



Your Generics & Biosimilars Industry

February 28, 2025

Assemblymember Elaine Marzola
Chair, Assembly Commerce and Labor Committee
Nevada State Assembly
401 South Carson Street
Carson City, Nevada 89701-4747

Dear Assemblymember Marzola,

The Association for Accessible Medicines (“AAM”) is the leading trade association for manufacturers of generic and biosimilar prescription medicines. AAM’s core mission is to improve the lives of patients by advancing timely access to affordable, FDA-approved generic and biosimilar medicines.

AAM respectfully opposes Assembly Bill 44 (“AB 44”) as drafted. AB 44 would amend Nevada’s existing unfair trade practices law to prohibit “[m]anipulating the price of an essential good or service in this State.” AB 44 § 598A.060(1)(f). Specifically, the bill would prohibit any entity—either “alone or in concert with others”—from “caus[ing] the price of an essential good or service in this State” to “increase in a manner that does not reflect basic forces of supply and demand” through “any fraudulent or deceptive conduct.” AB 44 § 598A.060(1)(f). “Essential good or service” encompasses “any good or service ... [t]hat is needed on a daily or recurring basis for the livelihood of a person,” including “medicine.” AB 44 § 598A.060(3)(a). A proposed amendment to AB 44 would redefine “essential good or service” to explicitly include “pharmaceutical and other medical products....” AB 44 – AG Proposed Revisions (Feb. 17, 2025).

AAM recognizes the need to address prescription drug prices and supports efforts to suppress truly unfair or deceptive trade practices. However, AB 44 is neither a permissible nor a prudent solution to those problems.

First, applying AB 44 to out-of-state pricing decisions is unconstitutional. The dormant Commerce Clause prohibits States from legislating in ways that regulate or discriminate against interstate commerce. *Okla. Tax Comm’n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995). This doctrine prohibits state laws that “directly affect[] transactions that take place across state lines or entirely outside of the state’s borders.” *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 614, 616 (9th Cir. 2018) (invalidating California law that regulated the treatment of medical waste outside California because “California has attempted to regulate waste treatment everywhere in the country”); see also, e.g., *Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1324 (9th Cir. 2015) (holding unconstitutional state law regulating out-of-state art sales because the law “directly regulates the conduct of the seller or the seller’s agent for a transaction that occurs wholly outside the State”). A law that directly regulates out-of-state commerce is “a per se violation of the Commerce Clause.” *Daniels Sharpsmart, Inc.*, 889 F.3d at 616.

AB 44 violates this prohibition. The bill is not limited to actions taken *in Nevada* that cause a price increase in the State; rather, it would prohibit actions that are “intended to and do[] cause”—directly or indirectly—“the price of an essential good or service in this State ... to increase.” AB 44 § 598A.060(1)(f). For example, an out-of-state generic manufacturer that increased the wholesale acquisition cost (“WAC”) of its generic medicine could violate AB 44 if its out-of-state WAC increase “cause[d]” the price of its generic medicine “to increase” when it is resold into Nevada in a transaction between third parties. AB 44 § 598A.060(1)(f). Thus, AB 44 directly regulates wholly out-of-state pricing decisions.

Courts have consistently applied the Commerce Clause to strike down state laws that regulated generic manufacturers’ out-of-state pricing decisions or other out-of-state conduct. See *Association for Accessible Medicines v. Bonta*, --- F. Supp. 3d ---, 2025 WL 489713, at *7-11 (E.D. Cal. Feb. 13, 2025); *Association for Accessible Medicines v. Ellison*, 704 F. Supp. 3d 947, 951-55 (D. Minn. 2023); *Ass’n for Accessible Meds. v. Frosh*, 887 F.3d 664, 666, 670-72 (4th Cir. 2018); *Healthcare Distrib. All. v. Zucker*, 353 F. Supp. 3d 235, 246, 261-62 (S.D.N.Y. 2018), *rev’d in part on other grounds sub nom. Ass’n for Accessible Meds. v. James*, 974 F.3d 216 (2d Cir. 2020); *Pharmaceutical Research & Manufacturers of America v. District of Columbia*, 406 F. Supp. 2d 56, 60, 68-70 (D.D.C. 2005), *aff’d sub nom. Biotechnology Industry Organization v. District of Columbia*, 496 F.3d 1362 (Fed. Cir. 2007); *Pharm. Rsch. & Mfrs. of Am. v. Comm’r, Maine Dep’t of Hum. Servs.*, 2000 WL 34290605, at *2 (D. Me. Oct. 26, 2000), *rev’d on other grounds sub nom. Pharm. Rsch. & Mfrs. of Am. v. Concannon*, 249 F.3d 66 (1st Cir. 2001). AB 44 is unconstitutional for the same reason.

Second, AB 44 is bad policy. Although AB 44 is limited to price increases from “fraudulent or deceptive conduct,” this limitation is unlikely to protect generic and biosimilar medicines from being targeted by burdensome and meritless lawsuits resulting from the legislation’s new prohibition. Critically, Nevada law creates a private right of action for persons who are “threatened with” or have incurred “injury or damage to his or her business or property” because of an unfair trade practice. See Nev. Rev. Stat. Ann. § 598A.210(1)-(2). In addition to authorizing injunctive relief, the law allows private plaintiffs to recover “restitution or disgorgement,” and entitles a prevailing private plaintiff to recover “treble damages” and “attorneys’ fees. *Id.* § 598A.210(2). These strong incentives for private-plaintiff lawsuits create a substantial risk that AB 44, if it were to become law, would spur a wave of baseless lawsuits against generic and biosimilar manufacturers based on their pricing decisions. That risk is made more acute by the complex pricing structures that are characteristic of the pharmaceutical industry. Private plaintiffs motivated by the prospect of treble damages would undoubtedly seek to capitalize on that complexity as a way to label “deceptive” what are in reality legitimate price increases by generic manufacturers.

Ultimately, if AB 44 were to become law as written, the impact would be to make it *more* expensive and difficult for manufacturers to bring life-saving and affordable generic and biosimilar medicines to patients in Nevada, directly undermining the very goal AB 44 is intended to advance.

Sincerely,



Brett Michelin
Senior Director, State Government Affairs
Association for Accessible Medicines

cc: Attorney General Ford
Assembly Commerce and Labor Committee