

## A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 **"CHAPTER**

5 **PRESCRIPTION DRUG EXCESSIVE PRICING ACT**

6 § -1 **Definitions.** As used in this chapter:

7 "High income country" means the United Kingdom, Germany,  
8 Canada, or Australia.

9 § -2 **Excessive pricing in sales of prescription drugs**  
10 **prohibited.** No drug manufacturer or licensee thereof, excluding  
11 a point of sale retail seller, shall:

- 12 (1) Sell or supply for sale a patented prescription drug  
13 in this state for an excessive price; or  
14 (2) Impose minimum resale requirements for a patented  
15 prescription drug that results in the prescription  
16 drug being sold in this state for an excessive price.

17 § -3 **Burden of proof; determination of excessive**  
18 **pricing.** (a) A prima facie case of excessive pricing shall be



1 established where the wholesale price of a patented prescription  
2 drug in this state is over thirty per cent higher than the  
3 comparable price in any high income country in which the product  
4 is protected by patents or other exclusive marketing rights.

5 (b) Where a prima facie case of excessive pricing is  
6 shown, the burdens of providing evidence and of proving by a  
7 preponderance of the evidence shall shift to the defendant to  
8 show that the prescription drug is not excessively priced given:

- 9 (1) Demonstrated costs of invention, development, and  
10 production of the prescription drug;  
11 (2) Global sales and profits to date;  
12 (3) Consideration of any government funded research that  
13 supported the development of the drug; and  
14 (4) The impact of price on access by residents and the  
15 State to the prescription drug.

16 § -4 **Unfair or deceptive act or practice.** Any violation  
17 of section -2 shall be deemed to be an unfair or deceptive act  
18 or practice in the conduct of trade or commerce within the  
19 meaning of section 480-2."

20 SECTION 2. If any provision of this Act, or the  
21 application thereof to any person or circumstance is held  
22 invalid, the invalidity does not affect other provisions or



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1 applications of the Act, which can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 3. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun, before its effective date.

7 SECTION 4. This Act shall take effect on January 1, 2007.

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JAN 20 2006



HB 2046

**Report Title:**

Prescription Drug Excessive Pricing Prohibited

**Description:**

Makes it an unfair or deceptive act or practice for drug manufacturers to sell patented prescription drugs for an excessive price or impose minimum resale requirements that result in an excessive price; defines "excessive price" as over 30 per cent higher than the price in any high income country.

