State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2819

04/04/2019 Authored by Howard and Schultz
The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; income; imposing a tax on the excess prices of certain drugs; proposing coding for new law in Minnesota Statutes, chapter 290.

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

Section 1. **[290.9810] EXCESS PRICES TAX; PRESCRIPTION DRUGS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Adjusted average manufacturer price" means the following, as adjusted by the commissioner under subdivision 5:

(1) the average manufacturer price of a prescription drug as defined in United States Code, title 42, section 1396r-8(k)(1); or

(2) for drugs for which United States Code, title 42, section 1396r-8(k)(1), does not define an average manufacturer price, the wholesale acquisition cost of a prescription drug as determined in United States Code, title 42, section 1395w-3a(c)(6)(B).

(c) "Excess price amount" means the difference, if any, between:

(1) the manufacturer's adjusted average manufacturer price of a prescription drug for the year in which sales are required to be reported under subdivision 4; and

(2) the indexed average manufacturer's price of a prescription drug for that year.

(d) "Indexed average manufacturer's price" means the average manufacturer's price of a prescription drug for the later of calendar year 2014 or the calendar year when the drug's first sale in Minnesota occurs, multiplied each year by an adjustment factor that is equal to

the medical care Consumer Price Index for All Urban Consumers, United States city average, and including any adjustment made in or for prior years.

(e) "Manufacturer" means a manufacturer as defined in United States Code, title 42, section 1395w-3a(c)(6)(A), that has nexus with Minnesota.

(f) "Prescription drug" has the meaning given in section 151.01.

(g) "Sold in this state" means any sale of a prescription drug for purposes of resale, possession, or use in this state, excluding any subsequent resale.

Subd. 2. **Tax imposed.** In addition to any other tax imposed by this chapter, a tax is imposed on a manufacturer's excess price amount for a prescription drug. The tax is equal to ... percent of the excess price amount of each drug produced by a manufacturer that is sold in this state, multiplied by the number of units of the drug produced by that manufacturer that are sold in this state as reported by the commissioner in subdivision 4.

Subd. 3. **Administration of tax.** The commissioner may provide for any requirement necessary to administer this section, including the time and manner for filing returns. All provisions relating to collection, audit, assessment, refund, penalty, interest, enforcement, collection remedies, appeal, and administrative provisions under chapters 270C and 289A that apply to taxes imposed under this chapter apply to the tax imposed under this section.

Subd. 4. **Reporting of prescription drug sales.** Each year by February 15, a manufacturer or wholesale drug distributor licensed under chapter 151 shall submit to the commissioner of revenue, in the form and manner specified by the commissioner, the number of units of each prescription drug sold in this state in the immediately preceding calendar year. Each year by September 1, the commissioner must send to each manufacturer subject to the tax in subdivision 2 a report detailing the number of units of each prescription drug manufactured by the taxpayer in the year for which the sales are reported. The commissioner must also include any adjustments in the average manufacturer price of a prescription drug as provided in subdivision 5. The commissioner may contract with a vendor for assistance in administering this section.

Subd. 5. **Average manufacturer price; adjustments.** The commissioner, in consultation with the Board of Pharmacy, may reduce the average manufacturer price of a prescription drug to reflect increases in the costs of inputs necessary to manufacture the prescription drug. By March 1, the commissioner must notify a manufacturer subject to the tax in subdivision 2 of any adjustment in the average manufacturer price. The commissioner must provide a manufacturer an opportunity to appeal an adjustment made under this paragraph, in the form and manner specified by the board. An appeal of the commissioner's decision

must be taken by June 1. By October 1, the commissioner must certify any increase in the average manufacturer price of a prescription drug to the commissioner of revenue.

EFFECTIVE DATE. This section is effective .....