

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0193.01 Julie Hoerner

HOUSE BILL 01-1108

HOUSE SPONSORSHIP

Plant

SENATE SPONSORSHIP

(None)

House Committees

Health, Environment, Welfare, & Institutions

Finance

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A PRESCRIPTION DRUG PROGRAM TO**
102 **ENHANCE AFFORDABILITY OF PRESCRIPTION MEDICATIONS FOR**
103 **COLORADANS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Finds and declares that it is in the best interests of the people of Colorado to make prescription medications more affordable.

Defines terms.

Creates the prescription program within the department of health care policy and financing (the department). Creates a rebate agreement between the state, drug manufacturers, and drug labelers. Requires the executive director of the department to negotiate the rebate amount.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

Outlines the eligibility requirement for the prescription program. Sets out a formula for setting the price of prescription drugs. Requires the state board of pharmacy to promulgate rules for the disclosure of savings provided to consumers as a result of the prescription program. Sets out the claims handling process for retail pharmacies to obtain rebate amounts. Allows the names of drug manufacturers and drug labelers who do not participate in the prescription program to be released to the public upon written request. Sets out the procedure for handling price discrepancies between the state, manufacturers, and labelers. Creates the prescription program cash fund.

Requires the executive director of the department to submit an annual report to the health, environment, welfare, and institutions committee of the house of representatives and the health, environment, children and families committee of the senate annually. Requires the report to discuss the number of persons enrolled in the prescription program and the financial status of the program. Allows the department to coordinate the prescription program with other governmental programs or agencies for enhanced efficiency.

Allows the executive director to establish emergency pricing for prescription drugs. Requires the executive director to analyze data concerning the most frequently prescribed drugs, the most expensive drugs, the average cost of prescription drugs for persons enrolled in the program, and the average cost for prescription drugs for persons not enrolled in the program. Imposes fines on manufacturers, labelers, and retail pharmacies that do not comply with the prescription program.

Prohibits profiteering by any manufacturer, labeler, or retail pharmacy participating in the prescription program. Creates a civil right of action to prevent profiteering. Allows for treble damages, costs, expert witness fees, attorney fees, and punitive damages.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that uninsured residents of Colorado pay excessive prices for
4 prescription drugs. In many states, excessive drug prices deny residents
5 access to medically necessary health care, and thereby threaten the safety
6 and health of these residents. Many residents are admitted to or treated
7 at hospitals each day because they are unable to afford the drugs
8 prescribed for them that could have prevented the need for hospitalization.

1 Many others enter expensive institutional care facilities because they are
2 unable to afford the prescription drugs that would allow these individuals
3 to live outside of an institution.

4 (2) Uninsured residents of Colorado pay far higher prices for
5 prescription drugs than are paid by managed care organizations, insurance
6 companies, and the federal government for the same medicines and
7 dosages. In many cases, these excessive drug prices have the effect of
8 denying such residents access to medically necessary care, thereby
9 threatening their health and safety. One primary reason uninsured
10 residents pay so much for prescription drugs is that, unlike insured
11 residents, they have no prescription benefits manager negotiating a fair
12 price with the drug companies on their behalf. The state government is
13 the only agent that, as a practical matter, can play an effective role as a
14 market participant on behalf of all residents who are uninsured or
15 underinsured. The state is able to, and the general assembly determines
16 that it is in the best interests of the state to, act as a prescription benefit
17 manager, negotiating voluntary drug rebates and using these funds to
18 reimburse retail pharmacies for offering lower drug prices.

19 (3) Therefore, the general assembly hereby finds, determines, and
20 declares that it is in the best interests of the state of Colorado to create a
21 prescription drug program to make prescription drugs more affordable.
22 Increased affordability of prescription drugs will improve the overall
23 health of the citizens of Colorado and thus will benefit families,
24 employers, employees, and the fiscal strength of our society. The
25 promotion of healthy communities also improves the public health and
26 welfare.

27 **SECTION 2.** Article 4 of title 26, Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW PART to read:

2 PART 11

3 PRESCRIPTION DRUG PROGRAM

4 **26-4-1101. Short title.** THIS PART 11 SHALL BE KNOWN AND MAY
5 BE CITED AS THE "PRESCRIPTION DRUG FAIR PRICING ACT".

6 **26-4-1102. Definitions.** AS USED IN THIS PART 11, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH CARE
9 POLICY AND FINANCING.

10 (2) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
11 THE DEPARTMENT.

12 (3) "LABELER" MEANS AN ENTITY OR PERSON THAT RECEIVES
13 PRESCRIPTION DRUGS FROM A MANUFACTURER OR WHOLESALER,
14 REPACKAGES SUCH DRUGS FOR RETAIL SALE, AND MAINTAINS A LABELER
15 CODE FROM THE FEDERAL FOOD AND DRUG ADMINISTRATION PURSUANT TO
16 21 CFR 207.20.

17 (4) "PARTICIPANT" MEANS A PERSON WHO IS DETERMINED BY THE
18 EXECUTIVE DIRECTOR TO BE ELIGIBLE TO PARTICIPATE IN THE PRESCRIPTION
19 PROGRAM UNDER CRITERIA DEVELOPED PURSUANT TO SECTION 26-4-1103
20 (5).

21 (5) "RETAIL PHARMACY" MEANS A RETAIL PHARMACY OR OTHER
22 BUSINESS LICENSED TO DISPENSE PRESCRIPTION DRUGS IN THIS STATE AND
23 THAT DISPENSES DRUGS COVERED BY A REBATE AGREEMENT UNDER THE
24 PRESCRIPTION PROGRAM PURSUANT TO THIS PART 11. "RETAIL PHARMACY"
25 INCLUDES A PRESCRIPTION DRUG OUTLET AS DEFINED IN SECTION 12-22-102
26 (30.2), C.R.S., AND ALL PRESCRIPTION FACILITIES REGISTERED WITH THE
27 STATE BOARD OF PHARMACY PURSUANT TO ARTICLE 22 OF TITLE 12, C.R.S.

1 **26-4-1103. Prescription program - establishment - rebate**
2 **agreement - rebate amount - discounted prices for participants -**
3 **eligibility - operation of the program - manufacturers and labelers -**
4 **cash fund - annual report - coordination with other programs - rules**
5 **- waivers. (1) Prescription program.** THE PRESCRIPTION PROGRAM IS
6 HEREBY ESTABLISHED WITHIN THE DEPARTMENT FOR THE PURPOSE OF
7 PROVIDING PRESCRIPTION DRUGS AT DISCOUNTED PRICES TO UNINSURED
8 RESIDENTS OF THIS STATE.

9 (2) **Rebate agreements.** A MANUFACTURER OR LABELER THAT
10 SELLS PRESCRIPTION DRUGS IN COLORADO THROUGH ANY STATE-FUNDED
11 OR STATE-OPERATED PROGRAM SHALL ENTER INTO A REBATE AGREEMENT
12 WITH THE DEPARTMENT FOR THE PRESCRIPTION PROGRAM CREATED IN
13 SUBSECTION (1) OF THIS SECTION. THE REBATE AGREEMENT SHALL
14 REQUIRE THE MANUFACTURER OR LABELER TO MAKE REBATE PAYMENTS TO
15 THE STATE QUARTERLY ACCORDING TO A SCHEDULE ESTABLISHED BY THE
16 DEPARTMENT.

17 (3) **Rebate amount.** (a) THE EXECUTIVE DIRECTOR SHALL
18 NEGOTIATE THE AMOUNT OF THE REBATE REQUIRED FROM A
19 MANUFACTURER OR LABELER PURSUANT TO THIS SUBSECTION (3).

20 (b) THE EXECUTIVE DIRECTOR SHALL TAKE INTO CONSIDERATION
21 THE REBATE CALCULATED UNDER THE MEDICAID REBATE PROGRAM
22 PURSUANT TO 42 U.S.C. SEC. 1396r-8, THE AVERAGE WHOLESALE PRICE OF
23 SUCH PRESCRIPTION DRUGS, AND ANY OTHER INFORMATION PERTAINING TO
24 PRESCRIPTION DRUG PRICES AND DISCOUNT PRICES.

25 (c) THE EXECUTIVE DIRECTOR SHALL USE THE EXECUTIVE
26 DIRECTOR'S BEST EFFORTS TO OBTAIN AN INITIAL REBATE AMOUNT EQUAL
27 TO OR GREATER THAN THE REBATE CALCULATED UNDER THE MEDICAID

1 PROGRAM PURSUANT TO 42 U.S.C. SEC. 1396r-8.

2 (4) **Discounted prices for prescription program participants.**

3 (a) A RETAIL PHARMACY SHALL DISCOUNT THE PRICE OF PRESCRIPTION
4 DRUGS COVERED BY THE PRESCRIPTION PROGRAM AND SOLD TO
5 PRESCRIPTION PROGRAM RECIPIENTS.

6 (b) THE DEPARTMENT SHALL ESTABLISH DISCOUNTED PRICES FOR
7 PRESCRIPTION DRUGS COVERED BY A REBATE AGREEMENT TAKING INTO
8 CONSIDERATION REDUCED PRICES FOR STATE AND FEDERALLY CAPPED
9 DRUG PROGRAMS, DIFFERENTIAL DISPENSING FEES, ADMINISTRATIVE
10 OVERHEAD, AND INCENTIVE PAYMENTS.

11 (5) **Eligibility for individuals to participate in the prescription**
12 **program.** RESIDENTS OF THE STATE ARE ELIGIBLE TO PARTICIPATE IN THE
13 PRESCRIPTION PROGRAM IF SUCH RESIDENTS DO NOT HAVE PRESCRIPTION
14 DRUG COVERAGE UNDER ANY HEALTH INSURANCE PLAN OR UNDER
15 MEDICAID OR MEDICARE. THE DEPARTMENT SHALL ESTABLISH SIMPLIFIED
16 PROCEDURES FOR DETERMINING ELIGIBILITY AND ISSUING PRESCRIPTION
17 ENROLLMENT CARDS TO ELIGIBLE RESIDENTS. THE DEPARTMENT SHALL
18 UNDERTAKE OUTREACH EFFORTS TO BUILD PUBLIC AWARENESS OF THE
19 PRESCRIPTION PROGRAM AND MAXIMIZE ENROLLMENT BY ELIGIBLE
20 RESIDENTS. THE DEPARTMENT MAY ADJUST THE REQUIREMENTS AND
21 TERMS OF THE PRESCRIPTION PROGRAM TO ACCOMMODATE ANY NEW
22 FEDERALLY FUNDED PRESCRIPTION DRUG PROGRAMS.

23 (6) **Operation of the prescription program.** (a) THE STATE
24 BOARD OF PHARMACY SHALL ADOPT RULES REQUIRING DISCLOSURE BY
25 RETAIL PHARMACIES TO PRESCRIPTION PROGRAM PARTICIPANTS OF THE
26 AMOUNT OF SAVINGS PROVIDED AS A RESULT OF THE PRESCRIPTION
27 PROGRAM. THE RULES SHALL CONSIDER AND PROTECT INFORMATION THAT

1 IS CONSIDERED PROPRIETARY IN NATURE.

2 (b) THE DEPARTMENT MAY NOT IMPOSE TRANSACTION CHARGES ON
3 RETAIL PHARMACIES THAT SUBMIT CLAIMS OR RECEIVE PAYMENTS UNDER
4 THE PRESCRIPTION PROGRAM.

5 (c) A RETAIL PHARMACY SHALL SUBMIT CLAIMS TO THE
6 DEPARTMENT TO VERIFY THE AMOUNT CHARGED TO PARTICIPANTS.

7 (d) ON A WEEKLY OR BIWEEKLY BASIS, THE DEPARTMENT SHALL
8 REIMBURSE A RETAIL PHARMACY FOR DISCOUNTED PRICES PROVIDED TO
9 PARTICIPANTS AND SHALL PAY THE RETAIL PHARMACY PROFESSIONAL FEES
10 SET BY THE EXECUTIVE DIRECTOR. THE INITIAL PROFESSIONAL FEE SHALL
11 BE THREE DOLLARS PER PRESCRIPTION.

12 (e) THE DEPARTMENT SHALL COLLECT FROM THE RETAIL
13 PHARMACIES ANY UTILIZATION DATA NECESSARY TO CALCULATE THE
14 AMOUNT OF THE REBATE FROM THE MANUFACTURER OR LABELER. THE
15 DEPARTMENT SHALL PROTECT THE CONFIDENTIALITY OF ALL INFORMATION
16 THAT CONSTITUTES TRADE SECRETS, WORK PRODUCT, OR PROPRIETARY
17 INFORMATION UNDER STATE OR FEDERAL LAW.

18 (7) **Manufacturers and labelers that do not participate in the**
19 **prescription program.** THE NAMES OF MANUFACTURERS AND LABELERS
20 THAT DO NOT ENTER INTO REBATE AGREEMENTS SHALL BE CONSIDERED
21 PUBLIC INFORMATION AND SHALL BE AVAILABLE FOR RELEASE TO THE
22 PUBLIC UPON WRITTEN REQUEST. THE DEPARTMENT SHALL IMPOSE PRIOR
23 AUTHORIZATION REQUIREMENTS IN THE STATE MEDICAID PROGRAM, AS
24 PRESCRIBED BY LAW, FOR THE DISPENSING OF PRESCRIPTION DRUGS
25 PROVIDED BY THOSE MANUFACTURERS AND LABELERS.

26 (8) **Discrepancies in rebate amounts.** (a) DISCREPANCIES IN
27 REBATE AMOUNTS SHALL BE RESOLVED PURSUANT TO THIS SUBSECTION (8).

1 (b) (I) IF THERE IS A DISCREPANCY IN THE MANUFACTURER’S OR
2 LABELER’S FAVOR BETWEEN THE AMOUNT CLAIMED BY A RETAIL
3 PHARMACY AND THE AMOUNT REBATED BY THE MANUFACTURER OR
4 LABELER, THE DEPARTMENT, AT THE DEPARTMENT’S EXPENSE, MAY HIRE AN
5 INDEPENDENT AUDITOR TO VERIFY THE ACCURACY OF THE DATA SUPPLIED
6 TO THE DEPARTMENT. IF, AFTER THE INDEPENDENT AUDIT CONDUCTED
7 PURSUANT TO THIS PARAGRAPH (b), A DISCREPANCY CONTINUES TO EXIST,
8 THE MANUFACTURER OR LABELER SHALL JUSTIFY THE REASON FOR THE
9 DISCREPANCY OR MAKE PAYMENT TO THE DEPARTMENT FOR ANY
10 ADDITIONAL AMOUNT.

11 (II) THE INDEPENDENT AUDITOR SHALL BE MUTUALLY AGREED
12 UPON BY THE DEPARTMENT AND THE MANUFACTURER OR LABELER.

13 (III) JUSTIFICATION FOR THE REASON FOR THE DISCREPANCY OR
14 PAYMENT SHALL BE MADE TO THE DEPARTMENT WITHIN SIXTY DAYS AFTER
15 THE COMPLETION OF THE AUDIT.

16 (c) (I) IF THERE IS A DISCREPANCY AGAINST THE INTEREST OF THE
17 MANUFACTURER OR LABELER IN THE INFORMATION PROVIDED BY THE
18 DEPARTMENT TO THE MANUFACTURER OR LABELER REGARDING THE
19 MANUFACTURER’S OR LABELER’S REBATE, THE MANUFACTURER OR
20 LABELER, AT THE MANUFACTURER’S OR LABELER’S EXPENSE, MAY HIRE AN
21 INDEPENDENT AUDITOR TO VERIFY THE ACCURACY OF THE DATA SUPPLIED
22 TO THE DEPARTMENT. IF, AFTER THE INDEPENDENT AUDIT CONDUCTED
23 PURSUANT TO THIS PARAGRAPH (c), A DISCREPANCY CONTINUES TO EXIST,
24 THE DEPARTMENT SHALL JUSTIFY THE REASON FOR THE DISCREPANCY OR
25 REFUND TO THE MANUFACTURER ANY EXCESS PAYMENT MADE BY THE
26 MANUFACTURER OR LABELER.

27 (II) THE INDEPENDENT AUDITOR SHALL BE MUTUALLY AGREED

1 UPON BY THE DEPARTMENT AND THE MANUFACTURER OR LABELER.

2 (III) JUSTIFICATION FOR THE REASON FOR THE DISCREPANCY OR
3 REFUND SHALL BE MADE TO THE MANUFACTURER OR LABELER WITHIN
4 SIXTY DAYS AFTER THE COMPLETION OF THE AUDIT.

5 (d) IF A DISCREPANCY EXISTS AFTER JUSTIFICATION FOR THE
6 DISCREPANCY HAS BEEN OFFERED PURSUANT TO PARAGRAPHS (b) AND (c)
7 OF THIS SUBSECTION (8), EITHER THE DEPARTMENT OR THE MANUFACTURER
8 OR LABELER MAY PURSUE A CLAIM BEFORE THE DISTRICT COURT OF THE
9 CITY AND COUNTY OF DENVER.

10 (9) **Prescription program cash fund.** (a) (I) MONEYS
11 COLLECTED FROM MANUFACTURERS OR LABELERS AS REBATES, PURSUANT
12 TO PARAGRAPH (b) OF SUBSECTION (8) OF THIS SECTION, SHALL BE
13 TRANSFERRED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO
14 THE PRESCRIPTION PROGRAM CASH FUND, WHICH FUND IS HEREBY
15 CREATED. THE EXECUTIVE DIRECTOR SHALL USE SUCH MONEYS FOR
16 REIMBURSEMENT TO RETAIL PHARMACIES CONSISTENT WITH THIS SECTION.
17 ANY MONEYS NOT PROVIDED AS REIMBURSEMENT TO RETAIL PHARMACIES
18 MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED IN SECTION
19 24-36-113, C.R.S. ALL INTEREST DERIVED FROM THE DEPOSIT AND
20 INVESTMENT OF MONEYS IN THE PRESCRIPTION PROGRAM CASH FUND SHALL
21 BE CREDITED TO THE FUND. ANY AMOUNT REMAINING IN THE PRESCRIPTION
22 PROGRAM CASH FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN IN
23 THE PRESCRIPTION PROGRAM CASH FUND AND SHALL NOT BE CREDITED OR
24 TRANSFERRED TO THE GENERAL FUND OR TO ANY OTHER FUND.

25 (II) UP TO ONE PERCENT ANNUALLY OF THE MONEYS IN THE
26 PRESCRIPTION PROGRAM CASH FUND MAY BE USED FOR THE EXPENSES
27 INCURRED BY THE DEPARTMENT IN ADMINISTERING THIS SECTION.

1 (b) BEGINNING WITH THE 2002-03 FISCAL YEAR, AND FOR EACH
2 FISCAL YEAR THEREAFTER SO LONG AS THE STATE RECEIVES MONEYS FROM
3 MANUFACTURERS AND LABELERS, MONEYS IN THE PRESCRIPTION PROGRAM
4 CASH FUND SHALL BE CONTINUOUSLY APPROPRIATED TO THE EXECUTIVE
5 DIRECTOR OF THE DEPARTMENT, WHO SHALL REIMBURSE RETAIL
6 PHARMACIES FOR DISCOUNTED PRESCRIPTION DRUGS.

7 (10) (a) **Annual summary report.** ON AND AFTER JANUARY 1,
8 2002, THE DEPARTMENT SHALL REPORT THE ANNUAL ENROLLMENT AND
9 FINANCIAL STATUS OF THE PRESCRIPTION PROGRAM TO THE HEALTH,
10 ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF
11 REPRESENTATIVES AND THE HEALTH, ENVIRONMENT, CHILDREN AND
12 FAMILIES COMMITTEE OF THE SENATE BY FEBRUARY 1 EACH YEAR.

13 (b) (I) DURING THE 2006 REGULAR SESSION OF THE GENERAL
14 ASSEMBLY, THE LEGISLATIVE COUNCIL OF THE GENERAL ASSEMBLY SHALL
15 CONDUCT A REVIEW OF THE "PRESCRIPTION DRUG FAIR PRICING ACT",
16 CREATED IN THIS PART 11. SUCH REVIEW SHALL CONSIDER FACTORS WHICH
17 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE PRICING DETERMINATIONS OF
18 THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 26-4-1104, THE
19 EFFECTIVENESS OF THE "PRESCRIPTION DRUG FAIR PRICING ACT" FOR
20 CONSUMERS, MANUFACTURERS, LABELERS, PARTICIPANTS, THE STATE,
21 INSURERS, AND ANY OTHER AFFECTED ENTITY, AND AN ASSESSMENT OF
22 WHETHER PRESCRIPTION DRUG PRICES WERE REDUCED BECAUSE OF THE
23 ACT.

24 (II) BASED ON SUCH REVIEW, THE LEGISLATIVE COUNCIL MAY
25 RECOMMEND TO THE GENERAL ASSEMBLY ANY LEGISLATION DETERMINED
26 TO BE NECESSARY.

27 (III) THE REQUIREMENTS FOR LEGISLATIVE COUNCIL REVIEW

1 PURSUANT TO THIS PARAGRAPH (b) SHALL TERMINATE JULY 1, 2006,
2 UNLESS THE GENERAL ASSEMBLY ACTS BY BILL TO EXTEND SAID
3 REQUIREMENTS BEYOND JULY 1, 2006.

4 (11) **Coordination with other programs.** THE DEPARTMENT MAY
5 COORDINATE WITH OTHER GOVERNMENTAL PROGRAMS AND AGENCIES TO
6 ENHANCE THE EFFICIENCY OF THE PRESCRIPTION PROGRAM, REDUCE THE
7 COST OF PRESCRIPTION DRUGS, AND MAXIMIZE THE BENEFITS OF THE
8 PRESCRIPTION PROGRAM AND OTHER GOVERNMENTAL PROGRAMS,
9 INCLUDING PROVIDING BENEFITS FOR THE PRESCRIPTION PROGRAM TO THE
10 BENEFICIARIES OF OTHER GOVERNMENT PROGRAMS.

11 (12) THE DEPARTMENT MAY PROMULGATE RULES AS NECESSARY
12 FOR THE IMPLEMENTATION OF THIS SECTION.

13 **26-4-1104. Determination of fair prices.** (1) BY APRIL 1, 2004,
14 THE EXECUTIVE DIRECTOR SHALL DETERMINE WHETHER THE PRICES FOR
15 PRESCRIPTION DRUGS PROVIDED TO THE PRESCRIPTION PROGRAM
16 PARTICIPANTS ARE REASONABLY COMPARABLE TO THE LOWEST COST PAID
17 FOR THE SAME DRUGS DELIVERED OR DISPENSED TO PERSONS NOT
18 PARTICIPATING IN THE PRESCRIPTION PROGRAM. IN MAKING THIS
19 DETERMINATION, THE EXECUTIVE DIRECTOR SHALL:

20 (a) REVIEW PRESCRIPTION DRUG USE IN THE MEDICAID PROGRAM
21 USING DATA FROM THE MOST RECENT SIX-MONTH PERIOD FOR WHICH DATA
22 IS AVAILABLE;

23 (b) DETERMINE THE:

24 (I) MOST FREQUENTLY PRESCRIBED DRUGS WITHIN THE
25 PRESCRIPTION PROGRAM;

26 (II) MOST EXPENSIVE DRUGS PRESCRIBED WITHIN THE
27 PRESCRIPTION PROGRAM;

1 (III) AVERAGE COST OF DRUGS FOR PARTICIPANTS WITHIN THE
2 PRESCRIPTION PROGRAM; AND

3 (IV) AVERAGE COST FOR DRUGS FOR PERSONS NOT WITHIN THE
4 PRESCRIPTION PROGRAM FOR A SIMILAR TIME PERIOD AS THE AVERAGE
5 DETERMINED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (b).

6 **26-4-1105. Profiteering in prescription drugs - right of action**
7 **and damages - civil violation. (1) Profiteering.** A MANUFACTURER,
8 LABELER, OR RETAIL PHARMACY ENGAGES IN ILLEGAL PROFITEERING IF
9 THAT MANUFACTURER, LABELER, OR RETAIL PHARMACY:

10 (a) EXACTS OR DEMANDS A PRICE IN EXCESS OF THE AVERAGE
11 WHOLESALE PRICE FOR ANY PRESCRIPTION DRUG;

12 (b) EXACTS OR DEMANDS PRICES OR TERMS THAT LEAD TO ANY
13 UNJUST OR UNREASONABLE PROFIT;

14 (c) DISCRIMINATES UNREASONABLY AGAINST ANY PERSON IN THE
15 SALE, EXCHANGE, DISTRIBUTION, OR HANDLING OF PRESCRIPTION DRUGS
16 DISPENSED OR DELIVERED IN THE STATE; OR

17 (d) INTENTIONALLY PREVENTS, LIMITS, LESSENS, OR RESTRICTS THE
18 SALE OR DISTRIBUTION OF PRESCRIPTION DRUGS IN THIS STATE IN
19 RETALIATION FOR THE PROVISIONS OF THIS PART 11.

20 (2) **Right of action and damages.** THE STATE MAY BRING A CIVIL
21 ACTION FOR A DIRECT OR INDIRECT INJURY TO ANY PERSON, GROUP OF
22 PERSONS, THE STATE, OR ANY POLITICAL SUBDIVISION OF THE STATE
23 CAUSED BY A VIOLATION OF THIS SECTION. THERE IS A RIGHT TO A JURY
24 TRIAL IN ANY ACTION BROUGHT UNDER THIS SECTION. IF THE STATE
25 PREVAILS, THE DEFENDANT SHALL BE SUBJECT TO TREBLE DAMAGES,
26 COSTS, ATTORNEY FEES, AND EXPERT WITNESS FEES TO BE DETERMINED BY
27 THE DISCRETION OF THE JUDGE. FOR A WILLFUL OR REPEATED VIOLATION

1 OF THIS SECTION, PUNITIVE DAMAGES MAY BE AWARDED. AFTER
2 DEDUCTION OF THE COSTS OF DISTRIBUTION, THE DAMAGES SHALL BE
3 EQUALLY DISTRIBUTED BY THE STATE TO ALL PLAINTIFFS.

4 (3) **Civil violations.** EACH VIOLATION OF THIS SECTION IS A CIVIL
5 VIOLATION FOR WHICH THE ATTORNEY GENERAL MAY OBTAIN, IN ADDITION
6 TO OTHER REMEDIES, INJUNCTIVE RELIEF AND A CIVIL PENALTY IN AN
7 AMOUNT NOT TO EXCEED _____ DOLLARS, PLUS THE COSTS OF SUIT,
8 INCLUDING BUT NOT LIMITED TO NECESSARY AND REASONABLE
9 INVESTIGATIVE COSTS, REASONABLE EXPERT WITNESS FEES, AND
10 REASONABLE ATTORNEY FEES.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.