



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2880

by Rep. Will Guzzardi

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.891 new

Creates the Prescription Drug Price Increase Tax Act. Imposes a tax on each establishment that makes the first sale of a covered outpatient drug within the State. Provides that the term "first sale" means an initial sale of a covered outpatient drug from a manufacturer to a wholesaler or from a wholesaler to a pharmacy. Provides that the tax shall be charged against and paid by the establishment making the first sale and shall not be added as a separate charge or line item or otherwise passed down on any invoice to the customer. Provides that the proceeds shall be deposited into the Prescription Drug Fairness Fund and used by the Department of Healthcare and Family Services. Amends the State Finance Act to create the Prescription Drug Fairness Fund.

LRB101 04901 HLH 49910 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 1. Short title. This Act may be cited as the  
5 Prescription Drug Price Increase Tax Act.

6 Section 5. Definitions. As used in this Act:

7 "Average manufacturer price" has the meaning given to that  
8 term in 42 U.S.C. 1396r-8.

9 "Baseline average manufacturer price" means the average  
10 manufacturer price for the dosage, form, and strength of the  
11 covered outpatient drug for the first full calendar quarter  
12 after the day on which the drug was first marketed.

13 "Covered outpatient drug" has the meaning given to that  
14 term in 42 U.S.C. 1396r-8.

15 "First sale" means an initial sale of a covered outpatient  
16 drug from a manufacturer to a wholesaler or, if the sale from  
17 the manufacturer to the wholesaler is not subject to the tax  
18 under this Act, from the wholesaler to a pharmacy. Any such  
19 sale of a covered outpatient drug within the State shall be  
20 presumed to be the first sale of the covered outpatient drug  
21 unless the seller can prove that the tax is due from another  
22 establishment within the chain of title.

23 "Inflation-adjusted baseline average manufacturer price"

1 means the baseline average manufacturer price increased by the  
2 percentage by which the Consumer Price Index for All Urban  
3 Consumers (United States city average) for the month before the  
4 month in which the sale occurs exceeds that index for the month  
5 before the first month of the first full calendar quarter after  
6 the day on which the drug was first marketed, regardless of  
7 whether the covered outpatient drug has been sold or  
8 transferred to an entity, including a division or subsidiary of  
9 the manufacturer, after the first day of that quarter.

10 Section 10. Tax imposed.

11 (a) On and after January 1, 2020, any establishment that  
12 makes the first sale of a covered outpatient drug within the  
13 State is liable for a tax equal to 100% of the difference  
14 between the gross amount received for the first sale of the  
15 covered outpatient drug and the inflation-adjusted baseline  
16 average manufacturer price of the covered outpatient drug.

17 (b) This tax shall be charged against and paid by the  
18 establishment making the first sale and shall not be added as a  
19 separate charge or line item or otherwise passed down on any  
20 invoice to the customer.

21 (c) Any invoice associated with the first sale of a covered  
22 outpatient drug shall state the establishment making the sale's  
23 liability for the tax and include the establishment's name,  
24 address, and taxpayer identification number. This invoice  
25 shall also include identifying information, as defined by the

1 Department of Healthcare and Family Services, for the covered  
2 outpatient drug or drugs associated with the first sale, the  
3 date of the sale, the purchaser, the number of units sold, and  
4 any other information required by the Department of Healthcare  
5 and Family Services. A copy of this invoice shall be made  
6 available to any subsequent seller or purchaser of the covered  
7 outpatient drugs detailed on the invoice as evidence that the  
8 subsequent seller or purchaser is not liable for the tax. The  
9 Department of Healthcare and Family Services may adopt rules  
10 concerning the information required and may allow for such  
11 invoices to be transmitted and stored electronically,  
12 including allowing sellers to maintain records of the invoice  
13 on behalf of purchasers.

14 Section 15. Returns. On or before the twentieth day of each  
15 calendar month, every establishment that makes a first sale of  
16 a covered outpatient drug within the State during the preceding  
17 calendar month shall file a return with the Department of  
18 Revenue, stating:

- 19 (1) the name of the establishment;  
20 (2) the address of the establishment's principal place  
21 of business;  
22 (3) the amount of tax due; and  
23 (4) such other information as the Department of Revenue  
24 may require.

25 If a taxpayer fails to sign a return within 30 days after

1 the proper notice and demand for signature by the Department of  
2 Revenue, the return shall be considered valid and any amount  
3 shown to be due on the return shall be deemed assessed.

4 Section 20. Recordkeeping. Any establishment liable for  
5 any tax under this Act shall maintain auditable records of  
6 sales made and taxes paid for a period of at least 3 years  
7 unless the Department of Revenue establishes a different  
8 retention period by rule. Those records shall be available to  
9 the Department of Revenue for inspection or audit upon request.

10 Section 25. Retailers' Occupation Tax Act. All of the  
11 provisions of Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i and 5j of  
12 the Retailers' Occupation Tax Act, which are not inconsistent  
13 with this Act, and Section 3-7 of the Uniform Penalty and  
14 Interest Act, shall apply, as far as practicable, to the  
15 subject matter of this Act to the same extent as if such  
16 provisions were included herein.

17 Section 30. Payment into the Prescription Drug Fairness  
18 Fund. The proceeds collected from the tax imposed under this  
19 Act shall be deposited into the Prescription Drug Fairness  
20 Fund, a special fund created in the State treasury. Moneys in  
21 the Fund shall be used, subject to appropriation, by the  
22 Department of Healthcare and Family Services.

1           Section 90. The State Finance Act is amended by adding  
2           Section 5.891 as follows:

3           (30 ILCS 105/5.891 new)

4           Sec. 5.891. The Prescription Drug Fairness Fund.