

By: Representative Bell (65th)

To: Drug Policy; Judiciary A

HOUSE BILL NO. 137

1 AN ACT TO CREATE THE "PROHIBITION ON PRICE GOUGING FOR
 2 ESSENTIAL DRUGS ACT"; TO DEFINE "PRICE GOUGING" AND CERTAIN OTHER
 3 TERMS; TO PROHIBIT MANUFACTURERS AND WHOLESALE DISTRIBUTORS OF
 4 ESSENTIAL GENERIC DRUGS FROM ENGAGING IN PRICE GOUGING; TO REQUIRE
 5 THE DIVISION OF MEDICAID AND DEPARTMENT OF HUMAN SERVICES TO
 6 NOTIFY THE ATTORNEY GENERAL OF EXCESSIVE PRICE INCREASES FOR
 7 ESSENTIAL GENERIC DRUGS; TO AUTHORIZE THE ATTORNEY GENERAL TO
 8 REQUEST CERTAIN INFORMATION FROM DRUG MANUFACTURERS AND TO
 9 INSTITUTE PROCEEDINGS FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE
 10 IMPOSITION OF A CIVIL PENALTY IN THE AMOUNT OF \$100,000.00 FOR
 11 VIOLATIONS; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** This act shall be known and may be cited as the
 14 "Prohibition on Price Gouging for Essential Drugs Act."

15 **SECTION 2.** As used in this act, the following words and
 16 phrases have the meanings ascribed in this section unless the
 17 context clearly indicates otherwise:

18 (a) "Essential generic drug" means a prescription drug
 19 that is made available for sale in the state and for which all
 20 exclusive marketing rights, if any, granted under the Federal
 21 Food, Drug and Cosmetic Act (FD&C Act, 21 USC ch. 9), Section 351



22 of the Public Health Service Act (42 USC ch. 6A), and federal
23 patent law have expired, and which either:

24 (i) Appears on the Model List of Essential
25 Medicines most recently adopted by the World Health Organization;
26 or

27 (ii) Has been designated as an essential medicine
28 by the United States Secretary of Health and Human Services due to
29 its efficacy in treating a life-threatening health condition or a
30 chronic health condition that substantially impairs a person's
31 ability to engage in activities of daily living.

32 The term "essential generic drug" includes any drug-device
33 combination product for the delivery of an essential generic drug.

34 (b) "Medical assistance program" means a program
35 administered by the state to provide payment, in whole or in part,
36 of the cost of medical care and services to persons whose income
37 and resources are insufficient to meet the cost of the medical
38 care and services.

39 (c) "Price gouging" means an unconscionable increase in
40 the price of a prescription drug.

41 (d) "State Health Plan" means and has the same
42 definition as that term has in Section 41-7-173.

43 (e) "Unconscionable increase" means an increase in the
44 price of a prescription drug which:



45 (i) Is excessive and not justified by the cost of
46 producing the drug or the cost of appropriate expansion of access
47 to the drug to promote public health; and

48 (ii) Results in consumers for whom the drug has
49 been prescribed having no meaningful choice about whether to
50 purchase the drug at an excessive price because of the importance
51 of the drug to their health and insufficient competition in the
52 market for the drug.

53 (f) "Wholesale acquisition cost" has the meaning stated
54 in 42 USC sec. 1395w-3a.

55 **SECTION 3.** A manufacturer or wholesale distributor may not
56 engage in price gouging in the sale of an essential generic drug.

57 **SECTION 4.** (1) The Division of Medicaid and the Mississippi
58 Department of Human Services shall notify the Attorney General of
59 any increase in the price of an essential generic drug when the
60 price increase, by itself or in combination with another price
61 increase or increases, would:

62 (a) Result in an increase of fifty percent (50%) or
63 more in the wholesale acquisition cost of the drug within the
64 preceding one-year period; or

65 (b) Result in an increase of fifty percent (50%) or
66 more in the price paid by a medical assistance program for the
67 drug within the preceding one-year period.

68 (2) On request of the Attorney General, the manufacturer of
69 an essential generic drug identified in a notice under subsection



70 (1) of this section must submit the following information to the
71 Attorney General within forty-five (45) days of receiving the
72 request:

73 (a) An itemization of the components of the cost of
74 producing the drug;

75 (b) A statement identifying the circumstances and
76 timing of any expenditures made by the manufacturer to expand
77 access to the essential generic drug;

78 (c) An explanation of any improvement in public health
79 associated with those expenditures; and

80 (d) Any other information that the manufacturer
81 believes to be relevant to a determination of whether a violation
82 of this act has occurred.

83 (3) The Attorney General may require a manufacturer to
84 produce any records or documents that may be relevant to a
85 determination of whether a violation of this act has occurred.

86 (4) The Attorney General may institute proceedings against a
87 manufacturer or wholesale distributor of an essential generic drug
88 alleging a violation of this act in the Circuit Court of the First
89 Judicial District of Hinds County. On petition of the Attorney
90 General, the court may issue an order:

91 (a) Compelling a manufacturer or wholesale distributor
92 to provide the information required under subsection (2) or to
93 produce specific records or documents requested by the Attorney



94 General under subsection (3) which may be relevant to a
95 determination of whether a violation of this act has occurred;

96 (b) Restraining or enjoining a violation of this act;

97 (c) Restoring to any consumer, including any
98 third-party payor, any money acquired as a result of a price
99 increase that violates this act;

100 (d) Requiring a manufacturer that has engaged in price
101 gouging in the sale of an essential generic drug to make the drug
102 available to participants under the State Health Plan or a medical
103 assistance program for a period of up to one (1) year at the price
104 at which the drug was made available to participants under the
105 State Health Plan or medical assistance program immediately before
106 the manufacturer's violation of this act; and

107 (e) Imposing a civil penalty of up to One Hundred
108 Thousand Dollars (\$100,000.00) for each violation of this act.

109 (5) In any action brought by the Attorney General under
110 subsection (4), a person who is alleged to have violated a
111 requirement of this act may not assert as a defense that the
112 person did not deal directly with a consumer in this state.

113 **SECTION 5.** This act shall take effect and be in force from
114 and after July 1, 2018.

