# SB0073

LRB10005928MJP15955b

## 100TH GENERAL ASSEMBLY

## State of Illinois

## 2017 and 2018

### SB0073

Introduced 1/12/2017, by Sen. Ira I. Silverstein

## SYNOPSIS AS INTRODUCED:

410 ILCS 620/16.2 new

Amends the Illinois Food, Drug and Cosmetic Act. Adds provision concerning prescription drug price increases. Requires manufacturers of prescription drugs to notify State purchasers, health insurers, health care service plan providers, and pharmacy benefit managers of specified increases in drug prices at least 30 days before such increase and the cost of specified new prescription drugs 3 days before the commercial availability of a new drug approved by the U.S. Food and Drug Administration or within 3 days after approval by the U.S. Food and Drug Administration if the new drug will be made commercially available within 3 days of such approval. Provides that within 30 days after such notifications, prescription drug manufacturers shall report specified information to the Department of Public Health and requires the Department to publish such information on its website. Provides that failure to report such information to specified entities shall result in a specified administrative penalty. Provides that the Department may adopt rules and issue guidance to implement these provisions and shall be responsible for enforcing these provisions. Contains provisions concerning the confidentiality of pricing information. Repeals provisions concerning prescription drug price increases on January 1, 2022. Effective immediately.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 5. The Illinois Food, Drug and Cosmetic Act is amended by adding Section 16.2 as follows:

(410 ILCS 620/16.2 new)

Sec. 16.2. Prescription drug price increases.

(a) This Section shall apply to any manufacturer of a prescription drug that is purchased or reimbursed by any of the following:

(1) A State purchaser, including, but not limited to, State retirement systems, the Department of Corrections, the Department of Healthcare and Family Services, the Department of Public Health, or any entity acting on behalf of a State purchaser.

(2) A health insurer.

(3) A health care service plan provider.

(4) A pharmacy benefit manager.

(b) On and after January 1, 2018, a manufacturer of a prescription drug with a wholesale acquisition cost per month supply or per a course of treatment that lasts less than a month that comes within the schedule set forth in subsection (c) of this Section shall provide written notice to State

purchasers, health insurers, health care service plan providers, and pharmacy benefit managers if the manufacturer is increasing the wholesale price of the prescription drug during any 12-month period by 25% or more, or by more than $10,000. The notice shall be provided in writing at least 30 days prior to the planned effective date of the increase. Within 30 days after notification of a price increase as provided in this subsection (b), a manufacturer shall report the following information to the Department of Public Health:

(1) the previous year's marketing budget for the drug, the manufacturer may limit the information to that which is publicly available;

(2) the date and price of acquisition if the drug was not developed by the manufacturer; and

(3) a schedule of price increases for the drug for the previous 5 years if it was manufactured by the company, or if the drug was acquired by the manufacturer within the previous 5 years, the price of the drug at the time of the acquisition and in the calendar year prior to acquisition.

The Department of Public Health shall publish data collected pursuant to this subsection (b) publicly on its website no less than quarterly.

(c) A manufacturer shall provide the notice required pursuant to subsection (b) of this Section if the prescription drug wholesale acquisition cost per month supply or per a course of treatment that lasts less than a month is within the

following amounts:

(1) For calendar year 2018, $100 or more.

(2) For calendar year 2019, $105 or more.

(3) For calendar year 2020, $110 or more.

(4) On and after January 1, 2021, $116 or more.

(d) On and after January 1, 2018, a manufacturer of a prescription drug shall provide written notice to State purchasers, health insurers, health care service plan providers, and pharmacy benefit managers if the manufacturer is introducing a new prescription drug to market at a wholesale cost of $10,000 or more annually or per course of treatment. The notice shall be provided in writing 3 days before the commercial availability of a drug approved by the federal Food and Drug Administration (FDA). In a case in which the commercial availability is expected within 3 days of FDA approval, a manufacturer may provide a notice pending FDA approval in order to ensure approved drugs are commercially available without delay, unless any other law prohibits that notification, in which case the notice shall be provided as soon as practicable, but no later than 3 days after FDA approval. Within 30 days after notification of approval for a new drug as provided in this subsection (d), a manufacturer shall report the following information to the Department of Public Health:

(1) the expected marketing budget for the drug; and

(2) the date and price of acquisition if the drug was

not developed by the manufacturer.

The Department of Public Health shall publish data collected pursuant to this subsection (d) publicly on its website no less than quarterly.

(e) Except for prescription drugs subject to subsection (d) of this Section, notice shall not be required for a prescription drug that is not already purchased or reimbursed by a purchaser described in subsection (a) of this Section.

(f) The Department of Public Health may adopt rules or issue guidance to implement this Section. The Department of Public Health may consult with the Department of Insurance, the Department of Healthcare and Family Services, the State Board of Pharmacy, any State purchaser of prescription drugs, or entity acting on behalf of a State purchaser, in adopting necessary rules, in issuing guidance, in posting information on its website under this Section, and in taking any other action for the purpose of implementing this Section.

(g) The Department of Public Health shall be responsible for enforcing the provisions of this Section.

(h) Any manufacturer of a prescription drug subject to this Section shall comply with the provisions of this Section. Any manufacturer of a prescription drug subject to this Section that does not report the information required pursuant to this Section to State purchasers, health care service plans, health insurers, or pharmacy benefit managers is liable for an administrative penalty of $1,000 a day for every day after the

30-day notification period, the administrative penalty shall be assessed by the Department of Public Health. The Department of Public Health may order the penalty to be paid after appropriate notice and an opportunity for a hearing.

(i) This Section shall not restrict the legal ability of a pharmaceutical manufacturer to change prices as permitted under federal law.

(j) For purposes of this subsection (j), "pricing information" means advanced notification of a price increase pursuant to subsection (b) of this Section or advanced notification of the price of a new drug pursuant to subsection (d) of this Section.

(1) Until the effective date of the increase, pricing information shall be deemed confidential information that shall not be made public by an entity described in paragraph (1) of subsection (a) of this Section and is exempt from disclosure under the Freedom of Information Act.

(2) Until the effective date of the increase, pricing information shall be deemed confidential information that shall not be made public by an entity described in paragraphs (2), (3), or (4) of subsection (a) of this Section.

(3) Notwithstanding paragraph (2) of this subsection (j), an entity described in paragraph (2) or (3) of subsection (a) of this Section may, and an entity described

in paragraph (4) of subsection (a) of this Section shall, disclose pricing information to its contracting public and private purchasers that agree to maintain the confidentiality of the pricing information until the effective date of the increase. Pricing information received by a contracting public or private purchaser pursuant to this Section shall be deemed confidential information that shall not be made public by a contracting public or private purchaser and is exempt from disclosure under the Freedom of Information Act.

(4) Disclosure of pricing information by a pharmaceutical manufacturer pursuant to this Section shall not constitute a waiver of any protection of the information provided by any other law.

(k) This Section is repealed on January 1, 2022.

Section 99. Effective date. This Act takes effect upon becoming law.