

**LD 1117, An Act To Prevent Excessive Prices for Prescription Drugs**

**SUMMARY:**

As drafted, this bill prohibits excessive price increases for generic and off-patent prescription drugs sold in this State. The bill provides that a price increase for a generic or off-patent prescription drug is excessive when:

- A. The price increase, adjusted for inflation using the Consumer Price Index, exceeds:
  - (1) Fifteen percent of the wholesale acquisition cost of the immediately preceding calendar year; or
  - (2) Forty percent of the wholesale acquisition cost of 3 years prior to the current year; and
- B. The price increase, adjusted for inflation using the Consumer Price Index, exceeds \$30 for a 30-day supply of the generic or off-patent prescription drug or for a course of treatment of the generic or off-patent prescription drug that lasts less than 30 days.

The bill provides that it is not a violation for a distributor or pharmacy to increase the price if the increase is directly attributable to additional costs for the generic or off-patent prescription drug imposed on the distributor or pharmacy by the manufacturer.

The bill makes prescription drug manufacturers who violate the provisions subject to enforcement action by the Attorney General.

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**TESTIMONY:** Written testimony can be found at this [link](#)

### ISSUES FOR CONSIDERATION:

1. The sponsor has suggested a [proposed amendment](#) to the bill that seeks to address concerns raised at the public hearing and in written testimony. The proposed amendment does the following:

- Transfers responsibility for notifying a manufacturer and the AG's Office of an excessive price increase to MHDO rather than administrators of state programs and requires the reporting of certain information;
- Reduces potential civil penalty for violations from \$10,000 per day to \$3,000 per day for each violation; and
- Clarifies that a court may issue an order to impose a civil penalty of \$500,000 on any manufacturer that withdraws an identified drug from sale or distribution, whether directly or indirectly through a distributor, for the purpose of avoiding a fine upon the petition of the AG and removes requirement that AG must assess the penalty (*intended to address legal concerns raised about bill as drafted*).

2. Does this proposal violate the Commerce Clause of the U.S. Constitution by regulating prices outside of the State? Concerns raised by Association for Accessible Medicines; representative of AAM is available to answer questions.

3. Consider concerns raised about potential impact on MaineCare? Written testimony submitted by DHHS indicated the federal regulations dictate reimbursement paid to pharmacies for costs of prescription drugs.

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### **ISSUES FOR CONSIDERATION (cont'd) :**

4. At the committee's request, representatives from the Attorney General's Office were invited to participate in the work session and address any questions related to any legal issues associated with the proposal.
5. As drafted, the bill is based on a [model law](#) developed by the National Academy of State Health Policy. The model was developed in a manner to help safeguard against legal challenges in response to a [policy brief](#) commissioned by NASHP. According to NASHP's [legislative tracker](#), 6 state legislatures (including Maine) are considering similar legislation. Representatives of NASHP are also available to answer questions.

### **FISCAL INFORMATION:**

Not yet determined