



Prescription Drug Resource Center

NATIONAL CONFERENCE of STATE LEGISLATURES

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State Actions to Halt Price Gouging for Generic Drugs

NCSL Update: Maryland Law, Bills Filed in 16 States, Court Ruling Interferes

Last May, Maryland became the first state to enact a law protecting consumers who rely on Essential Generic Drugs. The new state law ([MD House Bill 631](#) of 2017), titled Essential Generic Drugs,:

- Prohibits a manufacturer or wholesale distributor from engaging in price gouging in the sale of an essential off-patent or generic drug.
- Establishes that it is not a violation of a certain provision of this act for a wholesale distributor to increase a price of an essential off-patent or generic drug under certain circumstances.
- Requires manufacturer of an essential off-patent or generic drug to submit financial material to the attorney general, with potential legal action for violations.



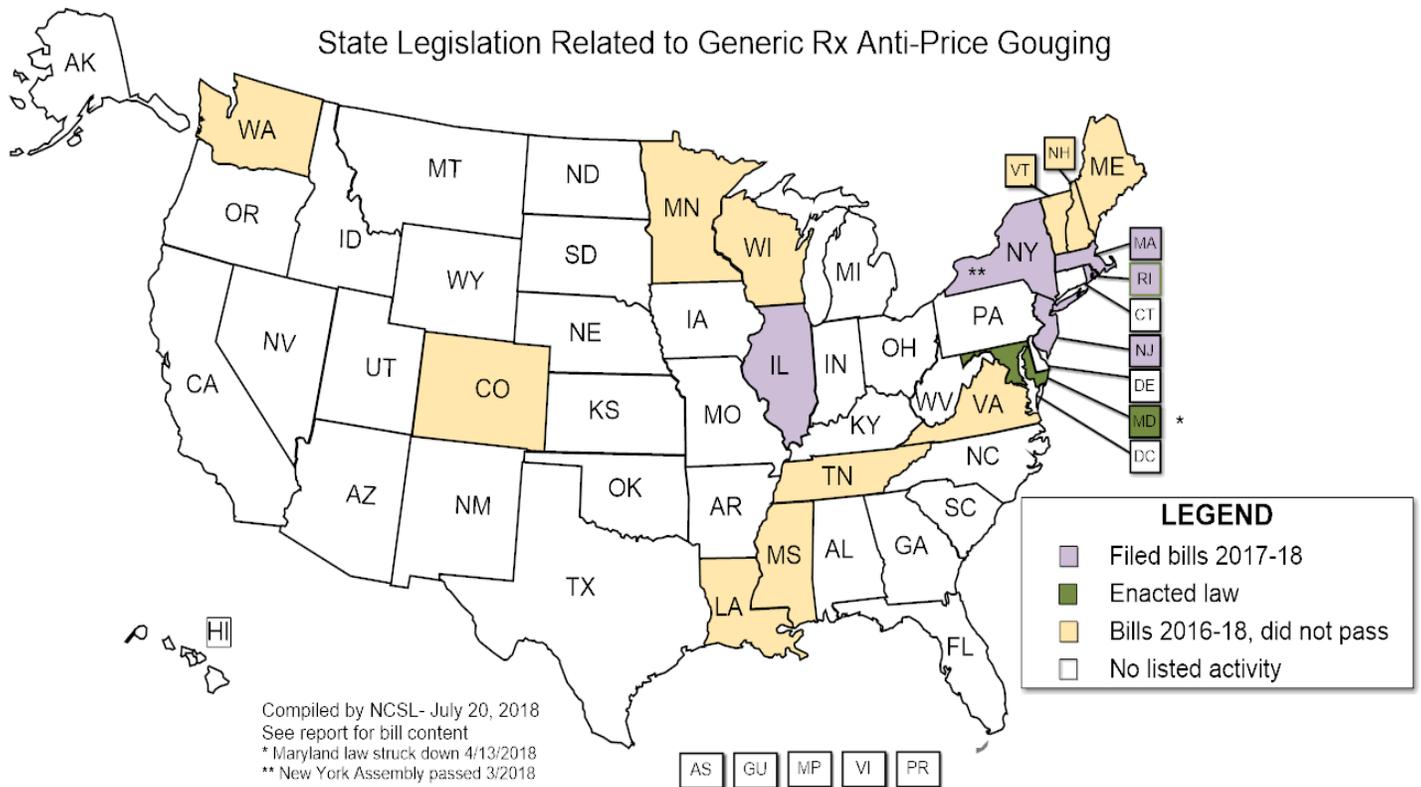
The Maryland law was [struck down](#), however, by a federal appeals court on April 13, in a decision that found that the law violated the U.S. Constitution's "dormant commerce clause" because it would have regulated sales outside of the state.

Legislators in more than a dozen other states have filed legislation for a state law similar to Maryland's, that could block or restrict generic drug price gouging. As of June 30, 2018, there were similar bills in at least 16 other states—Colorado, Illinois, Louisiana, Massachusetts, Minnesota, New Jersey, New York, Rhode Island, Tennessee (study and report only), Vermont, Virginia and Wisconsin. The New York Assembly passed one such bill in March 2018.

In the same season as these bills were being considered, headlines labeling the Maryland law "unconstitutional" often have an impact, at least on delaying the state legislative process. Stakeholders and sponsors have been re-examining the legal wording in future or pending bills. The federal interstate "dormant commerce clause" has been the subject of numerous previous court cases for several decades. For a legal analysis of this case, see [Legal Challenges of Rx Drug Laws Passed in 2017](#), and [court documents](#), posted by NASHP.

As of June 4, bills are no longer active in 11 states. (See map, page 2) The reasons for nonpassage vary, and may not be related to the court ruling. With 2018 state sessions ending in many states by June 1, the next round of discussion may well emerge in 2019.

Note: NCSL takes no position on state legislation and policy.



NCSL 50-State Legislative Research:

Topics: Pricing and Payment – Industry; **States:** All States; **Keyword:** gouging; related

This list covers January 2015-June 4, 2018 and may not include all state measures with similar intent. It is subject to future additions or updates.

This link <http://www.ncsl.org/research/health/prescription-drug-statenet-database.aspx> provides access to all users)

COLORADO

[CO S 152](#) | 2018

Prohibit Price Gouging on Prescription Drugs

Status: Failed - Adjourned - Postponed Indefinitely | **Date of Last Action:*** 1/29/2018

Author: Aguilar (D) **Additional Authors:** Lontine (D)

Topics: Pricing and Payment - Industry

Summary: Concerns a prohibition against price gouging on certain prescription drugs.

History: 01/29/2018 - INTRODUCED.

02/14/2018 - From SENATE Committee on STATE, VETERANS, & MILITARY AFFAIRS: Postponed indefinitely.

[CO H 1179](#) | 2018

Prohibit Price Gouging on Prescription Drugs

Status: Failed - Adjourned - HOUSE | **Date of Last Action:*** 2/2/2018

Author: Salazar (D)

Topics: Pricing and Payment - Industry

Summary: Concerns a prohibition against price gouging on certain prescription drugs.

History: 02/02/2018 - INTRODUCED.

03/08/2018 - From HOUSE Committee on HEALTH, INSURANCE & ENVIRONMENT: Reported favorably with amendment.

03/14/2018 - From HOUSE Committee on FINANCE: Reported favorably.

04/11/2018 - From HOUSE Committee on APPROPRIATIONS: Reported favorably; To second reading; adjourned

ILLINOIS

[IL H 4900](#) | 2018

Generic Drug Pricing Fairness Act

Status: Pending - Senate Judiciary Committee | **Date of Last Action:*** 2/14/2018

Author: Guzzardi (D) **Additional Authors:** Demmer (R);Flowers (D); (D);Ammons (D); Wallace (D); Moeller (D); Tabares (D); Mitchell C (D); Fine (D); Cassidy (D); Gabel (D); Hernandez (D); Chapa-LaVia (D); Lang (D); Smith (D)

Topics: Pricing and Payment - Industry

Summary: Creates the Generic Drug Pricing Fairness Act, provides that a manufacturer or wholesale drug distributor shall not engage in price gouging in the sale of an essential off-patent or generic drug, provides that the Director of Healthcare and Family Services or Director of Central Management Services may notify the Attorney General of any increase in the price of any essential off-patent or generic drug under the Medical Assistance Program under the Public Aid Code or a State health plan.

History: 02/14/2018 - INTRODUCED. 02/28/2018 - From HOUSE Committee on HUMAN SERVICES: Do pass.

04/19/2018 - In HOUSE. Read third time. **Passed HOUSE.** *****To SENATE.

05/15/2018 - In SENATE Committee on JUDICIARY: To Subcommittee on Business Entities.

LOUISIANA

[LA H 243](#) | 2018

Drugs and Prescription

Status: Failed - Adjourned - HOUSE | **Date of Last Action:*** 4/12/2018

Author: Talbot (R)

Topics: Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers

Summary: Prohibits a manufacturer or wholesale distributor from engaging in price gouging in the sale of an essential off-patent or generic drug.

History: 03/12/2018 – INTRODUCED; To HOUSE Committee on HEALTH AND WELFARE.

04/05/2018 - From HOUSE Committee on HEALTH AND WELFARE: Reported with amendment.

04/06/2018 - Committee amendment adopted on HOUSE floor.

04/06/2018 - Ordered Engrossed.

04/11/2018 - From HOUSE Committee on HOUSE AND GOVERNMENTAL AFFAIRS: Reported with amendment.

04/12/2018 - Committee amendment adopted on HOUSE floor.

04/12/2018 - Ordered Reengrossed; In HOUSE. Scheduled for floor debate on 04/17/18.- failed- adjourned

MAINE

[ME LR 677](#) | 2018

Consumer Prescription Drug Protections

Status: Failed - Adjourned - Legislature | **Date of Last Action:*** 12/19/2016

Author: Agency and Department

Topics: Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers

Summary: Increases consumer prescription drug protections., prohibiting price gouging for the sale of essential generic or off-patent drugs.

History: 12/19/2016 - FILED.

05/12/2017 - Assigned Senate Paper number 563 and LD 1605

12/19/2016 -failed - adjourned

MARYLAND

[MD H 631](#) | 2017

Essential Generic Drugs

Status: **Enacted - Act No. 818** | **Date of Last Action:*** 05/27/2017 - Enacted

Author: Busch (D) **Additional Authors:** Washington M (D);Fennell (D);Hayes (D);Hettleman (D);Hill (D);Howard S (R);Jackson (D);Jalisi (D);Knotts (D);Ebersole (D);Chang (D);Carey (D);Wilson (D);Washington A (D);Fraser-Hidalgo (D);Angel (D);Atterbeary (D);Barnes D (D);Barron (D);Brooks (D);Krimm (D);Lam (D);Lierman (D);Sydnor (D);Tarlau (D);West (R);Young (D);Young P (D);Sanchez (D);Queen (D);Proctor S (D);Sample-Hughes (D);Saab (R);Platt (D);Lisanti (D);Mautz (R);McCray (D);Metzgar (R);Miele (R);Moon (D);Morales (D);Patterson (D);Lewis R (D);Miller A (D);Barve (D);Vallario (D);Turner F (D);Jones A (D);Gaines (D);Aumann (R);Dumais (D);Gutierrez (D);Haynes (D);Pendergrass (D);Sophocleus (D);Rosenberg (D);Barkley (D);Davis D (D);Healey (D);Hixson (D);Howard (D);Frush (D);McIntosh (D);Oaks (D);Holmes (D);Jameson (D);McDonough (R);Waldstreicher (D);Walker (D);Frick (D);Reznik (D);Carr (D);Clippinger (D);Cullison (D);Kelly A (D);Valderrama (D);Stein (D);Pena-Melnyk (D);Anderson (D);Barnes (D);Beidle (D);Conaway (D);Gilchrist (D);Glenn (D);Kipke (R);Lafferty (D);Luedtke (D)

Topics: Pricing and Payment - Industry, Insurance/Coverage - Rx Drugs, Cost Sharing and Deductibles - Consumers

Summary: Prohibits a manufacturer or wholesale distributor from engaging in price gouging in the sale of an essential off-patent or generic drug, establishes that it is not a violation of a certain provision of this Act for a wholesale distributor to increase a price of an essential off-patent or generic drug under certain circumstances, requires a manufacturer of an essential off-patent or generic drug to submit a certain statement to the Attorney General within a certain time frame.

History: 01/30/2017 - INTRODUCED.

01/30/2017 - To HOUSE Committee on HEALTH AND GOVERNMENT OPERATIONS.

03/20/2017 - From HOUSE Committee on HEALTH AND GOVERNMENT OPERATIONS: Reported as amended.

03/20/2017 - Committee amendment adopted on HOUSE floor.

03/20/2017 - Second reading passed with amendments. To third reading.

03/20/2017 - Passed HOUSE. *****To SENATE.

04/07/2017 - Passed SENATE. *****To HOUSE for concurrence.

04/10/2017 - HOUSE concurred in SENATE amendments.

04/10/2017 - Eligible for GOVERNOR'S desk.

05/27/2017 - Became law without GOVERNOR'S signature as Chapter No. 818

[MD S 415](#) | 2017

Essential Generic Drugs

Status: Failed - Adjourned - Senate Finance Committee | **Date of Last Action:*** 1/27/2017

Author: Miller T (D) **Additional Authors:** Benson (D); Manno (D); Robinson B (D); Muse (D); Peters (D); Rosapepe (D); Zucker (D); Ferguson (D); Mathias (D); Young (D); Guzzone (D); Ramirez (D); Nathan-Pulliam (D); McFadden (D); Pinsky (D); Kelley (D); Astle (D); Currie (D); Lee (D); Feldman (D); Madaleno (D); Smith W (D)

Topics: Pricing and Payment - Industry, Medicaid Use and Cost - Rx Drugs

Summary: Prohibits a manufacturer or wholesale distributor from engaging in price gouging in the sale of an essential generic drug, requires the Maryland Medical Assistance Program to notify the manufacturer of an essential generic drug and the Attorney General of a specified increase in the price of the essential generic drug under specified circumstances.

History: 01/27/2017 - INTRODUCED.

Failed - Adjourned - Senate Finance Committee

(See H 631 above, enacted into law)

MASSACHUSETTS

[MA S 652](#) | 2018

Pharmaceutical Price Gouging Prevention

Status: Pending - Joint Committee on Health Care Financing | **Date of Last Action:*** 2/22/2017

Author: Montigny (D)

Topics: Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers

Summary: Promotes transparency and prevent price gouging of pharmaceutical drug prices.

History: 02/22/2017 - INTRODUCED.

02/24/2017 - Filed as Senate Docket 923

02/27/2017 - To JOINT Committee on HEALTH CARE FINANCING. Dated 1/23/2017.

06/12/2017 - Hearing scheduled for: 7/11/2017.

07/11/2017 - In JOINT Committee on HEALTH CARE FINANCING: Heard. Eligible for Executive Session.

MINNESOTA

[MN S 2841](#) | 2018

Drug Price Gouging

Status: Failed - Adjourned - Senate Health and Human Services Finance and Policy Committee | **Date of Last Action:*** 3/1/2018

Author: Klein (DFL)

Topics: Pricing and Payment - Industry

Associated Bills: MN H 3131 - Companion

Summary: Prohibits a manufacturer or wholesale drug distributor from price gouging, allows the Board of Pharmacy, the Commissioner of Human Services, and health plan companies to notify the Attorney General of certain prescription drug price increases, authorizes the AG to obtain drug pricing information and take action against drug manufacturers and wholesalers related to certain price increases, including "in the sale of an essential off-patent or generic drug", imposes civil penalties and provides for a citizen "Private right of action."

History: 03/01/2018 - INTRODUCED.

03/01/2018 - To SENATE Committee on HEALTH and HUMAN SERVICES FINANCE and POLICY; Failed - Adjourned

MISSISSIPPI

[MS H 137](#) | 2018

Essential Drugs and Price Gouging

Status: Failed - Died | **Date of Last Action:*** 1/2/2018

Author: Bell C (D)

Topics: Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers

Summary: Creates the prohibition on price gouging for essential drugs act, defines price gouging and certain other terms, prohibits manufacturers and wholesale distributors of essential generic drugs from engaging in price gouging, requires the division of Medicaid and department of human services to notify the attorney general of excessive price increases for essential generic drugs, authorizes the attorney general to request certain information from drug manufacturers and to institute proceedings for violations.

History: 01/02/2018 - INTRODUCED.

01/02/2018 - To HOUSE Committee on DRUG POLICY and HOUSE Committee on JUDICIARY A.

01/26/2018 - From HOUSE Committee on DRUG POLICY: Recommended as substituted.

01/26/2018 - To HOUSE Committee on JUDICIARY A; 01/30/2018 - Died in committee.

NEW HAMPSHIRE

[NH H 1780](#) | 2018

Price Gouging by Prescription Drug Companies |

Status: Failed - Died | **Date of Last Action:*** 1/3/2018

Author: McBeath (D) **Additional Authors:** Campion (D)

Topics: Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers

Summary: Prohibits price gouging by certain prescription drug companies

History: 01/03/2018 - INTRODUCED.

02/08/2018 - From HOUSE Committee on COMMERCE AND CONSUMER AFFAIRS: Ought not to pass.

02/22/2018 - Failed to pass HOUSE.

NEW JERSEY

[NJ S 1590](#) | 2018

Excessive Price Increase Restrictions

Status: Pending - Senate Health, Human Services and Senior Citizens Committee | **Date of Last Action:*** 2/5/2018

Author: Singleton (D) **Additional Authors:** Corrado (R)

Topics: Pricing and Payment - Industry

Associated Bills: NJ A 3987 - Identical

Summary: Prohibits excessive increases in prices charged for essential off patent and generic prescription drugs and biological products. Also prohibits a pharmaceutical manufacturer or wholesaler from price gouging on sales of essential off patent, generic drugs and biological products. Would require the Division of Consumer Affairs in the Department of Law and Public Safety to report any suspected price gouging to the Attorney General

History: 02/01/2018 - FILED.

02/05/2018 - INTRODUCED.

02/05/2018 - To SENATE Committee on HEALTH, HUMAN SERVICES AND SENIOR CITIZENS.

NEW YORK

[NY S 2402](#) & [NY A 10527](#) | 2017-18

Price Gouging of Pharmaceuticals

Status: Pending - Senate Consumer Protection Committee | **Date of Last Action:*** 5/04/2018

Author: Carlucci (D) **Additional Authors:** Carlucci (D);Brooks (D)

Topics: Pricing and Payment - Industry

Summary: Penalizes the price gouging of pharmaceuticals, penalty not to exceed one million dollars.

History: 01/13/2017 - INTRODUCED.

01/13/2017 - To SENATE Committee on CONSUMER PROTECTION.

02/14/2017 - From SENATE Committee on CONSUMER PROTECTION.

02/14/2017 - To SENATE Committee on HEALTH.

01/03/2018 - To SENATE Committee on CONSUMER PROTECTION.

05/04/2018 A 10527 Introduced

05/04/2018 To ASSEMBLY Committee on CONSUMER AFFAIRS AND PROTECTION

[NY S 2544](#) | 2017-18

Price Gouging by Manufacturers of Prescription Drugs

Status: Pending - Senate Finance Committee | **Date of Last Action:*** 1/13/2017

Author: Hannon (R) **Additional Authors:** Hannon (R);Ortt (R)

Topics: Pricing and Payment - Industry

Associated Bills: NY A 5733 - Same as

Summary: Prohibits price gouging by manufacturers of prescription drugs.

History: 01/13/2017 - INTRODUCED.

01/13/2017 - To SENATE Committee on HEALTH.

03/01/2017 - From SENATE Committee on HEALTH.

03/01/2017 - To SENATE Committee on FINANCE.

[NY A 5733](#) | 2017-18

Price Gouging By Manufacturers of Prescription Drugs

Status: Pending - Assembly Health Committee | **Date of Last Action:*** 2/14/2017

Author: McDonald J (D) **Additional Authors:** McDonald J (D)

Topics: Pricing and Payment - Industry

Associated Bills: NY S 2544 - Same as

Summary: Prohibits price gouging by manufacturers of prescription drugs.

History: 02/14/2017 - INTRODUCED.

02/14/2017 - To ASSEMBLY Committee on HEALTH.

NY A 7087 & S 5262 | 2017-18

Price Gouging of Medicine

Status: 03/22/2018 – Pending in Senate

Authors: Crespo (D), [Colton \(D\)](#), [Galef \(D\)](#), [Arroyo \(D\)](#), [Crouch \(R\)](#), [Montesano \(R\)](#), [Blake \(D\)](#), [Jean-Pierre \(D\)](#), [Taylor \(D\)](#)

Summary: Relates to price gouging of medicine. "For the purposes of this section, "drug subject to a shortage" shall mean any drug or medical product intended for human use publicly reported as being subject to a shortage by the U.S. food and drug administration on its website.

History: 04/04/2017 INTRODUCED

06/19/2017 Passed ASSEMBLY. *****To SENATE. (142-1)

03/22/2018 **Passed ASSEMBLY.** *****To SENATE. (133-1)

03/22/2018 [To SENATE Committee on CONSUMER PROTECTION](#)

[NY A 5733](#) | 2017

Price Gouging by Manufacturers of Prescription Drugs

Status: Pending - Assembly Health Committee | **Date of Last Action:*** 2/14/2017

Author: McDonald J (D) **Additional Authors:** McDonald J (D)

Topics: Pricing and Payment - Industry

Associated Bills: NY S 2544 - Same as

Summary: Prohibits price gouging by manufacturers of prescription drugs.

History: 02/14/2017 - INTRODUCED.

02/14/2017 - To ASSEMBLY Committee on HEALTH.

[NY S 7022](#) | 2016

Price Gouging By Manufacturers of Prescription Drugs

Status: Failed – Adjourned | **Date of Last Action:*** 3/16/2016

Author: Hannon (R)

Topics: Pricing and Payment - Industry, Access, Cost Sharing and Deductibles - Consumers

Summary: Prohibits price gouging by manufacturers of prescription drugs.

History: 03/16/2016 - INTRODUCED.

03/16/2016 - To SENATE Committee on HEALTH.

[NY S 8182](#) | 2016

Price Gouging of Epinephrine Autoinjectors

Status: Failed – Adjourned | **Date of Last Action:*** 9/19/2016

Author: Carlucci (D)

Topics: Pricing and Payment - Industry, Access, Safety and Errors - Rx Drugs

Summary: Relates to the price gouging of epinephrine autoinjectors, provides that no party in the distribution chain of epinephrine

autoinjectors shall sell the autoinjectors for an unconscionably excessive price, based on a court's determination, provides that a defendant may rebut a prima facie case with evidence that additional costs not within the control of the defendant were imposed, provides that the Attorney General may apply for a restraining order, provides for civil penalties and appropriate restitution.

History: 08/26/2016 - INTRODUCED.

08/26/2016 - To SENATE Committee on RULES.

09/07/2016, 09/19/2016 - Amended in SENATE Committee on RULES.

RHODE ISLAND

[RI H 5032](#) | 2018

Prescribed Drugs Price Gouging

Status: Pending - House Corporations Committee | **Date of Last Action:*** 1/6/2017

Author: Lombardi (D) **Additional Authors:** McEntee (D)

Topics: Pricing and Payment - Industry

Summary: Prohibits price-gouging of prescribed drugs or pharmaceuticals in times of market emergency or market shortages, makes violators guilty of a felony and subject to injunctive relief.

History: 01/06/2017 - INTRODUCED.

01/06/2017 - To HOUSE Committee on CORPORATIONS.

01/20/2017 - Scheduled for hearing and/or consideration 01/24/2017.

01/24/2017 - In HOUSE Committee on CORPORATIONS: Committee recommends measure to be held for further study.

[RI H 7022](#) | 2018

Prescribed Drugs Price Gouging

Status: Pending - House Corporations Committee | **Date of Last Action:*** 1/3/2018

Author: Lombardi (D) **Additional Authors:** Williams (D);Hull (D);Coughlin (D)

Topics: Pricing and Payment - Industry, Insurance/Coverage - Rx Drugs, Cost Sharing and Deductibles - Consumers

Summary: Prohibits price-gouging of prescribed drugs or pharmaceuticals in times of market emergency or market shortages, and would make violators guilty of a felony. The act would further make them subject to injunctive relief upon suit brought by the attorney general of the state of Rhode Island. This act would take effect upon passage.

History: 01/03/2018 - INTRODUCED.

01/03/2018 - To HOUSE Committee on CORPORATIONS.

01/23/2018 - In HOUSE Committee on CORPORATIONS: Committee recommends measure to be held for further study.

[RI H 7468](#) | 2016

Price Gouging of Prescribe Drugs Prohibition

Status: Failed - Adjourned | **Date of Last Action:*** 03/01/2016

Author: Lombardi (D) **Additional Authors:** Handy (D);Carson (D);Regunberg (D);McEntee (D)

Topics: Pricing and Payment - Industry

Summary: Prohibits price gouging of prescribed drugs or pharmaceuticals in times of market emergency or market shortages and would make violators guilty of a felony and subject to injunctive relief.

History:

02/04/2016 – INTRODUCED; To HOUSE Committee on CORPORATION;

03/01/2016 - Committee recommends measure to be held for further study; Failed - Adjourned

TENNESSEE

[TN H 1328](#) | 2018

Prescription Drug Fair Pricing Act

Status: Failed - Adjourned - House Insurance and Banking Committee | **Date of Last Action:*** 2/9/2017

Author: Stewart M (D)

Topics: Pricing and Payment - Industry

Associated Bills: TN S 1420 - Same as

Summary: Relates to Drugs, relates to Prescription, enacts the Prescription Drug Fair Pricing Act, requires studies and reports on or before January 15, 2018, by the commissioner of health concerning price gouging for essential generic drugs and the Commissioner of Commerce and Insurance concerning price transparency for prescription drugs, requires reports to legislative committees.

History: 02/09/2017 - INTRODUCED.

02/17/2017 - In HOUSE; Assigned to INSURANCE AND BANKING Subcommittee; Failed - Adjourned

[TN S 1420](#) | 2018

Prescription Drug Fair Pricing Act

Status: Failed - Adjourned - Senate Commerce and Labor Committee | **Date of Last Action:*** 2/9/2017

Author: Harris (D)

Topics: Pricing and Payment - Industry

Associated Bills: TN H 1328 - Same as

Summary: Relates to Prescription Drugs, enacts the Prescription Drug Fair Pricing Act, requires studies and reports, by the commissioner of health concerning price gouging for essential generic drugs and the Commissioner of Commerce and Insurance concerning price transparency for prescription drugs, requires reports to legislative committees.

History: 02/09/2017 - INTRODUCED.

02/13/2017 - To SENATE Committee on COMMERCE AND LABOR; Failed - Adjourned

VERMONT

[VT H 713](#) | 2018

Prohibiting Price Gouging for Essential Off Patent

Status: Failed - Adjourned - House Health Care Committee | **Date of Last Action:*** 1/24/2018

Author: Lippert (D)

Topics: Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers

Summary: Relates to prohibiting price gouging for essential off-patent or generic drugs.

History: 01/24/2018 - INTRODUCED.

01/25/2018 - To HOUSE Committee on HEALTH CARE; Failed - Adjourned

VIRGINIA

[VA S 223](#) | 2018

Prescription Drug Price Gouging

Status: Failed - Died | **Date of Last Action:*** 1/10/2018

Author: Edwards (D)

Topics: Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)

Summary: For prescription drug price gouging: prohibits unconscionable price increases in the price of essential off-patent or generic drugs, authorizes the Secretary of Health and Human Resources to designate drugs as essential drugs, and establishes an enforcement mechanism.

History: 01/03/2018 – PREFILED;

01/10/2018 - To SENATE Committee on EDUCATION AND HEALTH.

02/01/2018 - In SENATE Committee on EDUCATION AND HEALTH: Passed by indefinitely.

WASHINGTON

[WA S 5995](#) and [WA H 2556](#) | 2018

Status: Failed - Adjourned - Senate Ways and Means Committee | **Date of Last Action:*** 1/8/2018

Authors: Sen. Karen Keiser; Rep. [Laurie Jinkins](#)

Summary: Declares that excessive price increases for generic medications are a violation of the consumer protection act. Protects consumers and purchasers from excessive increases in generic prescription drug prices. " If a drug manufacturer increases the wholesale acquisition cost of a generic drug by a percent equal to or greater than one hundred percent at any one time or in the aggregate in any twelve-month period, the drug manufacturer must use the price increase notification form... to notify the office of the insurance commissioner and the prescription drug program of the increase. This notice must be provided to the insurance commissioner and the prescription drug program at least thirty days before the increase takes effect." The form must require drug manufacturers to disclose: (1) The most recent wholesale acquisition cost of the generic drug before an increase equal to or greater than 100% at any one time or in the aggregate in any twelve-month period in either pricing measure; (2) The wholesale acquisition cost of the generic drug when exceeding the 100% threshold; (3) Any material change in ingredient, production, or manufacturing costs resulting in the price increase; (4) Whether the drug is a sole source drug; (5) Changes to the drug manufacturer's corporate structure within the last two years including, whether the drug manufacturer has been or is in the process of merging with or acquiring another company; and (6) Any other information the drug manufacturer deems relevant.

History: 12/04/2017 - PREFILED.

01/08/2018 – INTRODUCED; To SENATE Committee on HEALTH CARE & LONG TERM CARE.

02/01/2018 - Executive action taken by committee.

02/01/2018 - From SENATE Committee on HEALTH CARE & LONG TERM CARE: Do pass as substituted.

02/02/2018 - To SENATE Committee on WAYS AND MEANS.; Failed - Adjourned -

Off Patent or Generic Drugs Price Restrictions**Status:** Failed - Failed to Pass | **Date of Last Action:*** 3/22/2018**Author:** Dave Hansen (D-030); Additional authors: Berceau (D) , Subeck (D) , Considine (D) , Sargent (D) , Ringhand (D), Taylor L (D) , Zepnick (D) , Pope (D) , Hansen (D) , Anderson J (D):**Summary:** Relates to price restrictions for certain off-patent or generic drugs; prohibits manufacturer or wholesale distributor from price gouging on sales of essential off patent or generic drugs. Authorizes the Attorney General to request that a manufacturer or wholesale distributor submit a statement, records, or other documents that may be relevant to investigating price gouging of essential off patent or generic drugs. The Attorney General may petition a state court and impose a fine of \$10,000 for each instance of price gouging.**History:** 03/22/2018 – INTRODUCED; To SENATE Committee on SENATE ORGANIZATION.
03/28/2018 - Failed to pass pursuant to Senate Joint Resolution 1.

* "Date of Last Action" refers to the legislature and may not include a governor's actions.

To access the latest status of individual legislation, visit the [NCSL Prescription Drug Database](#).
Online information is ADA compliant and is updated weekly.

Final 6/6/2018 rc; es

Appendix: MEDIA BACKGROUND**A Maryland law to prevent 'unconscionable' price hikes on old drugs has been struck down**

© The Washington Post – 4/13/2018 -[Full article online](#)

A Maryland law crafted to deter companies from instituting large price increases on old, off-patent drugs was **struck down** by a federal appeals court Friday, in a decision that could give pause to other states considering similar legislation. The Maryland law, which went into effect in October, was seen as a model for other state-based efforts aimed at curtailing massive price hikes on generic drugs in [Louisiana](#) and [Illinois](#). The court found that the law violated the Constitution because it would have regulated sales outside of the state. "Although we sympathize with the consumers affected by the prescription drug manufacturers' conduct and with Maryland's efforts to curtail prescription-drug price gouging, we are constrained to apply the dormant commerce clause to the Act," Stephanie Thacker, judge for the U.S. Court of Appeals for the 4th Circuit, wrote in the majority opinion.

U.S. Judge refuses to block Maryland price-gouging law

Michael Dresser Reporter The Baltimore Sun 9/29/2017

<http://www.baltimoresun.com/news/maryland/politics/bs-md-price-gouging-law-20170929-story.html>

Opponents of a new law allowing Maryland to challenge generic drug price-gouging lost the first round of a legal battle Friday as a federal judge refused to block the measure.

U.S. District Judge Marvin J. Garbis turned down a plea by a pharmaceutical industry group to issue an injunction against the law, which takes effect Sunday and empowers the Maryland Attorney General's Office to challenge drug prices it determines to be unconscionable.

A spokesman for the association of drug makers that brought the lawsuit said the group was "disappointed" by the ruling and intended to immediately appeal it to the U.S. Court of Appeals for the Fourth Circuit.

The Democrat-dominated [General Assembly](#) passed the legislation, the first of its kind in the United States, this past spring. Republican Gov. Larry Hogan allowed it to become law without his signature, tacitly conceding a veto would be overridden. On Friday, a spokesman said the governor explained in a May 26 letter that he generally supports addressing the issue but is concerned about the way the bill seeks to do so.

The ruling is a victory for Attorney General [Brian E. Frosh](#), a Democrat who advocated for the bill's passage and successfully defended it in the first part of what is likely to be a long legal challenge.

"We think it's a big victory for Maryland consumers," Frosh said. "It really will help protect the health of people across our state."

Frosh said he expects an appeal but his office will not wait to begin putting cases together. He said members of the public can call his office to report excessive price increases.

Vincent DeMarco, who lobbied for the bill's passage, commended Frosh for what he called "his effective defense of this life-saving law."

DeMarco, president of the Maryland Citizens Health Initiative, pledged to work closely with the Attorney General's Office to help make sure the law works. He urged Marylanders to contact his organization to report questionable prices.

"For the first time in American history, generic and off-patent drug manufacturers can't raise their prices so much that they hurt Marylanders without justification," DeMarco said.

The Association for Accessible Medicines, a group representing generic drug manufacturers and distributors, argued the law violates the U.S. Constitution's provision giving Congress the power to regulate interstate commerce. It also contended the measure violates the Fourteenth Amendment's guarantee of due process because it is unconstitutionally vague.

Garbis dismissed the group's claim under the commerce clause but allowed its claim that the law is too vague to continue being heard. He said that while he did not have enough information to rule on the merits of that claim, "it is at the very least plausible" the vagueness argument could prevail.

However, the judge declined to issue a preliminary injunction while the lawsuit proceeds. He noted that courts have held that such a move is an "extraordinary remedy" that should only be granted if a litigant "clearly establishes" it is entitled to the relief.

Garbis ruled the association hadn't done so.

The judge rejected the group's claim the law violated the commerce clause. He said nothing in the legislation favored in-state companies over out-of-state drug makers. He also found that the measure would not prevent companies from making profits and would only block their ability to "extract excessive profits by price-gouging Maryland consumers on essential drugs for which there is limited competition."

Jeff Francer, senior vice president of the Association for Accessible Medicines, said the group believes the law unconstitutionally tries to regulate business deals that happen out-of-state. He said it creates business conditions that could lead some generic drug makers to stop making a medicine altogether.

"This law will hurt patient access to safe, affordable generic medicines in Maryland and the rest of the U.S," Francer said in a statement.

Garbis dismissed that argument as "entirely speculative."

"Litigants may not, without adequate factual support, hold courts hostage by resorting to these kinds of hypothetical scenarios," the judge wrote in a 40-page opinion.

The law was prompted by public revulsion over some highly publicized examples of companies gaining control of drugs for which there was a single manufacturer and maximizing profits by jacking up prices — sometimes by more than 1,000 percent

Targeting Unconscionable Prescription Drug Prices - Maryland

An analysis in New England Journal of Medicine's JAMA - <https://catalyst.nejm.org/marylands-anti-price-gouging-law/> – NEJM- Oct 2017