



July 8, 2022

The Honorable Kathy Hochul  
Governor of State of New York  
NYS State Building  
Albany, NY 12224

Dear Governor Hochul,

On behalf of National Taxpayers Union (NTU), the oldest taxpayer advocacy organization in the country, we respectfully request that you veto S3081B - the so-called prescription drug “price-gouging” bill. At a time when citizens across the country are struggling to make ends meet in a post-pandemic economy, it is understandable that a bill such as this would seem appealing. Upon careful consideration, however, we hope you will realize that instead of helping the good citizens of your state, this bill is likely to lead to less market competition and fewer consumer choices and options.

A significant problem with S3081B lies in the extreme ambiguity of the definition of price-gouging. Whether intentional or not, this lack of clarity virtually guarantees this legislation will end up in the hands of the courts soon after becoming law. Specifically, the bill states “no manufacturer, supplier, wholesaler, distributor, or retail seller of any drug subject to a shortage shall sell or offer to sell any such drug for an amount which represents an unconscionably excessive price,” but the bill does not define “unconscionably excessive.” Instead, the bill explicitly states that this determination will be made by a court.

Additionally, the bill gives the New York Attorney General unfettered power to impose civil penalties up to three times the gross receipts for a drug deemed unconscionably excessive. Taken together, the vague definition that will be used, and the increased risks and liabilities to companies that manufacture, distribute and sell important life-saving drugs, there is no doubt in our minds that S3081B will negatively impact the citizens in your state by stifling pharmaceutical innovation and depressing the growth of a competitive marketplace - one that would truly lower consumer costs.

A final and very significant reason why we urge you to veto this bill is that it violates the Dormant Commerce Clause of the U.S. Constitution. The bill seeks to regulate trade beyond the borders of the state of New York. The state of Maryland learned this first-hand after passing a nearly identical bill in 2017. Shortly thereafter, the U.S. Court of Appeals for the Fourth Circuit declared the law unconstitutional because it regulated trade outside of Maryland. Further, in 2019 the U.S. Supreme Court denied an appeal by Maryland's Attorney General to uphold the state law.

We at NTU recognize the challenges you and lawmakers face as you try to lower prescription drug prices and reduce out-of-pocket costs for New Yorkers. As such, we strongly believe S3081B will worsen the medication shortage situation in your state and lead to fewer consumer choices. The vast majority of drugs on the shortage list are generics and biosimilars - drugs that are prone to shortages due to market conditions and poor reimbursement rates. During these uncertain economic times, when families are already experiencing shortages in food, baby formula, and other important consumer needs, the last thing New Yorkers should face is limited access to the medications they and their families depend on to maintain their health and well-being.

Thank you for taking the time to consider our perspective on this bill. We hope you will stand with the patients and taxpayers of New York and oppose this legislation. Please feel free to contact us if you have any questions.

Sincerely,

Leah Vukmir  
Vice President of State Affairs

Jessica Ward  
Director of State Affairs

