HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 8

A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

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

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

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

The purpose of this Act is to protect the health, safety, and welfare of residents of the State of Hawaii by creating a cause of action allowing consumers, the State, and other

affected parties to bring suit to enjoin excessive prices of prescription drugs and obtain damages and other relief.

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

"PART . EXCESSIVE PRESCRIPTION DRUG PRICING

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

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

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

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

(1) Sell or supply for sale, in the State, a patented prescriptive drug at an excessive price; or

(2) Impose minimum resale requirements for a patented prescription drug that results in the prescription drug being sold in the State for an excessive price.

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

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

§328-D Judicial remedies. (a) Any affected party, including the State, shall have standing to file a civil suit in a court of competent jurisdiction for a violation of this part

and to seek a remedy, including declaratory and injunctive relief.

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

(1) Temporary, preliminary, or permanent injunctions to enjoin the sales of prescription drugs in the State at excessive prices;

(2) Appropriate fines for each violation;

(3) Damages, including treble damages;

(4) Reasonable attorney's fees;

(5) Costs of litigation; and

(6) Any other relief the court deems proper."

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

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SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: B Baker

Josh Green MD

Cynthia Thielen

JAN 17 2007

Report Title:
Prescription Drugs

Description:
Allows consumers, the State, and other affected parties to obtain an injunction, damages, and other relief when a drug manufacturer or its licensee sells prescription drugs for an excessive price