_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: “AN ACT PREVENTING EXCESSIVE PRICES FOR PRESCRIPTION DRUGS; ESTABLISHING REMEDIES FOR EXCESSIVE PRICE INCREASES; PROHIBITING WITHDRAWAL OF PRESCRIPTION DRUGS FROM MONTANA IN CERTAIN INSTANCES; PROVIDING PENALTIES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Prohibition on Prescription Drug Price Gouging Act".

NEW SECTION. **Section 2. Purpose.** It is the purpose of [sections 1 through 7] to protect the health, safety, and economic well-being of the state and the residents of this state by guarding them from the negative and harmful impact of excessive prices for prescription drugs.

NEW SECTION. **Section 3. Definitions.** As used in [section 1 through 7], the following definitions apply:

(1) "Applicable manufacturer" means a manufacturer, as defined in 37-7-602, of prescription drugs that are sold in the state whether directly or through a distributor, sufficient to confer either general or specific jurisdiction over the manufacturer by a court of this state.

(2) “Consumer price index” means:

(a) the consumer price index, United States city average, for all items, for all urban consumers, as published by the bureau of labor statistics of the United States department of labor, or its successor; or

(b) if the index is discontinued, an equivalent reported by a federal authority. If no such index is reported, the term means a comparable index chosen by the bureau of labor statistics.

(3) "Distributor" means a wholesale distributor as defined in 37-7-602 that procures prescription drugs from an applicable manufacturer for sale or distribution in the state and/or that distributes or sells the prescription drugs in the state, sufficient to confer either general or specific jurisdiction over the distributor by a court of this state.

(4) "Prescription drug" has the meaning provided in 33-22-170.

(5) "Wholesale acquisition cost" has the meaning provided in 42 U.S.C. 1395w-3a.

NEW SECTION. **Section 4. Excessive price increases prohibited.** (1) It is a violation of [sections 1 through 7] for an applicable manufacturer or a distributor to impose an excessive price increase, whether directly or through a distributor, on the sale of any prescription drug sold, dispensed, or delivered in the state to any consumer in the state.

(2) A price increase is excessive for purposes of [sections 1 through 7] when the price increase, after being adjusted for inflation using the consumer price index, exceeds:

(a) 10% of the wholesale acquisition cost during the immediately preceding calendar year; or

(b) 30% of the wholesale acquisition cost during the immediately preceding 3 calendar years.

NEW SECTION. **Section 5. Enforcement.** (1) An applicable manufacturer or a distributor shall notify the state attorney general of any price increase of a prescription drug that is in violation or in apparent violation of [section 4].

(2) Within 30 days of receipt of the notice, the attorney general shall provide the applicable manufacturer or the distributor with notice of receipt by serving the notice on the applicable manufacturer's or the distributor's registered agent. The notice must:

(a) advise the applicable manufacturer or the distributor that the attorney general has received notice pursuant to subsection (1);

(b) notify the applicable manufacturer or the distributor of the terms set forth in subsections (4) through (6) ; and

(c) require the applicable manufacturer or the distributor to submit a response pursuant to subsection (4).

(3) Within 60 days of receipt of notice under subsection (2), the applicable manufacturer or the distributor of the prescription drug shall submit a statement to the attorney general:

(a) itemizing the components of the cost of producing the prescription drug;

(b) identifying the circumstances and timing of any increase in materials or manufacturing costs that caused any increase in the price of the prescription drug during the preceding year; and

(c) providing any other information that the applicable manufacturer or the distributor believes to be pertinent to a determination of whether a violation of [section 4] has occurred.

(4) The attorney general may require an applicable manufacturer or a distributor to produce any records or documents that may be relevant to a determination of whether a violation has occurred.

(5) On petition of the attorney general, a court of competent jurisdiction may issue an order:

(a) compelling the applicable manufacturer or the distributor:

(i) to provide a statement required under subsection (3); or

(ii) to produce records or documents requested by the attorney general under subsection (4) that may be relevant to a determination of whether a violation of [section 4] has occurred;

(b) restraining or enjoining a violation of this act,

(c) requiring prices be restored to levels that comply with [section 4];

(d) requiring the applicable manufacturer or the distributor to provide an accounting to the attorney general of all revenues generated in violation of [section 4];

(e) restoring to any consumer, including any third-party payor, any money acquired as a result of a price increase that violates or has been adjudged to have violated [section 4];

(f) requiring that all revenues generated in violation of [section 4] be remitted to the state general fund to be used for efforts designed to reduce the cost to state residents of acquiring prescription drugs, if the applicable manufacturer or the distributor is unable to provide the restitution required in subsection (4)(e);

(g) imposing a civil penalty of up to $10,000 a day for each violation of this act; and

(h) providing for any other appropriate relief, including costs of suit reasonably incurred by the attorney general in bringing action against the applicable manufacturer or the distributor found in violation of [section 4] above.

(6) For the purposes of subsection (5)(g), each individual transaction in violation of [section 4] is a

separate violation of [this act].

NEW SECTION. **Section 6. Prohibition on withdrawal of prescription drugs for sale.** (1) It is a violation of [sections 1 through 7] for an applicable manufacturer or a distributor to directly or through a distributor withdraw a prescription drug from sale or distribution in the state for the purpose of avoiding the pricing prohibitions of [section 4].

(2) If the attorney general believes a drug has been withdrawn from sale or distribution in the state in violation of this section, the attorney general shall notify the applicable manufacturer or the distributor that:

(a) the attorney general intends to assess the penalty provided for in this section; and

(b) the applicable manufacturer or the distributor may request a hearing under the contested case procedures of Title 2, chapter 4, to offset the imposition of the penalty.

(3) The attorney general shall assess a penalty of $1 million on an applicable manufacturer or a distributor that the attorney general determines has withdrawn a prescription drug from sale or distribution in the state in violation of this section.

NEW SECTION. **Section 7. Rulemaking authority.** The attorney general may adopt rules necessary to implement the provisions of [sections 1 through 7].

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 7].

NEW SECTION. **Section 9. Effective date.** [This act] is effective January 1, 2022.

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