

1                                    AMENDMENT TO SENATE BILL 3

2            AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3, AS AMENDED,  
3 with reference to page and line numbers of Senate Amendment  
4 No. 1, on page 5, immediately below line 28, by inserting the  
5 following:

6            "Section 27. Emergency drug pricing. Maximum retail  
7 prices for prescription drugs sold in Illinois by a drug  
8 manufacturer not participating in the program shall be  
9 established pursuant to this Section.

10            (a) Emergency drug pricing procedures. The following  
11 provisions apply to determinations regarding maximum retail  
12 prices for prescription drugs and to the procedures for  
13 establishing those prices.

14            (1) By January 1, 2004, the Department shall adopt  
15 rules establishing the procedures for adoption and  
16 periodic review of maximum retail prices, the procedures  
17 for establishing maximum retail prices for new  
18 prescription drugs and for reviewing maximum retail  
19 prices of selected drugs, and the procedures for phasing  
20 out or terminating maximum retail prices.

21            (2) By January 1, 2005, the Department shall  
22 determine whether the cost of prescription drugs provided  
23 to qualified residents under this Act is reasonably

1 comparable to the lowest cost paid for the same drugs  
2 delivered or dispensed in the State. In making this  
3 determination the following provisions apply.

4 (A) The Department shall review prescription  
5 drug use in the Medicaid program using data from the  
6 most recent 6-month period for which data is  
7 available.

8 (B) Using the data reviewed in subdivision  
9 (a)(2)(A), the Department shall determine the 100  
10 drugs for which the most units were provided and the  
11 100 drugs for which the total cost was the highest.

12 (C) For each prescription drug listed in  
13 subdivision (a)(2)(B), the Department shall  
14 determine the cost for each drug for qualified  
15 residents provided those drugs under this Act on a  
16 certain date. The average cost for each such drug  
17 must be calculated.

18 (D) For each prescription drug listed in  
19 subdivision (a)(2)(B), the Department shall  
20 determine the lowest cost for each drug paid by any  
21 purchaser on the date that is used for subdivision  
22 (a)(2)(C) delivered or dispensed in the State,  
23 taking into consideration the federal supply  
24 schedule and prices paid by pharmaceutical benefits  
25 managers and by large purchasers and excluding drugs  
26 purchased under this Act. The average cost for each  
27 such drug must be calculated.

28 (E) If the average cost for one or more  
29 prescription drugs under this Act as determined in  
30 subdivision (a)(2)(C) is not reasonably comparable  
31 to the average lowest cost for the same drug or  
32 drugs as determined in subdivision (a)(2)(D), the  
33 Department shall establish maximum retail prices for  
34 any or all prescription drugs sold in the State.

1           Maximum prescription drug prices established under  
2           this subdivision (a)(2)(E) must take effect on July  
3           1, 2005.

4           (b) Select prescription drugs. In making a determination  
5           under this Section, the Department may rely on pricing  
6           information on a selected number of prescription drugs if  
7           that list is representative of the prescription drug needs of  
8           the residents of the State and is made public as part of the  
9           process of establishing maximum retail prices.

10          (c) Public health or welfare. The Department may take  
11          actions that the Department determines are necessary if there  
12          is a severe limitation or shortage of or lack of access to  
13          prescription drugs in the State that could threaten or  
14          endanger the public health or welfare.

15          (d) Dispensing fees. The maximum retail price shall  
16          include the agreed dispensing fee contained in subsection (b)  
17          of Section 25 of this Act.

18          (e) Appeals. A retailer of prescription drugs may appeal  
19          the maximum retail price of a prescription drug established  
20          under this Section in accordance with the Illinois  
21          Administrative Procedure Act.

22          (f) Enforcement. A violation of the maximum retail prices  
23          established under this Section is a violation of the Consumer  
24          Fraud and Deceptive Business Practices Act."; and

25          on page 9, immediately below line 4, by inserting the  
26          following:

27                 "Section 41. Rebate agreement. A drug manufacturer that  
28                 sells prescription drugs in this State through the Senior  
29                 Citizens and Disabled Persons Property Tax Relief and  
30                 Pharmaceutical Assistance Act or any other publicly supported  
31                 pharmaceutical assistance program shall enter into a rebate  
32                 agreement with the Department under this Act. The rebate  
33                 agreement must require the drug manufacturer to make rebate

1 payments to the State each calendar quarter or according to a  
2 schedule established by the Department.

3 Section 42. Action with regard to non-participating drug  
4 manufacturers. The names of drug manufacturers who do and do  
5 not enter into rebate agreements under this Act are public  
6 information. The Department of Public Aid shall release this  
7 information to health care providers and the public on a  
8 regular basis and shall publicize participation by drug  
9 manufacturers that is of particular benefit to the public.  
10 The Department of Public Aid shall impose prior authorization  
11 requirements in the Medicaid program, as permitted by law,  
12 for the dispensing of prescription drugs provided by  
13 non-participating drug manufacturers."; and

14 on page 10, immediately below line 15, by inserting the  
15 following:

16 "Section 44. Profiteering.

17 (a) Prescription drugs are a necessity of life.  
18 Profiteering in prescription drugs is unlawful and is subject  
19 to the provisions of this Section. This Section applies to  
20 drug manufacturers not participating in the program.

21 (b) A drug manufacturer not participating in the program  
22 engages in illegal profiteering if that manufacturer does any  
23 of the following:

24 (1) Exacts or demands an unconscionable price.

25 (2) Exacts or demands prices or terms that lead to  
26 any unjust or unreasonable profit.

27 (3) Discriminates unreasonably against any person in  
28 the sale, exchange, distribution, or handling of  
29 prescription drugs dispensed or delivered in the State.

30 (4) Intentionally prevents, limits, lessens, or  
31 restricts the sale or distribution of prescription drugs  
32 in this State in retaliation for the provisions of this

1 Act.

2 (c) The State may bring a civil action in the circuit  
3 court for a direct or indirect injury to any person, group of  
4 persons, the State, or a political subdivision of the State  
5 caused by a violation of this Section. There is a right to a  
6 jury trial in any action brought under this Section. If the  
7 State prevails, the defendant shall pay 3 times the amount of  
8 damages and the costs of suit, including necessary and  
9 reasonable investigative costs, reasonable expert fees, and  
10 reasonable attorney's fees. For a willful or repeated  
11 violation of this Section, punitive damages may be awarded.  
12 After deduction of the costs of distribution, the damages  
13 must be equitably distributed by the State to all injured  
14 parties.

15 (d) Each violation of this Section is a civil violation  
16 for which the Attorney General may obtain, in addition to  
17 other remedies, injunctive relief and a civil penalty in an  
18 amount not to exceed \$100,000, plus the costs of suit,  
19 including necessary and reasonable investigative costs,  
20 reasonable expert fees, and reasonable attorney's fees.

21 (e) A violation of this Section is also a violation of  
22 the Consumer Fraud and Deceptive Business Practices Act.;"  
23 and

24 on page 11, immediately below line 15, by inserting the  
25 following:

26 "Section 995. The Consumer Fraud and Deceptive Business  
27 Practices Act is amended by adding Sections 2MM and 2NN as  
28 follows:

29 (815 ILCS 505/2MM new)

30 Sec. 2MM. Retail prices of drugs. A violation of the  
31 maximum retail prices established under Section 27 of the  
32 Senior Citizens and Disabled Persons Prescription Drug

1 Discount Program Act is an unlawful practice under this Act.

2 (815 ILCS 505/2NN new)

3 Sec. 2NN. Prescription drugs; profiteering. A violation  
4 of Section 44 of the Senior Citizens and Disabled Persons  
5 Prescription Drug Discount Program Act is an unlawful  
6 practice under this Act."