2022 -- H 7024

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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO COMMERCIAL LAW-- GENERAL REGULATORY PROVISIONS

Introduced By: Representatives J Lombardi, Hull, Cassar, Potter, Felix, Morales, and Henries
Date Introduced: January 10, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW – GENERAL REGULATORY PROVISIONS" is hereby amended by adding the following chapter:

CHAPTER 13.4

PRICE-GOUGING OF PRESCRIPTION DRUGS PROHIBITED

6-13.4-1. Purpose.

The purpose of this act is to prohibit prescription drug price-gouging or excessive pricing during market shortages.

6-13.4-2. Findings.

The general assembly finds as follows:

(1) Many pharmaceutical drugs are necessary to maintain the health and welfare of the American people;

(2) Currently the nation is facing a chronic shortage of vital drugs necessary in surgery, in treating cancer, and in fighting other life-threatening illnesses; and

(3) In order to prevent any party within the chain of distribution of any vital drugs from taking unfair advantage of consumers during market shortages, the public interest requires that such conduct be prohibited and made subject to criminal penalties.

6-13.4-3. Definitions.

As used in this chapter the following words and terms shall have the following meanings:

(1) "Biologic" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood

component or derivative, allergenic product, or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings;

(2) "Drug" means a drug intended for use by human beings that:

(i) Because of its toxicity or other potential for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(ii) Is limited by an approved application under §505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to use under the professional supervision of a practitioner licensed by law to administer such drug;

(3) "Market emergency" means any declaration of a state of emergency by the governor or by declaration by the President;

(4) "Market shortage" means a situation in which the total supply of all clinically interchangeable versions of an FDA-regulated drug is inadequate to meet the current or projected demand at the user level;

(5) "Price gouging" means charging a consumer an unreasonably high price for any drug during a declared market emergency. This section shall not prohibit the fluctuation in the price of drugs that occurs during the normal course of business;

(6) "Unreasonably excessive drug pricing" means the amount charged represents a gross disparity between the average prices at which the same or similar commodity was readily available and sold or offered for sale within the local area in the usual course of business during the thirty (30) days immediately before the declaration of the market emergency and the additional charges are not substantially attributable to increased cost to retailers, imposed by their suppliers, including replacement costs imposed by the vendors' source. Additionally, the average price calculation during said thirty (30) day period shall not include discounted prices set and offered as a result of bona fide manufacturer's or supplier's limited discounts or rebates; and

(7) "Vital drug" means any drug or biologic used to prevent or treat a serious or life-threatening disease or medical condition, for which there is no other available source with sufficient supply of that drug or biologic or alternative drug or biologic available.

6-13.4-4. Unreasonably excessive drug pricing.

(a) The governor may issue an executive order or rely on an executive order of the President, declaring a market shortage or market emergency for a period of six (6) months with regard to one or more vital drugs due to a market shortage under this chapter.

(b) If the governor or the President issues an executive order under subsection (a) of this

section, it shall be unlawful for any person to sell vital drugs at a price that is unreasonably excessive and such action indicates that the seller is taking unfair advantage of the circumstances related to a market shortage to unreasonably increase prices during such period.

(c) Enforcement. -- The attorney general is authorized to enforce penalties under this chapter.

6-13.4-5. Penalties.

(a) Any person who sells or offers to sell any vital drug during a declared market shortage with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances shall be guilty of a felony and shall be imprisoned for up to five (5) years and by a fine of up to ten thousand dollars ($10,000) or both.

(b) Multiple Offenses. In assessing the penalty provided by subsection (a) of this section each day of a continuing violation shall be considered a separate violation.

(c) Whenever it shall appear to the attorney general that any person or entity is engaged in practices constituting a violation of any provision of this chapter and until such complaint is dismissed by the attorney general or set aside by a court upon review, the attorney general may in their discretion bring an action in the superior court for the county in which the violation has occurred, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted in the interest of the general public.

6-13.4-6. Determination of unreasonably excessive.

(a) The attorney general, in determining whether an alleged violator's price was unreasonably excessive, shall consider whether:

(1) The price reasonably reflected additional costs, not within the control of that person or company, that were paid, incurred, or reasonably anticipated by that person or company;

(2) The price reasonably reflected additional risks taken by that person or company to produce, distribute, obtain, or sell such product under the circumstances;

(3) There is a gross disparity between the challenged price and the price at which the same or similar goods were readily available in the state and prior to the same declared market shortage;

(4) The marginal benefit received by the wholesaler or distributor is significantly changed in comparison with marginal earnings in the year before a market shortage was declared;

(5) The price charged was comparable to the price at which the goods were generally available in the New England area if the wholesaler or distributor did not sell or offer to sell the prescription drug in question prior to the time a market shortage was declared; and

(6) The price was substantially attributable to local, regional, national, or international market conditions.

(b) Consultation. Not later than one year after the date of enactment of this chapter and annually thereafter, the attorney general or designee, shall consult with representatives of the National Association of Wholesalers, group purchasing organizations, pharmaceutical distributors, hospitals, manufacturers, patients, and other interested community organizations to reassess the criteria set forth in subsection (a) of this section in determining unreasonably excessive and prepare and submit to the general assembly a report on the results of the reassessment.

6-13.4-7. Duration.

(a) Any market shortage declared by the governor or President in accordance with this chapter shall be in effect for a period not to exceed six (6) months from the date on which the governor or President issues the executive order.

(b) Termination. Any market shortage declared by the governor or President in accordance with this chapter shall terminate if:

(1) There is enacted a law terminating the market shortage which shall be passed by the general assembly after a national market shortage is declared; or

(2) The governor or President issues a proclamation terminating the market shortage; whichever comes first.

(c) Declaration Renewal. The governor or President may renew the state of market shortage declared under subsection (a) of this section, if the governor or President declares that the severe shortage continues to affect the health and well-being of citizens beyond the initial six (6) month period.

SECTION 2. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO COMMERCIAL LAW-- GENERAL REGULATORY PROVISIONS

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This act would prohibit 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.

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