
A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the excessive prices
2 of prescription drugs in the State of Hawaii threatens the
3 health and welfare of the State's residents as well as the
4 State's ability to ensure that all residents receive the health
5 care that they need. Excessive prescription drug prices
6 directly and indirectly cause economic harm to the State of
7 Hawaii and its residents.

8 It is the responsibility of the State to protect and
9 promote the health, safety, and welfare of state residents. The
10 State may promote the public health, safety, and welfare by
11 regulating monopoly pricing of goods and services and preventing
12 or sanctioning unfair trade practices. Accordingly, it is
13 incumbent upon the legislature to take action to restrain the
14 excessive prices of prescription drugs through mechanisms that
15 are consistent with state and federal law.

16 The purpose of this Act is to protect the health, safety,
17 and welfare of residents of the State of Hawaii by preventing
18 excessive prices of prescription drugs.



1 SECTION 2. Chapter 328, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . EXCESSIVE PRESCRIPTION DRUG PRICING

5 §328- Definitions. As used in this part, unless the
6 context requires otherwise:

7 "Affected party" means any person who is directly or
8 indirectly affected by excessive prices of patented prescription
9 drugs, including any organization representing such persons or
10 any person or organization or entity representing the public
11 interest in connection with the price of prescription drugs.

12 "High income country" means any of the following: United
13 Kingdom, Germany, Canada, and Australia.

14 §328- Excessive pricing in sales of prescription drugs;
15 violation. It shall be unlawful for any drug manufacturer or
16 drug manufacturer's licensee, excluding a point of sale retail
17 seller, to:

- 18 (1) Sell or supply for sale, in the State, a patented
19 prescriptive drug at an excessive price; or
20 (2) Impose minimum resale requirements for a patented
21 prescription drug that results in the prescription
22 drug being sold in the State for an excessive price.



1 **§328- Burden of proof.** (a) A prima facie case of
2 excessive prescription drug pricing shall be established when
3 the wholesale price of a patented prescription drug in the State
4 is more than thirty per cent higher than the comparable price in
5 any high income country in which the prescription drug is
6 protected by patents or other exclusive marketing rights.

7 (b) Where a prima facie case of excessive prescription
8 drug pricing is established, the burden of establishing proof by
9 a preponderance of the evidence shall shift to the defendant.
10 The defendant shall show that a given prescription drug is not
11 excessively priced, given demonstrated costs of invention,
12 development, and production of the prescription drug, global
13 sales and profits to date, consideration of any government
14 funded research that supported the development of the drug, and
15 the impact of price on access to the prescription drug by
16 residents and the State.

17 **§328- Judicial remedies.** (a) Any affected party,
18 including the State, shall have standing to file a civil suit in
19 a court of competent jurisdiction for a violation of this part
20 and to seek a remedy, including declaratory and injunctive
21 relief.



1 (b) If a judge of the court of competent jurisdiction
 2 finds that there has been excessive prescription drug pricing in
 3 a suit filed by an affected party, the judge shall levy any
 4 appropriate civil penalties including:

- 5 (1) Temporary, preliminary, or permanent injunctions to
- 6 enjoin the sales of prescription drugs in the State at
- 7 excessive prices;
- 8 (2) Appropriate fines for each violation;
- 9 (3) Damages, including treble damages;
- 10 (4) Reasonable attorney's fees;
- 11 (5) Costs of litigation; and
- 12 (6) Any other relief the court deems proper."

13 SECTION 3. This Act does not affect rights and duties that
 14 matured, penalties that were incurred, and proceedings that were
 15 begun, before its effective date.

16 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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HB 187.2

Report Title:

Prescription Drugs; Excessive Pricing

Description:

Establishes offense of excessive prescription drug prices, including definitions, burden of proof, and judicial remedies.

