

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 24-1123.01 Brita Darling x2241

HOUSE BILL 24-1438

HOUSE SPONSORSHIP

Mabrey and Jodeh,

SENATE SPONSORSHIP

Roberts,

House Committees

Health & Human Services
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE IMPLEMENTATION OF CERTAIN AFFORDABLE**
102 **PRESCRIPTION DRUG PROGRAMS, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes it a deceptive trade practice under the "Colorado Consumer Protection Act" for a manufacturer to fail to comply with:

- The insulin affordability program; and
- The requirements for the emergency supply of prescription insulin.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

HOUSE
Amended 2nd Reading
April 20, 2024

The bill authorizes the attorney general to enforce:

- The insulin affordability program;
- The requirements for the emergency supply of prescription insulin; and
- The epinephrine auto-injector affordability program (epinephrine program).

The bill also increases the amount of a fine for a manufacturer's failure to comply with the requirements of the insulin affordability program, the requirements for the emergency supply of prescription insulin, and the epinephrine program to the amount and frequency that is permitted under the "Colorado Consumer Protection Act".

The bill requires the state board of pharmacy to provide flyers to be distributed to pharmacies about the epinephrine program that include a quick response (QR) code to allow individuals to access and complete the epinephrine program's application online. The completed, printed application will include a billing code or other method for the dispensing pharmacy to be reimbursed for the cost of the epinephrine auto-injector above any required cost sharing by the individual.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **add**
3 (1)(eeee) as follows:

4 **6-1-105. Unfair or deceptive trade practices.** (1) A person
5 engages in a deceptive trade practice when, in the course of the person's
6 business, vocation, or occupation, the person:

7 (eeee) FAILS TO COMPLY WITH THE MANUFACTURER
8 REQUIREMENTS UNDER THE INSULIN AFFORDABILITY PROGRAM PURSUANT
9 TO SECTION 12-280-139 OR THE MANUFACTURER REQUIREMENTS FOR THE
10 EMERGENCY SUPPLY OF PRESCRIPTION INSULIN PURSUANT TO SECTION
11 12-280-140.

12 **SECTION 2.** In Colorado Revised Statutes, 12-280-139, **amend**
13 (4), (9), and (11); and **repeal** (1)(b) as follows:

14 **12-280-139. Insulin affordability program - record keeping -**
15 **reimbursement - definitions.** (1) As used in this section and section

1 12-280-140, unless the context otherwise requires:

2 (b) ~~"Division of insurance" means the division of insurance in the~~
3 ~~department of regulatory agencies, created in section 10-1-103.~~

4 (4) (a) ~~The division of insurance~~ BOARD shall develop an
5 application form to be used by an individual who is seeking insulin under
6 the program. The application form must require the individual to show
7 proof that the individual meets the requirements of subsection (3) of this
8 section.

9 (b) ~~The division of insurance and the department of health care~~
10 ~~policy and financing~~ BOARD shall make the application form available on
11 ~~each agency's~~ ITS website. ~~The division of insurance~~ BOARD shall also
12 make the application form available to pharmacies, health-care providers,
13 and health facilities that prescribe or dispense insulin.

14 (9) ~~The division of insurance and the department of health care~~
15 ~~policy and financing~~ BOARD shall promote the availability of the program
16 to Coloradans. The promotional material must include information about
17 each manufacturer's consumer insulin programs. ~~Each agency~~ THE BOARD
18 may seek and accept gifts, grants, and donations to fulfill the
19 requirements of this subsection (9).

20 (11) (a) A manufacturer that fails to comply with the requirements
21 of this section:

22 (I) Is subject to a fine ~~of ten thousand dollars for each month of~~
23 ~~noncompliance.~~ IN AN AMOUNT AND FREQUENCY THAT IS EQUAL TO THE
24 AMOUNT AND FREQUENCY OF THE FINE PERMITTED UNDER THE
25 "COLORADO CONSUMER PROTECTION ACT", PART 1 OF ARTICLE 1 OF TITLE
26 6; AND

27 (II) ENGAGES IN A DECEPTIVE TRADE PRACTICE UNDER SECTION

1 6-1-105 (1)(eeee).

2 (b) THE ATTORNEY GENERAL IS AUTHORIZED TO ENFORCE THIS
3 SECTION.

4 **SECTION 3.** In Colorado Revised Statutes, 12-280-140, **amend**
5 (9) as follows:

6 **12-280-140. Emergency prescription insulin supply - eligibility**
7 **- record keeping.** (9) (a) A manufacturer that fails to comply with the
8 requirements of this section:

9 (I) Is subject to a fine of ~~ten thousand dollars for each month of~~
10 ~~noncompliance.~~ IN AN AMOUNT AND FREQUENCY THAT IS EQUAL TO THE
11 AMOUNT AND FREQUENCY OF THE FINE PERMITTED UNDER THE
12 "COLORADO CONSUMER PROTECTION ACT", PART 1 OF ARTICLE 1 OF TITLE
13 6; AND

14 (II) ENGAGES IN A DECEPTIVE TRADE PRACTICE UNDER SECTION
15 6-1-105 (1)(eeee).

16 (b) THE ATTORNEY GENERAL IS AUTHORIZED TO ENFORCE THIS
17 SECTION.

18 **SECTION 4.** In Colorado Revised Statutes, 12-280-142, **amend**
19 (4), (6)(b)(II), (9), and (11); and **repeal** (1)(b) as follows:

20 **12-280-142. Epinephrine auto-injector affordability program**
21 **- record keeping - reimbursement - definitions.** (1) As used in this
22 section:

23 (b) ~~"Division of insurance" means the division of insurance in the~~
24 ~~department of regulatory agencies created in section 10-1-103.~~

25 (4) (a) ~~The division of insurance~~ BOARD shall develop an
26 EPINEPHRINE AUTO-INJECTOR AFFORDABILITY PROGRAM application form
27 to be used by an individual who is seeking epinephrine auto-injectors

1 through the program. ALL MANUFACTURERS SUBJECT TO THIS SECTION
2 SHALL PARTICIPATE IN THE PROGRAM. THE APPLICATION FORM MUST BE
3 AVAILABLE TO INDIVIDUALS, PHARMACIES, HEALTH-CARE PROVIDERS, AND
4 HEALTH FACILITIES THROUGH THE DIVISION'S WEBSITE AND MUST BE
5 ACCESSIBLE THROUGH A QUICK RESPONSE (QR) CODE OR OTHER
6 MACHINE-READABLE CODE. WITHIN A REASONABLE PERIOD OF TIME AFTER
7 THE PUBLICATION OF THE PROGRAM WEBSITE, ALL MANUFACTURERS
8 REQUIRED TO PARTICIPATE IN THE PROGRAM SHALL INCLUDE A LINK TO
9 THE PROGRAM WEBSITE ON THE MANUFACTURER'S CONSUMER
10 EPINEPHRINE AUTO-INJECTOR PROGRAM WEBSITE. At a minimum, the
11 application form must:

12 (I) Provide information related to program eligibility and coverage
13 in English, Spanish, and in each language spoken by at least two and
14 one-half percent of the population of any county in which such population
15 speaks English less than very well, as defined by the United States bureau
16 of the census American community survey or comparable census data,
17 and speaks a shared minority language at home; and

18 (II) Require the individual to ~~show proof~~ ATTEST that the
19 individual meets the requirements of subsection (3) of this section; AND

20 (III) INCLUDE THE INFORMATION REQUIRED FOR A PHARMACY TO
21 SUCCESSFULLY SUBMIT, PURSUANT TO SUBSECTION (8) OF THIS SECTION,
22 AN ELECTRONIC CLAIM FOR REIMBURSEMENT THAT IS MADE IN
23 ACCORDANCE WITH THE NATIONAL COUNCIL FOR PRESCRIPTION DRUG
24 PROGRAMS' STANDARDS FOR ELECTRONIC CLAIMS PROCESSING FOR THE
25 COST TO DISPENSE THE EPINEPHRINE AUTO-INJECTORS, ABOVE ANY
26 REQUIRED COST SHARING BY THE INDIVIDUAL AND ADJUDICATED AT THE
27 POINT OF SALE.

1 ~~(b) The division of insurance and the department of health care~~
2 ~~policy and financing shall make the application form available on each~~
3 ~~agency's website. The division of insurance shall also make the~~
4 ~~application form available to pharmacies, health-care providers, and~~
5 ~~health facilities that prescribe or dispense epinephrine auto-injectors~~
6 BOARD SHALL SUPPLY PHARMACIES WITH INFORMATION ABOUT THE
7 PROGRAM TO PROVIDE TO INDIVIDUALS WHO ARE SEEKING ACCESS TO THE
8 PROGRAM. THE INFORMATION MUST CONTAIN A QUICK RESPONSE (QR)
9 CODE OR OTHER MACHINE-READABLE CODE THAT AN INDIVIDUAL MAY USE
10 TO ACCESS THE PROGRAM APPLICATION AND INCLUDE INFORMATION ON
11 HOW TO SUBMIT A PROGRAM APPLICATION.

12 (6) (b) The pharmacist is encouraged to inform the individual:
13 (II) Of any manufacturer-sponsored programs that assist
14 individuals who cannot afford their prescription epinephrine
15 auto-injectors AND PROVIDE THE INDIVIDUAL WITH THE INFORMATION
16 DESCRIBED IN SUBSECTION (4)(b) OF THIS SECTION ABOUT THE
17 PROGRAM.

18 ~~(9) The division of insurance and the department of health care~~
19 ~~policy and financing~~ BOARD shall promote the availability of the program
20 to Coloradans. The promotional material must include information about
21 each manufacturer's consumer epinephrine auto-injector program, as
22 applicable. ~~Each agency~~ THE BOARD may seek and accept gifts, grants,
23 and donations to fulfill the requirements of this subsection (9).

24 (11) (a) A manufacturer that fails to comply with the requirements
25 of this section:

26 (a) (I) Is subject to a fine ~~of ten thousand dollars for each month~~
27 ~~of noncompliance.~~ IN AN AMOUNT AND FREQUENCY THAT IS EQUAL TO THE

1 AMOUNT AND FREQUENCY OF THE FINE PERMITTED UNDER THE
2 "COLORADO CONSUMER PROTECTION ACT", PART 1 OF ARTICLE 1 OF TITLE
3 6; and

4 ~~(b)~~ (II) Engages in a deceptive trade practice under section
5 6-1-105 (1)(zzz).

6 (b) THE ATTORNEY GENERAL IS AUTHORIZED TO ENFORCE THIS
7 SECTION.

8 **SECTION 5. Appropriation.** For the 2024-25 state fiscal year,
9 \$8,874 is appropriated to the department of regulatory agencies for use by
10 the division of professions and occupations. This appropriation is from
11 the division of professions and occupations cash fund created in section
12 12-20-105 (3), C.R.S., and is based on an assumption that the division
13 will require an additional 0.2 FTE. To implement this act, the division
14 may use this appropriation for personal services.

15 **SECTION 6. Safety clause.** The general assembly finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety or for appropriations for
18 the support and maintenance of the departments of the state and state
19 institutions.