pharmaceutical price gouging complaints, issue subpoenas, file motions with the courts, and other actions. Costs for this staff are shown in Table 3 below.

Judicial Department. Workload in the Judicial Department may minimally increase to hear civil cases under the bill. While the exact number of deceptive trade practice cases that will be filed with the courts is unknown, it is assumed to be minimal and can be accomplished by the courts within existing appropriations.

Department of Health Care Policy and Financing. HCPF will have additional workload to monitor its prescription drug claims for evidence of price gouging. It is assumed that any suspected instances will be coordinated with DORA, which will have dedicated staff for investigating price gouging.

Prescription drug costs. To the extent that the bill results in lower costs for prescription drugs, costs to the state will decrease for programs that purchase or pay for prescription drugs, including under Medicaid, the Children's Basic Health Plan, the Department of Corrections offender health services, and state employee health benefit plans, among others. The potential decrease cannot be estimated at this time and will depend on future pricing decisions by pharmaceutical manufacturers and wholesalers under current law compared with under the bill.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments, and indirect cost recoveries, are estimated to be \$37,169 in FY 2018-19 and \$41,603 in FY 2019-20.

**Table 3
Expenditures Under SB 18-152**

| Cost Components | FY 2018-19 | FY 2019-20 |
|---|-------------------|-------------------|
| Department of Regulatory Agencies | | |
| Personal Services | \$129,242 | \$140,992 |
| Operating Expenses and Capital Outlay Costs | \$11,116 | \$1,900 |
| Legal Services | \$10,656 | \$5,328 |
| Board Expenses | \$3,150 | \$3,150 |
| Centrally Appropriated Costs* | \$26,170 | \$28,840 |
| FTE – Personal Services | 1.8 FTE | 2.0 FTE |
| DORA (Subtotal) | \$180,334 | \$180,210 |
| Department of Law | | |
| Personal Services | \$36,270 | \$43,525 |
| Operating Expenses and Capital Outlay Costs | \$5,178 | \$475 |
| Centrally Appropriated Costs* | \$10,999 | \$12,763 |
| FTE – Personal Services | 0.4 FTE | 0.5 FTE |
| Law (Subtotal) | \$52,447 | \$56,763 |
| Total | \$232,781 | \$236,973 |
| Total FTE | 2.2 FTE | 2.5 FTE |

* Centrally appropriated costs are not included in the bill's appropriation.

Local Government

The bill will affect local governments in two primary areas. First, district attorneys, who have concurrent jurisdiction over deceptive trade practices, may have additional workload to investigate and take action in price gouging cases, or to refer these cases to the Attorney General. Second, local governments that offer employee health plans may have lower premium costs to the extent that this bill reduces costs for prescription drugs compared to current law.

Effective Date

This bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on February 14, 2018.

State Appropriations

For FY 2018-19, the bill requires the following appropriations:

- Department of Regulatory Agencies - \$154,164 from the Division of Professions and Occupations Cash Fund and an allocation of 1.8 FTE; and

- Department of Law - \$52,104, of which \$41,448 is General Fund and \$10,656 is reappropriated from the DORA appropriation above, and an allocation of 0.4 FTE.

State and Local Government Contacts

Health Care Policy And Financing
Judicial
Regulatory Agencies

Information Technology
Law