

Requested by Representative BUEHLER

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 4005**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert  
2 “180.510.”.

3 On page 5, after line 43, insert:

4 **“SECTION 6. As used in this section and section 7 of this 2018 Act:**

5 **“(1) ‘Drug’ has the meaning given that term in ORS 689.005.**

6 **“(2) ‘Essential off-patent or generic drug’ means any prescription  
7 drug or device used to deliver a prescription drug:**

8 **“(a) For which all exclusive marketing rights, if any, granted under  
9 the Federal Food, Drug, and Cosmetic Act have expired;**

10 **“(b) That is actively manufactured and marketed for sale in the  
11 United States by three or fewer manufacturers;**

12 **“(c) That is made available for sale in this state; and**

13 **“(d)(A) That appears on the current Model List of Essential Medi-  
14 cines adopted by the World Health Organization; or**

15 **“(B) That has been designated by the Health Evidence Review  
16 Commission established in ORS 414.688 as an essential medicine due  
17 to its efficacy in treating a life-threatening condition or a chronic  
18 health condition that substantially impairs an individual’s ability to  
19 engage in activities of daily living.**

20 **“(3) ‘Manufacture’ has the meaning given that term in section 2 of  
21 this 2018 Act.**

1       “(4) ‘Manufacturer’ has the meaning given that term in section 2  
2 of this 2018 Act.

3       “(5) ‘Prescription drug’ has the meaning given that term in section  
4 2 of this 2018 Act.

5       “(6)(a) ‘Price gouging’ means an unconscionable increase in the  
6 price of a prescription drug by a manufacturer or wholesale distributor  
7 of a prescription drug regardless of whether the manufacturer or  
8 wholesale distributor sells a drug directly to a consumer.

9       “(b) ‘Price gouging’ does not include an unconscionable increase in  
10 the price charged by a wholesale distributor of a prescription drug if  
11 the increase is directly attributable to additional costs for the drug  
12 imposed on the wholesale distributor by the manufacturer of the drug.

13       “(7) ‘Unconscionable increase’ means an increase in the price of a  
14 prescription drug that:

15       “(a) Is excessive and not justified by the cost of producing the drug  
16 or the cost of appropriate expansion of access to the drug to promote  
17 public health; and

18       “(b) Results in consumers for whom the drug has been prescribed  
19 having no meaningful choice about whether to purchase the drug at  
20 an excessive price because of:

21       “(A) The importance of the drug to the health of the consumers;  
22 and

23       “(B) Insufficient competition in the market for the drug.

24       “SECTION 7. (1) A manufacturer or wholesale distributor of a pre-  
25 scription drug may not engage in price gouging in the sale of an es-  
26 sential off-patent or generic drug in this state.

27       “(2) Any person may file a complaint with the Attorney General  
28 asserting price gouging by a manufacturer or wholesale distributor of  
29 a prescription drug.

30       “(3) Upon receipt of the complaint, the Attorney General shall in-

1 investigate the complaint and may:

2 “(a) Require the manufacturer of the drug to submit a statement:

3 “(A) Itemizing the components of the cost of producing the drug;

4 “(B) Identifying the circumstances and timing of any increase in  
5 materials or manufacturing costs that cause an increase in the price  
6 of the drug within the 12 months preceding the price increase;

7 “(C) Identifying the circumstances and timing of any expenditures  
8 made by the manufacturer to expand access to the drug;

9 “(D) Describing any improvement in public health associated with  
10 the expenditures identified in subparagraph (C) of this paragraph; and

11 “(E) Providing any other information that the manufacturer be-  
12 lieves to be relevant as to whether the manufacturer has engaged in  
13 price gouging.

14 “(b) Require a manufacturer or wholesale distributor of a pre-  
15 scription drug to produce any records or other documents that may  
16 be relevant as to whether the manufacturer or wholesale distributor  
17 has engaged in price gouging.

18 “(4) The Attorney General shall submit to the Health Evidence Re-  
19 view Commission established in ORS 414.688 all of the Attorney  
20 General’s investigative materials and any recommended findings. The  
21 commission shall hold a public hearing and give the manufacturer or  
22 wholesale distributor and any other persons adversely affected by the  
23 price increase the opportunity to appear and provide testimony.

24 “(5) The commission shall determine whether a manufacturer or  
25 wholesale distributor of a prescription drug has engaged in price  
26 gouging. If the commission determines that a finding of price gouging  
27 is supported by the record, the Attorney General:

28 “(a) Shall impose a civil penalty, in the manner provided by ORS  
29 183.745, of at least \$10,000 but no more than an amount equal to 10  
30 percent of the manufacturer’s or wholesale distributor’s revenue from

1 the sales of the drug in this state.

2 “(b) May issue an order requiring the manufacturer or wholesale  
3 distributor to reimburse any consumer, including a third party payer,  
4 the portion of the price paid by the consumer that was found to be  
5 excessive.

6 “(c) May issue an order requiring the manufacturer or wholesale  
7 distributor to make the drug available for purchase in this state, for  
8 up to 12 months from the date of the order, at the last price charged  
9 by the manufacturer or wholesale distributor that was not found to  
10 be excessive.

11 “(6) Orders described in subsection (5) of this 2018 Act are final or-  
12 ders and may be appealed in the manner prescribed by ORS 183.480.

13 “(7) The Attorney General may remit or mitigate civil penalties or  
14 orders under subsection (5) of this section upon terms and conditions  
15 the Attorney General considers proper and consistent with the public  
16 health and safety.

17 “(8) Civil penalties collected under subsection (5) of this section  
18 shall be paid over to the State Treasurer and deposited into the Gen-  
19 eral Fund to be made available for general governmental expenses.

20 “(9) Any information provided to the Health Evidence Review  
21 Commission by a manufacturer or wholesale distributor of prescription  
22 drugs under subsection (4) of this section shall be considered a trade  
23 secret under ORS 192.345.

24 “SECTION 8. (1) If it appears to the Attorney General that a person  
25 has possession, custody or control of any information, document or  
26 other materials that are relevant to an investigation of a violation of  
27 section 7 of this 2018 Act, or that could lead to the discovery of rele-  
28 vant information in an investigation of a violation of section 7 of this  
29 2018 Act, the Attorney General may cause an investigative demand to  
30 be served upon the person. The investigative demand may require the

1 **person:**

2 **“(a) To appear and testify under oath at the time and place stated**  
3 **in the investigative demand;**

4 **“(b) To answer written interrogatories; or**

5 **“(c) To produce relevant documentary material or physical evidence**  
6 **for examination at the time and place stated in the investigative de-**  
7 **mand.**

8 **“(2) An investigative demand under this section shall be served in**  
9 **the manner provided by ORS 646.622 and may be enforced in the**  
10 **manner provided by ORS 646.626.**

11 **“SECTION 9. (1) The Attorney General may bring a civil action in**  
12 **the name of the State of Oregon against a person who violates section**  
13 **7 of this 2018 Act or for the purpose of seeking an injunction to re-**  
14 **strain an actual or threatened violation of section 7 of this 2018 Act**  
15 **and compel compliance with section 7 of this 2018 Act.**

16 **“(2) In any action brought pursuant to this section, the state may**  
17 **recover the costs of the investigation, the costs of the action, reason-**  
18 **able attorney fees and a civil penalty as provided in section 7 of this**  
19 **2018 Act.**

20 **“(3) Unless expressly provided, the remedies or penalties under this**  
21 **section are cumulative to each other and to the remedies available**  
22 **under all other laws of the state.**

23 **“SECTION 10. ORS 180.510 is amended to read:**

24 **“180.510. The Department of Justice shall carry out the functions of the**  
25 **Attorney General under this section and ORS 20.098, 83.710 to 83.750, 83.820**  
26 **to 83.895, 180.520, 336.184, 646.605 to 646.656, 646.990, 803.375, 803.385 and**  
27 **815.410 to 815.430 and section 7 of this 2018 Act. The Attorney General may**  
28 **employ personnel necessary to carry out the duties and functions described**  
29 **in this section and fix their compensation, subject to any applicable pro-**  
30 **visions of the State Personnel Relations Law.”.**

- 1 In line 44, delete “6” and insert “11”.
- 2 On page 6, line 43, delete “7” and insert “12”.
- 3 On page 8, line 12, delete “8” and insert “13”.
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