

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**ASSEMBLY, No. 2840**

**STATE OF NEW JERSEY  
220th LEGISLATURE**

DATED: JUNE 29, 2023

## SUMMARY

- Synopsis:** Establishes certain data reporting requirements for prescription drug supply chain; establishes Drug Affordability Council; appropriates \$1,500,000.
- Type of Impact:** Increase in State Expenditures in FY 2024; Annual Increases in State Expenditures and Revenues Thereafter.
- Agencies Affected:** Department of Law and Public Safety.

### Office of Legislative Services Estimate

| <b>Fiscal Impact</b>          | <b><u>FY 2024</u></b> | <b><u>FY 2025 and Thereafter</u></b> |
|-------------------------------|-----------------------|--------------------------------------|
| <b>State Cost Increase</b>    | Up to \$1,500,000     | Indeterminate                        |
| <b>State Revenue Increase</b> | None.                 | Indeterminate                        |

- The Office of Legislative Services (OLS) finds that the bill will increase State expenditures by up to \$1.5 million in FY 2024 for the implementation costs of the Division of Consumer Affairs related to the new data reporting requirements established in the bill for drug manufacturers, insurance carriers, pharmacy benefits managers, drug wholesalers, and pharmacy services administrative organizations, and the creation of the Drug Affordability Council. Thereafter, the State will incur indeterminate annual operating costs for the division and the council related to their new responsibilities under the bill.
- Each reporting entity enumerated above is to be charged an annual assessment fee by the division sufficient to support the operational costs of the division stemming from this bill, including costs of the Drug Affordability Council. The division is to remit any surplus assessment fees collected during a calendar year to the reporting entities. The OLS, at this point, cannot determine the annual operating costs of the division and the council stemming from their duties under the bill or ascertain the revenues the State will receive from the annual assessment fee.

- The State also may collect an indeterminate amount of annual revenue from civil penalties from reporting entities that do not comply with the bill's provisions, but a significant level of willful non-compliance is not anticipated.

## **BILL DESCRIPTION**

This bill establishes data reporting requirements for pharmacy benefits manager, wholesale drug distributors, insurance issuers, manufacturers, and pharmacy services administrative organizations so that the Division of Consumer Affairs can issue an annual report on emerging trends in prescription drug pricing at each stage of the supply chain. Every year, each reporting entity must register with the department and report on measures such as the volume, sales, revenue, and year-over-year change in prescription drug transactions. Once the department compiles this information and publishes its annual report on prescription drug pricing trends, it must hold a public hearing on the findings.

The bill also mandates that a manufacturer notify the department if it is increasing the price of a prescription drug or if it is introducing a new drug with a wholesale acquisition cost that exceeds the Medicare Part D specialty threshold or a biosimilar drug that has a wholesale acquisition cost that is not at least 15 percent less than the wholesale acquisition cost of the referenced brand biologic at the time the biosimilar drug is launched. The price increase reporting requirement applies when a manufacturer increases the wholesale acquisition cost of brand name or generic drugs by certain specified amounts.

Additionally, the bill establishes a Drug Affordability Council in, but not of, the Department of Law and Public Safety. The purpose of this five public-member council is to formulate legislative and regulatory policy recommendations that will protect New Jersey residents, State and local governments, health benefits plans, healthcare providers, licensed pharmacies, and other stakeholders within the State health care system from the high costs of prescription drug products. The bill requires the council to review the reports issued and data collected by the division pursuant to the bill and to submit annual recommendations for legislative, regulatory, or other action to the Governor and the Legislature that seek to advance the goal of more affordable and accessible prescription drugs for New Jersey residents.

The bill appropriates from the General Fund to the Division of Consumer Affairs in the Department of Law and Public Safety \$1,500,000 to implement the provisions of the bill.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS finds that the bill will increase State expenditures by up to \$1.5 million in FY 2024 for the implementation costs of the Division of Consumer Affairs related to the new data reporting requirements established in the bill for drug manufacturers, insurance carriers, pharmacy benefits managers, drug wholesalers, and pharmacy services administrative organizations, and the creation of the Drug Affordability Council. Thereafter, the State will incur indeterminate annual operating

costs for the council and the Division of Consumer Affairs, as the bill requires: 1) registration of each reporting entity with the division and the establishment of a data reporting intake procedure; 2) an analysis of the submitted data and the issuance of an annual report; 3) the hosting of public hearings on the findings; and 4) administratively supporting the Drug Affordability Council.

Each reporting entity enumerated above is to be charged an annual assessment fee by the division sufficient to support the operational costs of the division as they relate to this bill, including costs of the Drug Affordability Council. The OLS assumes that the division will begin to levy the assessment fee in FY 2025 per the bill's provisions. The division is to remit any surplus assessment fees collected during a calendar year to the reporting entities. The OLS, at this point, cannot determine the annual operating costs of the division and the council stemming from their duties under the bill or ascertain the revenues the State will receive from the annual assessment fee.

The State also may collect an indeterminate amount of annual revenue from civil penalties collected from violators of the bill's provisions. However, a significant level of willful non-compliance is not anticipated. Civil penalties may be imposed in the amount of \$10,000 for the first day that the reporting entity is found to have violated and for subsequent days of non-compliance, an amount starting at \$11,000 and increasing by \$1,000 for each additional day of non-compliance, not to exceed \$100,000 per day.

In addition, unauthorized disclosure of certain confidential information may be subject to a civil penalty not to exceed \$2,500.

*Section: Law and Public Safety*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).