

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 28 of the District of Columbia Official Code to establish excessive pricing of prescription drugs as a violation of District law, to establish penalties for the excessive pricing prohibition, and to provide that an aggrieved party may bring a cause of action in a court of competent jurisdiction.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the "Prescription Drug Excessive Pricing Act of 2005".

Sec. 2. Title 28 of the District of Columbia Official Code is amended as follows:

(a) Subtitle II. of the table of contents of Title 28 is amended by adding a new chapter 45B to read as follows:

"Chapter 45B. Excessive Pricing 28-4551."

(b) Add a new chapter 45B to read as follows:

"Chapter 45B

"Excessive Pricing.

"§ 28-4551. Findings

"§ 28-4552. Definitions.

"§ 28-4553. Excessive pricing in sales of prescription drugs, a violation of law.

"§ 28-4554. Burden of proof, determination of excessive pricing.

"§ 28-4555. Judicial remedies.

"§ 28-4551. Findings

“The Council of the District of Columbia finds that:

“(1) The excessive prices of prescription drugs in the District of Columbia is threatening the health and welfare of the residents of the District as well as the District government’s ability to ensure that all residents receive the health care they need, and these excessive prices directly and indirectly cause economic harm to the District and its residents;

“(2) The traditional police powers of the District of Columbia include protecting and promoting the health, safety, and welfare of the citizens; regulating monopoly pricing of goods and services; and regulating to assure consumer protection and to prevent and sanction unfair trade practices; and

“(3) To promote the health, safety, and welfare of its residents, it is incumbent on the government of the District of Columbia to take action to restrain the excessive prices of prescription drugs through mechanisms which are consistent with District and Federal law, including the Constitution.

“28-4552. Definitions.

“(1) “Affected party” means any person directly or indirectly affected by excessive prices of patented prescription drugs, including any organization representing such persons or any person or organization representing the public interest.

“(2) “High income country” means any of the following: United Kingdom, Germany, Canada, and Australia.

"§ 28-4553. Excessive pricing in sales of prescription drugs, a violation of law.

"It shall be unlawful for any drug manufacturer or licensee thereof, excluding a point of sale retail seller, to sell or supply for sale or impose minimum resale requirements for a patented prescription drug that results in the prescription drug being sold in the District for an excessive price;

"§ 28-4554 Burden of proof, determination of excessive pricing.

"(a) A prima facie case of excessive pricing shall be established where the wholesale price of a patented prescription drug in the District is over 30 percent higher than the comparable price in any high income country in which the product is protected by patents or other exclusive marketing rights.

"(b) Where a prima facie case of excessive pricing is shown, the burdens of providing evidence and of proving by a preponderance of the evidence shall shift to the defendant to show that a given prescription drug is not excessively priced given demonstrated costs of invention, development and production of the prescription drug, global sales and profits to date, consideration of any government funded research that supported the development of the drug, and the impact of price on access to the prescription drug by residents and the government of the District of Columbia.

"§ 28-4555. Judicial remedies.

"(a) Any affected party, including the District of Columbia, shall have standing to file a civil suit in a court of competent jurisdiction for a violation of this Act and to seek a remedy, including declaratory and injunctive relief.

"(b) If a judge of the court of competent jurisdiction finds that there has been excessive pricing in suit filed by an affected party, the judge shall levy the appropriate civil penalties and may order, if supported by the evidence:

"(A) Temporary, preliminary, or permanent injunctions to enjoin the sales of prescription drugs in the District at excessive prices;

"(B) Appropriate fines for each violation;

"(C) Damages, including treble damages;

"(D) Reasonable attorney's fees;

"(E) Cost of litigation; or

"(F) Any other relief the court deems proper.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.