

2016

State Prescription Drug Purchases. Pricing Standards. Initiative Statute.

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PROPOSITION **61** STATE PRESCRIPTION DRUG PURCHASES. PRICING STANDARDS. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Prohibits state agencies from buying any prescription drug from a drug manufacturer at any price over the lowest price paid for the same drug by the United States Department of Veterans Affairs, except as may be required by federal law.
- Applies to any program where the state agency is the ultimate payer for a prescription drug, even if the state agency does not itself buy the drug.
- Exempts purchases of prescription drugs

under managed care programs funded through Medi-Cal.

SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Potential for state savings of an unknown amount depending on (1) how the measure’s implementation challenges are addressed and (2) the responses of drug manufacturers regarding the provision and pricing of their drugs.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

The State Payments for Prescription Drugs

State Pays for Prescription Drugs Under Many Different State Programs. Typically, the state pays for prescription drugs under programs that provide health care or health insurance to certain state populations. For example, the state pays for prescription drugs through the health care coverage it provides to the state’s low-income residents through the Medi-Cal program and to current and retired state employees. The state also provides and pays for the health care of prison inmates, including their prescription drug costs.

State Pays for Prescription Drugs in a Variety of Ways.

In some cases, the state purchases prescription drugs directly from drug manufacturers. In other cases, the state pays for prescription drugs even though it is not the direct purchaser of them. For example, the state reimburses retail pharmacies for the cost of prescription drugs

purchased by the pharmacies and dispensed to individuals enrolled in certain state programs.

Annual State Drug Expenditures Totaled Almost \$3.8 Billion in 2014–15. As shown in Figure 1, the state spent almost \$3.8 billion on prescription drugs in 2014–15 under a variety of state programs. State funds pay for roughly half of overall state prescription drug spending, and the remainder is paid with federal and other nonstate revenues.

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Figure 1

Annual State Drug Spending^a

2014–15, All Fund Sources

Agency/Program	Population Served	Drug Spending ^b (In Millions)
Medi-Cal	State’s low-income residents	\$1,809 ^c
Public Employees’ Retirement System	Public employees, dependents, and retirees	1,328 ^d
University of California	Students, clinics, and hospital patients	334
Corrections	Inmates	211
Public Health	Underinsured individuals who are HIV-positive	57
State Hospitals	State hospital patients	35
Developmental Services	Developmental center residents	8
California State University	Students	4
Total		\$3,786

^a Figure excludes some state agencies or programs with relatively small prescription drug spending amounts.

^b Amounts listed generally account for any discounts or rebates that lower the agencies’ or programs’ prescription drug spending.

^c Amount does not include Medi-Cal managed care drug spending.

^d Amount excludes expenditures on behalf of local public employees.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Prescription Drug Pricing in General

Prices Actually Paid Often Differ From the Drugs' "List Prices." Prescription drugs sold in the United States have list prices that are similar to the manufacturer's suggested retail price (MSRP) for automobiles. Purchasers of the drugs typically negotiate the prices and often receive discounts. As a result, the final price paid for a prescription drug is typically lower than its list price.

Different Payers Often Pay Different Prices for the Same Prescription Drug. Often there is no single price paid by all payers for a particular prescription drug. Instead, different payers may regularly pay different prices for the same drug, which reflects the results of negotiations between the drugs' buyers and sellers. For example, two different insurance companies may pay different prices for the same drug, as may two separate state agencies such as the California Department of Health Care Services (DHCS) and the California Department of Public Health.

Prices Paid for Prescription Drugs Are Often Subject to Confidentiality Agreements. Prescription drug purchase agreements often contain confidentiality clauses that are intended to prohibit public disclosure of the agreed prices. As a result, the prescription drug prices paid by a particular entity, including a government agency, may be unavailable to the public.

State Prescription Drug Pricing

State Strategies to Reduce Prescription Drug Prices. California state agencies pursue a variety of strategies to reduce the prices they pay for prescription drugs, which typically involve negotiating with drug manufacturers and wholesalers. The particular strategies vary depending on program structure and the manner in which the state programs pay for drugs. For example, multiple California state departments jointly negotiate drug prices with manufacturers. By negotiating as a single, larger entity, the participating state departments are able to obtain lower drug prices. Another state strategy is to negotiate discounts from drug manufacturers in exchange for reducing the overall administrative burden on doctors prescribing these manufacturers' drugs.

United States Department of Veterans Affairs (VA) Prescription Drug Pricing

VA Provides Health Care to Veterans. The VA provides comprehensive health care to approximately nine million veterans nationwide. In doing so, the VA generally purchases the prescription drugs that it makes available to VA health care beneficiaries.

Programs to Reduce Federal Prescription Drug Expenditures. The federal government has established discount programs that place upper limits on the prices paid for prescription drugs by selected federal payers, including the VA. These programs generally result in lower prices than those available to private payers.

VA Obtains Additional Discounts From Drug Manufacturers or Sellers. On top of the federal discount programs described above, the VA often negotiates additional discounts from drug manufacturers or sellers that lower its prices below what other federal departments pay. Manufacturers or sellers provide these discounts in return for their drugs being made readily available to VA patients.

VA Publishes Some of Its Prescription Drug Pricing Information. The VA maintains a public database that lists the prices paid by the VA for most of the prescription drugs it purchases. According to the VA, however, the database may not display the lowest prices paid for some of the drugs for which the VA obtains additional negotiated discounts. The VA may not publish this pricing information in the database due to confidentiality clauses that are included in certain drugs' purchase agreements and are intended to prohibit public disclosure of the negotiated prices.

PROPOSAL

Measure Sets an Upper Limit on Amount State Can Pay for Prescription Drugs. This measure generally prohibits state agencies from paying more for a prescription drug than the lowest price paid by the VA for the same drug after all discounts are factored in for both California state agencies and the VA.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Measure Applies Whenever the State Is the Payer of Prescription Drugs. The measure's upper limit on state prescription drug prices applies regardless of how the state pays for the prescription drugs. It applies, for example, whether the state purchases prescription drugs directly from a manufacturer or instead reimburses pharmacies for the drugs they provide to enrollees of state programs.

Measure Exempts a Portion of the State's Largest Health Care Program From Its Drug Pricing Requirements. The state's Medi-Cal program offers comprehensive health coverage to the state's low-income residents. The state operates Medi-Cal under two distinct service delivery systems: the fee-for-service system (which serves approximately 25 percent of Medi-Cal enrollees) and the managed care system (which serves approximately 75 percent of enrollees). While the measure applies to the fee-for-service system, it exempts the managed care system from its drug pricing requirements described above.

DHCS Required to Verify That State Agencies Are Complying With Measure's Drug Pricing Requirements. The measure requires DHCS to verify that state agencies are paying the same or less than the lowest price paid by the VA on a drug-by-drug basis.

the prices of the prescription drugs it purchases does not *always* identify the lowest prices the VA pays. This is because, at least for some drugs, the VA has negotiated a lower price than that shown in the public database and is keeping that pricing information confidential. It is uncertain whether the VA could be nonetheless required to disclose these lower prices to an entity—such as DHCS—requesting such information under a federal Freedom of Information Act (FOIA) request. A FOIA exemption covering trade secrets and financial information may apply to prevent the VA from having to disclose these currently confidential prices to the state.

Confidentiality of VA Drug Prices Could Compromise the State's Ability to Implement the Measure. If the VA is legally allowed to keep some of its prescription drug pricing information confidential, DHCS would be unable to assess in all cases whether state agencies are paying less than or equal to the lowest price paid by the VA for the same drug. This would limit the state's ability to implement the measure as it is written. However, to address challenges in implementing laws, courts sometimes grant state agencies latitude to implement laws to the degree that is practicable as long as implementation is consistent with the laws' intent. For example, courts might allow the state to pay for drugs at a price not exceeding the lowest *known* price paid by the VA, rather than the actual lowest price, to allow the measure to be implemented.

Potential Confidentiality of Lowest VA Drug Prices Reduces but Does Not Eliminate Potential State Savings. The potential confidentiality of at least some of the lowest VA prices reduces but does not eliminate the measure's potential to generate savings related to state prescription drug spending. Though pricing information may be unavailable for some of the VA's lowest-priced prescription drugs, publicly available VA drug prices have historically been lower than the prices paid by some California state agencies for some drugs. To the extent that the VA's publicly available drug prices for particular drugs are lower than those paid by California state agencies and manufacturers choose to offer these prices to the state, the measure would help the state achieve prescription drug-related savings.

FISCAL EFFECTS

By prohibiting the state from paying more for a prescription drug than the lowest price paid by the VA, there is the potential for the state to realize reductions in its drug costs. There are, however, major uncertainties concerning (1) the implementation of the measure's lowest-cost requirement and (2) how drug manufacturers would respond in the market. We discuss these concerns below.

Potential Implementation Challenges Create Fiscal Uncertainty

Some VA Drug Pricing Information May Not Be Publicly Accessible. The measure generally requires that the prescription drug prices paid by the state not exceed the lowest prices paid by the VA on a drug-by-drug basis. As mentioned above, the VA's public database information on

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

**Potential Drug Manufacturer Responses
Limit Potential Savings**

Drug Manufacturer Responses Under Measure Could Significantly Affect Fiscal Impact. In order to maintain similar levels of profits on their products, drug manufacturers would likely take actions that mitigate the impact of the measure. A key reason why drug manufacturers might take actions in response to the measure relates to how federal law regulates state Medicaid programs' prescription drug prices. (Medi-Cal is California's Medicaid program.) Federal law entitles all state Medicaid programs to the lowest prescription drug prices available to most public and private payers in the United States (excluding certain payers, such as the VA). If certain California state agencies receive VA prices, as the measure intends, this would set new prescription drug price limits at VA prices for *all* state Medicaid programs. As a result, the measure could extend the VA's favorable drug prices to health programs serving tens of millions of additional people nationwide, placing added pressure on drug manufacturers to take actions to protect their profits under the measure.

Below are two possible manufacturer responses. (We note that manufacturers might ultimately pursue both strategies, while at the same time offering some drugs at favorable VA prices.)

- ***Drug Manufacturers Might Raise VA Drug Prices.*** Knowing that the measure makes VA prices the upper limit for what the state can pay, drug manufacturers might choose to raise VA drug prices. This would allow drug manufacturers to continue to offer prescription drugs to state agencies while minimizing any reductions to their profits. Should manufacturers respond in this manner, potential savings related to state prescription drug spending would be reduced.
- ***Drug Manufacturers Might Decline to Offer Lowest VA Prices to the State for Some Drugs.*** The measure places no requirement on drug manufacturers to offer prescription drugs to the state at the lowest VA prices. Rather, the measure restricts actions that the *state* can take (namely, prohibiting the

state from paying more than the lowest VA prices for prescription drugs). Therefore, if manufacturers decide it is in their interest not to extend the VA's favorable pricing to California state agencies (for example, to avoid consequences such as those described above), drug manufacturers could decline to offer the state some drugs purchased by the VA. In such cases, these drugs would be unavailable to most state payers. Instead, the state would be limited to paying for drugs that either the VA does not purchase or drugs that manufacturers will offer at the lowest VA prices. (However, to comply with federal law, Medi-Cal might have to disregard the measure's price limits and pay for prescription drugs regardless of whether manufacturers offer their drugs at or below VA prices.) This manufacturer response could reduce potential state savings under the measure since it might limit the drugs the state can pay for to those that, while meeting the measure's price requirements, are actually more expensive than those currently paid for by the state.

Summary of Overall Fiscal Effect

As discussed above, if adopted, the measure could generate annual state savings. However, the amount of any savings is highly uncertain as it would depend on (1) how the measure's implementation challenges are addressed and (2) the uncertain market responses of drug manufacturers to the measure. As a result, the fiscal impact of this measure on the state is unknown. It could range from relatively little effect to significant annual savings. For example, if the measure lowered total state prescription drug spending by even a few percent, it would result in state savings in the high tens of millions of dollars annually.

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee's top 10 contributors.

★ ARGUMENT IN FAVOR OF PROPOSITION 61 ★

Drug companies making enormous profits from people's illnesses and misery isn't just a moral issue. Skyrocketing prescription drug prices are a matter of life and death. More Americans die of hepatitis C than from all other infectious diseases—EVEN THOUGH THERE'S A CURE. One reason? The drug company that controls it charges *more than \$1,000 per pill*, out of most patients' reach. That's not the only outrageous example of drug-company price-gouging:

- The price of a common infection-fighting pill was raised overnight from \$13.50 to \$750—*nearly a 5000% increase*.
- *The average annual cost of widely-used specialty drugs is estimated at \$53,000*—greater than the nation's median household income (\$52,000) and almost 3 1/2 times larger than average annual Social Security benefits of \$15,000.
- One cancer drug costs *\$300,000 a year*.

The drug companies put profits over people, returns for stockholders over cures for patients. What good are miraculous, life-saving medications, if they're priced so high patients can't afford them—and thousands are dying as a result?

Proposition 61, The California Drug Price Relief Act, fights back against the drug companies' price-gouging. And it is expected to save lives. Here's how it would work: The Act would require the State of California to negotiate with drug companies for prices that are no more than the amounts paid for the same drugs by the U.S. Dept. of Veterans Affairs (DVA).

Why the Dept. of Veterans Affairs? Because unlike Medicare, the DVA negotiates for drug prices, and pays on average 20–24% less for medications than other government agencies, up to 40% less than Medicare Part D. The Drug Price Relief Act empowers the State of California, as the healthcare buyer for millions of Californians, to negotiate the same or even better deals for taxpayers, which could save billions in healthcare costs.

Drug companies are planning to spend \$100 million to fight this measure *because they know it would cause downward pressure on ALL drug prices*—and cut into their excessive profits.

Don't just take our word for it, a publication for drug executives called Prop. 61 "*GROUND ZERO*" in the national fight for lower drug prices, warning:

"If the voters of California approve this proposition . . . [it] would no doubt cause an immediate demand for the same VA discount rate to be made available to other states, the federal government, and likely private [health plan] entities, as well. *IN SHORT [IT] WOULD BE A PRICING DISASTER FOR THE ENTIRE U.S. DRUG INDUSTRY.*"

But a "pricing disaster" for drug companies would equal price relief for hard-pressed consumers.

Prop. 61 is strongly supported by the 86,000-member California Nurses Association—the largest healthcare-provider organization in the state; AARP, the largest retirees' group in California, with 3.3 million members; the Urban League; the Campaign for a Healthy California, including many labor unions; Progressive Democrats of America; Sen. Bernie Sanders; former U.S. Labor Secretary Robert Reich; and many others.

JOIN US IN FIGHTING AGAINST HIGH DRUG PRICES AND DRUG COMPANY GREED. VOTE YES ON PROPOSITION 61. For more information, go to www.StopPharmaGreed.com.

ZENEI CORTEZ, RN, Co-President
California Nurses Association/National Nurses Organizing Committee

NANCY McPHERSON, State Director
AARP California

SENATOR ART TORRES (Ret.), Chair
California Democratic Party (1996–2009)

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★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 61 ★

Leading experts have rejected proponents' claim that Prop. 61 would somehow reduce drug prices. In fact, EXPERTS WARN PROP. 61 WILL INCREASE DRUG PRICES.

The *California Medical Association*, the state's foremost medical organization representing 41,000 doctors, says:

"While California's physicians are profoundly concerned about the affordability of prescription drugs, we evaluated this measure and have concluded it is deeply flawed and unworkable. We believe the measure would likely increase—not lower—state prescription drug costs."

The highly-respected, independent *California State Legislative Analyst* says Prop. 61 *"could raise (state) spending on prescription drugs."*

The *California Taxpayers Association* opposes Prop. 61 because it would impose new bureaucracy and red tape, and cause countless lawsuits—COSTING TAXPAYERS MILLIONS.

The *Veterans of Foreign Wars (VFW)*, Department of California urges NO on 61 because it could jeopardize special discounts given to the U.S. Department of Veterans Affairs and INCREASE DRUG PRICES FOR VETERANS.

Who's behind this measure?

Prop. 61 was written by Michael Weinstein, president of

an organization that brings in \$1 billion annually selling prescription drugs and operating HMOs. His group is spending millions to fund the campaign. But he exempted his own organization from its drug pricing provisions. He shouldn't ask Californians to approve a flawed initiative he isn't willing to comply with himself.

Prop. 61 is OPPOSED BY MORE THAN 100 CALIFORNIA ORGANIZATIONS, including:

- Vietnam Veterans of America, California State Council
- California Taxpayers Association • Veterans of Foreign Wars (VFW), Dept. of California • California NAACP
- American Congress of Obstetricians and Gynecologists (ACOG)—District IX/CA • California Medical Association

Prop. 61 is deeply flawed and costly. Vote NO.

www.NoProp61.com

STEVE MACKEY, President
Vietnam Veterans of America, California State Council

WILLIAM M. REMAK, Chairman
California Hepatitis C Task Force

ALICE A. HUFFMAN, President
California NAACP

★ ARGUMENT AGAINST PROPOSITION 61 ★

Proposition 61 is a deeply flawed and costly scheme that is not what it seems.

Prop. 61 was written and is being promoted by Michael Weinstein, the controversial president of an organization that brought in more than \$1 billion selling prescription drugs and HMO policies. Suspiciously, he exempted his own HMO from having to comply with the measure he wrote and is promoting.

- The *Veterans of Foreign Wars, Department of California* warns Prop. 61 would harm veterans.
- The *California Medical Association*, representing 41,000 doctors, warns Prop. 61 would reduce patient access to medicines.
- The *California Taxpayers Association* warns Prop. 61 would impose new bureaucracy, red tape and lawsuits—costing taxpayers millions.

PROP. 61 DOES NOT APPLY TO 88% OF CALIFORNIANS. BUT IT NEGATIVELY IMPACTS ALL CALIFORNIANS

The proposition only covers an arbitrary group of patients in certain state government programs, including some government employees and state prisoners. More than 88% of Californians are excluded. More than 10 million Medi-Cal low-income patients, 20 million Californians with private health insurance and Medicare, and millions of others—*ALL EXCLUDED*.

PROP. 61 COULD INCREASE PRESCRIPTION DRUG COSTS FOR VETERANS

The US Department of Veterans Affairs receives special discounts on prescription drugs for veterans. This measure could result in eliminating these discounts and increasing prescription drug prices for veterans. That's why the measure is opposed by more than a dozen veteran groups, including:

- *Veterans of Foreign Wars, Department of California*
- *Vietnam Veterans of America, California State Council*
- *American Legion, Department of California*
- *AMVETS, Department of California*

DOCTORS AND PATIENT ADVOCATES SAY PROP. 61 WOULD DISRUPT ACCESS TO NEEDED MEDICINES

Prop. 61 would result in a new bureaucratic prior approval process

that would interfere with patient access to needed medicines.

Leading health groups oppose Prop. 61, including:

- *California Medical Association* • *American Congress of Obstetricians and Gynecologists (ACOG)—District IX/CA*
- *Ovarian Cancer Coalition of Greater California*

PROP. 61 WOULD LIKELY INCREASE STATE PRESCRIPTION DRUG COSTS

Prop. 61 would result in the elimination of drug discounts the state currently receives—increasing state prescription costs by tens of millions annually. The state's nonpartisan Legislative Analyst says the measure could raise state spending on many prescription drugs.

INCREASED BUREAUCRACY, RED TAPE AND HIGHER TAXPAYER COSTS

The California Taxpayers Association opposes Prop. 61. The measure is completely vague on how it would be implemented. Passage of this measure would result in more government bureaucracy, red tape and lawsuits as state agencies struggle to implement it—costing taxpayers millions.

PROMOTER WROTE IN SPECIAL PROVISIONS FOR HIS OWN ORGANIZATION

The proponent exempted his billion dollar operation and wrote in provisions giving him a special right to engage in lawsuits regarding this measure. This provision requires California taxpayers to pay his lawyers—a virtual blank check.

Proposition 61 is yet another example of a misleading and costly ballot measure. It would hurt veterans; jeopardize patient access to needed medicines; increase state prescription costs; and add more bureaucracy, red tape and lawsuits—costing taxpayers millions.

JOIN VETERANS, DOCTORS, PATIENT ADVOCATES, TAXPAYER GROUPS: NO on 61.

www.NoProp61.com

DALE SMITH, Commander

Veterans of Foreign Wars, Department of California

RANDY MUNOZ, Vice Chair, Latino Diabetes Association

GAIL NICKERSON, President

California Association of Rural Health Clinics

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 61 ★

The drug companies want you to believe they're opposing Prop. 61 because it wouldn't cover every drug purchase in California. That's as laughable as the NRA saying it opposes an assault-weapons ban because it doesn't cover enough different kinds of guns.

THE DRUG COMPANIES ARE ONLY CONCERNED ABOUT MAINTAINING THEIR EXORBITANT PRICES AND PROFITS, PURE AND SIMPLE!

Don't be fooled by their expected \$100-million campaign of distortion and mistruths. Voting against 61 only allows the drug companies to continue ripping off you and your family. Despite what they're telling voters, there's a reason the No on Prop. 61 campaign is FUNDED ALMOST ENTIRELY BY OUT-OF-STATE DRUG COMPANIES. Here's what drugmakers are telling themselves, in publications like *Pharmaceutical Executive*:

"It's pretty clear that if this California pricing proposition passes, ALL HELL MAY BREAK LOOSE FOR THE AMERICAN PHARMACEUTICAL INDUSTRY . . . It would shake the rafters of every single public state drug program in the nation, as well as the federal Medicaid and Medicare programs."

Drug companies are also unpatriotically threatening to raise drug prices for veterans, BUT THAT'S ANOTHER EMPTY THREAT. Federal law REQUIRES discounts for the Dept. of Veterans Affairs, drug companies aren't selling reduced-price drugs to veterans out of the goodness of their hearts.

Support Prop. 61 along with:

- California Nurses Association • AARP California • The Urban League • AIDS Healthcare Foundation • VoteVets Action Fund • Association of Asian Pacific Community Health Organizations • Progressive Democrats of America
- ONLY PROPOSITION 61 ALLOWS ORDINARY CITIZENS TO FIGHT BACK AGAINST DRUG COMPANY POWER AND GREED.** www.StopPharmaGreed.com.

OTTO O. YANG, M.D., Scientific Director
AIDS Healthcare Foundation

CAPTAIN SHAWN TERRIS (Ret.), Chair
California Democratic Party Veterans Caucus

NOLAN V. ROLLINS, President
Los Angeles Urban League/California Association of Urban Leagues

(p) “Person” means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(q) “Sexually Transmitted Infection” or “STI” means any infection or disease spread by sexual intercourse, including, but not limited to, HIV/AIDS, gonorrhea, syphilis, chlamydia, hepatitis, trichomoniasis, genital human papillomavirus infection (HPV), and genital herpes.

SEC. 5. Liberal Construction.

This Act is an exercise of the public power of the people of the State of California for the protection of their health, safety, and welfare, and shall be liberally construed to effectuate its purposes.

SEC. 6. Conflicting Measures.

This Act is intended to be comprehensive. It is the intent of the people of the State of California that in the event this Act and one or more measures relating to the same subject shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this Act. In the event that this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

SEC. 7. Proponent Accountability.

The people of the State of California hereby declare that the proponent of this Act should be held civilly liable in the event this Act is struck down, after passage, in whole or in part, by a court for being constitutionally or statutorily impermissible. Such a constitutionally or statutorily impermissible initiative is a misuse of taxpayer funds and electoral resources and the Act’s proponent, as the drafter of the Act, must be held accountable for such an occurrence.

In the event this Act, after passage, is struck down in court, in whole or in part, as unconstitutional or statutorily invalid, and all avenues for appealing and overturning the court decision have been exhausted, the proponent shall pay a civil penalty of \$10,000 to the General Fund of the State of California for failure to draft a wholly constitutionally or statutorily permissible initiative law. No party or entity may waive this civil penalty.

SEC. 8. Amendment and Repeal.

This Act may be amended to further its purposes by statute passed by a two-thirds (2/3) vote of the Legislature and signed by the Governor.

SEC. 9. Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

SEC. 10. Legal Defense.

The people of the State of California desire that the Act, if approved by the voters, and thereafter challenged in court, be defended by the State of California. The people of the State of California, by enacting this Act, hereby declare that the proponent of this Act has a direct and personal

stake in defending this Act from constitutional or statutory challenges to the Act’s validity. In the event the Attorney General fails to defend this Act; or the Attorney General fails to appeal an adverse judgment against the constitutionality or statutory permissibility of this Act, in whole or in part, in any court, the Act’s proponent shall be entitled to assert his direct and personal stake by defending the Act’s validity in any court and shall be empowered by the citizens through this Act to act as an agent of the citizens of the State of California subject to the following conditions: (1) the proponent shall not be considered an “at-will” employee of the State of California, but the Legislature shall have the authority to remove the proponent from his agency role by a majority vote of each house of the Legislature when “good cause” exists to do so, as that term is defined by California case law; (2) the proponent shall take the Oath of Office under Section 3 of Article XX of the California Constitution, as an employee of the State of California; (3) the proponent shall be subject to all fiduciary, ethical, and legal duties prescribed by law; and (4) the proponent shall be indemnified by the State of California for only reasonable expenses and other losses incurred by the proponent, as agent, in defending the validity of the challenged Act. The rate of indemnification shall be no more than the amount it would cost the State to perform the defense itself.

SEC. 11. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters.

PROPOSITION 61

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the Welfare and Institutions Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The California Drug Price Relief Act

The people of the State of California do hereby ordain as follows:

SECTION 1. Title.

This Act shall be known, and may be cited, as “The California Drug Price Relief Act” (the “Act”).

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

(a) Prescription drug costs have been, and continue to be, one of the greatest drivers of rising health care costs in California.

(b) Nationally, prescription drug spending increased more than 800 percent between 1990 and 2013, making it one of the fastest growing segments of health care.

(c) Spending on specialty medications, such as those used to treat HIV/AIDS, Hepatitis C, and cancer, are rising faster than other types of medications. In 2014 alone, total spending on specialty medications increased by more than 23 percent.

(d) The pharmaceutical industry’s practice of charging inflated drug prices has resulted in pharmaceutical

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company profits exceeding those of even the oil and investment banking industries.

(e) Inflated drug pricing has led to drug companies lavishing excessive pay on their executives.

(f) Excessively priced drugs continue to be an unnecessary burden on California taxpayers that ultimately results in cuts to health care services and providers for people in need.

(g) Although California has engaged in efforts to reduce prescription drug costs through rebates, drug manufacturers are still able to charge the state more than other government payers for the same medications, resulting in a dramatic imbalance that must be rectified.

(h) If California is able to pay the same prices for prescription drugs as the amounts paid by the United States Department of Veterans Affairs, it would result in significant savings to California and its taxpayers. This Act is necessary and appropriate to address these public concerns.

SEC. 3. Purposes and Intent.

The people of the State of California hereby declare the following purposes and intent in enacting this Act:

(a) To enable the State of California to pay the same prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs, thus rectifying the imbalance among government payers.

(b) To enable significant cost savings to California and its taxpayers for prescription drugs, thus helping to stem the tide of rising health care costs in California.

(c) To provide for the Act's proper legal defense should it be adopted and thereafter challenged in court.

SEC. 4. The California Drug Price Relief Act shall be codified by adding Section 14105.32 to the Welfare and Institutions Code, to read:

14105.32. Drug Pricing.

(a) Notwithstanding any other provision of law and insofar as may be permissible under federal law, neither the State of California, nor any state administrative agency or other state entity, including, but not limited to, the State Department of Health Care Services, shall enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, or any other discounts or credits, as determined by the State Department of Health Care Services, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

(b) The price ceiling described in subdivision (a) also shall apply to all programs where the State of California or any state administrative agency or other state entity is the ultimate payer for the drug, even if it did not purchase the drug directly. This includes, but is not limited to, California's Medi-Cal fee-for-service outpatient drug program and California's AIDS Drug Assistance Program. In addition to agreements for any cash discounts, free goods, volume discounts, rebates, or any other discounts or credits already in place for these programs, the responsible state agency shall enter into additional agreements with drug manufacturers for further price reductions so that the net cost of the drug, as determined by the State Department of Health Care Services, is the same as or less than the lowest price paid for the same

drug by the United States Department of Veterans Affairs. The requirements of this section shall not be applicable to drugs purchased or procured, or rates developed, pursuant to or under any Medi-Cal managed care program.

(c) It is the intent of the people of the State of California that the State of California, and all state agencies and other state entities that enter into one or more agreements with the manufacturer of any drug for the purchase of prescribed drugs, shall implement this section in a timely manner, and to that end the State of California and all such state agencies and other state entities are required to implement and comply with this law no later than July 1, 2017.

(d) The State of California, and each and every state administrative agency or other state entity, may adopt rules and regulations to implement the provisions of this section, and may seek any waivers of federal law, rule, and regulation necessary to implement the provisions of this section.

SEC. 5. Liberal Construction.

This Act is an exercise of the public power of the people of the State of California for the protection of their health, safety, and welfare, and shall be liberally construed to effectuate its purposes.

SEC. 6. Conflicting Measures.

This Act is intended to be comprehensive. It is the intent of the people of the State of California that in the event this Act and one or more measures relating to the same subject shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this Act. In the event that this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

SEC. 7. Proponent Accountability.

The people of the State of California hereby declare that the proponent of this Act should be held civilly liable in the event this Act is struck down, after passage, in whole or in part, by a court of law for being constitutionally or statutorily impermissible. Such a constitutionally or statutorily impermissible initiative is a misuse of taxpayer funds and electoral resources and the Act's proponent, as drafter of the Act, must be held accountable for such an occurrence.

In the event this Act, after passage, is struck down in a court of law, in whole or in part, as unconstitutional or statutorily invalid, and all avenues for appeal have been exhausted, the proponent shall pay a civil penalty of \$10,000 to the General Fund of the State of California for failure to draft and sponsor a wholly constitutionally or statutorily permissible initiative law but shall have no other liability to any person or entity with respect to, related to, or arising from the Act. No party or entity may waive this civil penalty.

SEC. 8. Amendment and Repeal.

This Act may be amended to further its purposes by statute passed by a two-thirds vote of the Legislature and signed by the Governor.

SEC. 9. Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall

not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

SEC. 10. Legal Defense.

The people of the State of California desire that the Act, if approved by the voters, and thereafter challenged in court, be defended by the State of California. The people of the State of California, by enacting this Act, hereby declare that the proponent of this Act has a direct and personal stake in defending this Act from constitutional or statutory challenges to the Act's validity. In the event the Attorney General fails to defend this Act, or the Attorney General fails to appeal an adverse judgment against the constitutionality or statutory permissibility of this Act, in whole or in part, in any court of law, the Act's proponent shall be entitled to assert its direct and personal stake by defending the Act's validity in any court of law and shall be empowered by the citizens through this Act to act as agent of the citizens of the State of California subject to the following conditions: (1) the proponent shall not be considered an "at-will" employee of the State of California, but the Legislature shall have the authority to remove the proponent from their agency role by a majority vote of each house of the Legislature when "good cause" exists to do so, as that term is defined by California case law; (2) the proponent shall take the Oath of Office under Section 3 of Article XX of the California Constitution as an employee of the State of California; (3) the proponent shall be subject to all fiduciary, ethical, and legal duties prescribed by law; and (4) the proponent shall be indemnified by the State of California for only reasonable expenses and other losses incurred by the proponent, as agent, in defending the validity of the challenged Act. The rate of indemnification shall be no more than the amount it would cost the state to perform the defense itself.

SEC. 11. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters.

PROPOSITION 62

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and repeals sections of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Justice That Works Act of 2016

SECTION 1. Title.

This initiative shall be known and may be cited as "The Justice That Works Act of 2016."

SEC. 2. Findings and Declarations.

The people of the State of California do hereby find and declare all of the following:

1. Violent killers convicted of first degree murder must be separated from society and severely punished.

2. Under current law, California sentences many criminals to death who commit first degree murder, but the state rarely carries out executions. Instead, the state spends millions of taxpayer dollars providing lawyers for death row inmates, only to see the murderers it has sentenced to death by execution die of old age in prison.

3. Since 1978, California has spent more than \$4 billion on a death penalty system that has sentenced nearly one thousand criminals to death by execution but has executed only 13 people. Even though there are over 700 inmates now on death row, California has not executed anyone in almost eleven years.

4. Violent murderers who are sentenced to serve life in prison without the possibility of parole in California are never eligible for parole. They spend the rest of their lives in prison and they die in prison.

5. Fewer than 1% of death row inmates work and pay their wages to compensate their victims. Murderers sentenced to life imprisonment without the possibility of parole are required to work in prison and use their wages to pay restitution to the victims of their crimes.

6. All convicted murderers sentenced to life imprisonment without the possibility of parole should be legally required to work while in prison and pay 60% of their wages to compensate their victims for the damage they caused.

7. While many think it is cheaper to execute murderers than to imprison them for life, in fact it is far more expensive. The death penalty system costs over \$100 million more per year to maintain than a system that has life imprisonment without the possibility of parole as its harshest punishment, according to a study by former death penalty prosecutor and judge, Arthur Alarcon, and law professor Paula Mitchell. By replacing the death penalty with life imprisonment without the possibility of parole, California taxpayers would save well over \$100 million every year.

8. The death penalty is a failed government program that wastes taxpayer dollars and makes fatal mistakes. More than 150 innocent people have been sentenced to death in this country, and some innocent people have actually been executed. Wrongful convictions rob innocent people of decades of their lives, waste tax dollars, and re-traumatize the victims' families, while the real killers remain free to kill again.

9. Retroactive application of this act will end a costly and ineffective practice immediately and ensure that California never executes an innocent person.

10. California's death penalty is an empty promise. Death penalty cases drag on for decades. A sentence of life in prison without the possibility of parole provides swift and certain justice for grieving families.

11. Life in prison without the possibility of parole ensures that the worst criminals stay in prison forever and saves money. By replacing the death penalty with life in prison without the possibility of parole, we would save the state \$1 billion in five years without releasing a single prisoner—\$1 billion that could be invested in crime prevention strategies, services for victims, education, and keeping our communities and families safe.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting the act to be as follows:

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