

HOUSE BILL 1095

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CF SB 669

By: **The Speaker (By Request – Prescription Drug Affordability Board) and
Delegates Cullison, Kelly, Pena–Melnyk, Pendergrass, and Rosenberg**

Introduced and read first time: February 6, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Prescription Drug Affordability Board and Fund**

3 FOR the purpose of repealing certain provisions of law requiring the Prescription Drug
4 Affordability Board to determine a certain funding source on or before a certain date,
5 consider using certain methods in making a certain determination, and report to
6 certain committees of the General Assembly on a certain recommendation; requiring
7 the Board to assess and collect a certain fee from certain persons in a certain manner;
8 requiring the Board to calculate a certain fee in a certain manner; requiring certain
9 entities to pay a certain fee on or before a certain date each year; requiring the Board
10 to allow certain persons to make certain payments; providing that certain fees may
11 be subject to a certain interest penalty; prohibiting a certain amount of fees collected
12 within a certain period of time from exceeding a certain amount; requiring the Board
13 to pay certain fees into the Prescription Drug Affordability Fund; establishing the
14 Fund as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the
15 Board to administer the Fund; requiring the State Treasurer to hold the Fund and
16 the Comptroller to account for the Fund; requiring any interest earnings of the Fund
17 to be credited to the Fund; specifying the contents of the Fund; specifying the purpose
18 for which the Fund may be used; providing for the investment of money in and
19 expenditures from the Fund; requiring the Fund to be subject to a certain audit;
20 adding special funds to the types of funds that are required to be used to establish
21 the Board; requiring the Board to repay certain funds from the Fund to the Maryland
22 Health Care Commission under certain circumstances and over a certain period of
23 time; exempting the Fund from a certain provision of law requiring interest earnings
24 on State money to accrue to the General Fund of the State; providing for the
25 construction of certain provisions of this Act; defining a certain term; making
26 conforming changes; and generally relating to the Prescription Drug Affordability
27 Board and Fund.

28 BY repealing and reenacting, without amendments,
29 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 Section 19–132(a) and (c)
2 Annotated Code of Maryland
3 (2019 Replacement Volume)
- 4 BY repealing and reenacting, with amendments,
5 Article – Health – General
6 Section 21–2C–11
7 Annotated Code of Maryland
8 (2019 Replacement Volume)
- 9 BY repealing and reenacting, without amendments,
10 Article – Health Occupations
11 Section 12–6C–01(a) and (v)
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2019 Supplement)
- 14 BY repealing and reenacting, without amendments,
15 Article – Insurance
16 Section 15–1601(a) and (m)
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2019 Supplement)
- 19 BY repealing and reenacting, without amendments,
20 Article – State Finance and Procurement
21 Section 6–226(a)(2)(i)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2019 Supplement)
- 24 BY repealing and reenacting, with amendments,
25 Article – State Finance and Procurement
26 Section 6–226(a)(2)(ii)121. and 122.
27 Annotated Code of Maryland
28 (2015 Replacement Volume and 2019 Supplement)
- 29 BY adding to
30 Article – State Finance and Procurement
31 Section 6–226(a)(2)(ii)123.
32 Annotated Code of Maryland
33 (2015 Replacement Volume and 2019 Supplement)
- 34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
35 That the Laws of Maryland read as follows:
- 36 **Article – Health – General**
- 37 19–132.

1 (a) In this Part III of this subtitle the following words have the meanings
2 indicated.

3 (c) "Carrier" means:

4 (1) An insurer or nonprofit health service plan that holds a certificate of
5 authority and provides health insurance policies or contracts in the State in accordance
6 with the Insurance Article; or

7 (2) A health maintenance organization that holds a certificate of authority
8 in the State.

9 21-2C-11.

10 [(a) On or before December 31, 2020, the Board shall determine a funding source
11 for the Board.

12 (b) In determining a funding source, the Board shall consider:

13 (1) Assessing and collecting a fee on manufacturers, pharmacy benefits
14 managers, health insurance carriers, wholesale distributors, or other entities;

15 (2) Using rebates the State or local government receives from
16 manufacturers; and

17 (3) Any other method it determines appropriate for funding the Board.

18 (c) On or before December 31, 2020, in accordance with § 2-1257 of the State
19 Government Article, the Board shall report back to the Senate Finance Committee and the
20 House Health and Government Operations Committee with a recommendation on
21 legislation necessary to establish a funding source for the Board.]

22 (A) IN THIS SECTION, "FUND" MEANS THE PRESCRIPTION DRUG
23 AFFORDABILITY FUND.

24 (B) (1) THE BOARD SHALL ASSESS AND COLLECT AN ANNUAL FEE ON:

25 (I) MANUFACTURERS;

26 (II) PHARMACY BENEFITS MANAGERS, AS DEFINED IN §
27 15-1601 OF THE INSURANCE ARTICLE;

28 (III) CARRIERS, AS DEFINED IN § 19-132 OF THIS ARTICLE;

29 (IV) WHOLESALE DISTRIBUTORS, AS DEFINED IN § 12-6C-01 OF
30 THE HEALTH OCCUPATIONS ARTICLE; AND

1 (V) ANY OTHER ENTITY IDENTIFIED IN REGULATIONS ADOPTED
2 BY THE BOARD.

3 (2) THE BOARD SHALL:

4 (I) ASSESS AND COLLECT THE ANNUAL FEE UNDER
5 PARAGRAPH (1) OF THIS SUBSECTION IN ACCORDANCE WITH CRITERIA
6 ESTABLISHED IN REGULATIONS ADOPTED BY THE BOARD; AND

7 (II) CALCULATE THE ANNUAL FEE UNDER PARAGRAPH (1) OF
8 THIS SUBSECTION IN A FAIR AND EQUITABLE MANNER.

9 (3) (I) ON OR BEFORE OCTOBER 1 EACH YEAR, EACH ENTITY
10 ASSESSED A FEE UNDER THIS SUBSECTION SHALL PAY THE FEE ASSESSED BY THE
11 BOARD.

12 (II) THE BOARD SHALL ALLOW ENTITIES TO MAKE PARTIAL
13 PAYMENTS WHEN PAYING THE FEE ASSESSED UNDER THIS SUBSECTION.

14 (III) ANY FEE NOT PAID WITHIN 30 DAYS AFTER THE PAYMENT
15 DUE DATE MAY BE SUBJECT TO AN INTEREST PENALTY TO BE DETERMINED AND
16 COLLECTED BY THE BOARD.

17 (4) THE TOTAL AMOUNT OF FEES THAT THE BOARD COLLECTS IN
18 EACH CALENDAR YEAR UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT
19 EXCEED \$2,000,000.

20 (5) THE BOARD SHALL PAY ALL FEES COLLECTED UNDER
21 PARAGRAPH (1) OF THIS SUBSECTION INTO THE FUND.

22 (C) (1) THERE IS A PRESCRIPTION DRUG AFFORDABILITY FUND.

23 (2) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING FOR THE
24 BOARD AND TO CARRY OUT THE PURPOSE OF THIS SUBTITLE.

25 (3) THE BOARD SHALL ADMINISTER THE FUND.

26 (4) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
27 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

28 (II) THE STATE TREASURER SHALL HOLD THE FUND
29 SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

1 12-6C-01.

2 (a) In this subtitle the following words have the meanings indicated.

3 (v) (1) "Wholesale distributor" means a person that is engaged in the
4 wholesale distribution of prescription drugs or prescription devices.

5 (2) "Wholesale distributor" includes:

6 (i) A manufacturer;

7 (ii) A repackager;

8 (iii) An own-label distributor;

9 (iv) A private-label distributor;

10 (v) A jobber;

11 (vi) A broker;

12 (vii) A warehouse, including a manufacturer's or distributor's
13 warehouse;

14 (viii) A manufacturer's exclusive distributor or an authorized
15 distributor of record;

16 (ix) A drug wholesaler or distributor;

17 (x) An independent wholesale drug trader;

18 (xi) A third party logistics provider;

19 (xii) A pharmacy that conducts wholesale distribution, if the
20 wholesale distribution business accounts for more than 5% of the pharmacy's annual sales;
21 and

22 (xiii) A pharmacy warehouse that conducts wholesale distribution.

23 Article - Insurance

24 15-1601.

25 (a) In this subtitle the following words have the meanings indicated.

26 (m) "Pharmacy benefits manager" means a person that performs pharmacy

1 benefits management services.

2 **Article – State Finance and Procurement**

3 6–226.

4 (a) (2) (i) Notwithstanding any other provision of law, and unless
5 inconsistent with a federal law, grant agreement, or other federal requirement or with the
6 terms of a gift or settlement agreement, net interest on all State money allocated by the
7 State Treasurer under this section to special funds or accounts, and otherwise entitled to
8 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General
9 Fund of the State.

10 (ii) The provisions of subparagraph (i) of this paragraph do not apply
11 to the following funds:

12 121. the Markell Hendricks Youth Crime Prevention and
13 Diversion Parole Fund; [and]

14 122. the Federal Government Shutdown Employee Assistance
15 Loan Fund; AND

16 **123. THE PRESCRIPTION DRUG AFFORDABILITY FUND.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
18 1, 2020.