

KAREN LEWIS YOUNG
Legislative District 3
Frederick County

Budget and Taxation Committee

Chair
Pensions Subcommittee



Annapolis Office
Miller Senate Office Building
11 Bladen Street, Suite 3 West
Annapolis, Maryland 21401
410-841-3575
800-492-7122 Ext. 3575
Karen.LewisYoung@senate.maryland.gov

District Office
253 East Church Street
Frederick, MD 21701
301-662-8520

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

The Honorable Guy Guzzone, Chair
The Honorable Jim Rosapepe, Vice Chair
Budget & Taxation Committee
Miller Senate Office Building
Annapolis, MD 21401

March 11th, 2026

**SB987 - Corporate Income Tax - Addition Modification - Direct-to-Consumer
Pharmaceutical Advertising**

Chair Guzzone, Vice Chair Rosapepe, and esteemed colleagues,

For decades, Maryland has been a national leader in health care, pioneering early expansion of Medicaid and developing innovative approaches like the landmark Prescription Drug Affordability Board and Easy Enrollment Program. Since the passage of the Affordable Care Act in 2010, our state has reduced the number of uninsured Marylanders from 13% to 6%, helping over 400,000 people to obtain coverage and resulting in \$460 million in savings to the health care system.¹ Studies have shown that access to full health coverage increases use of preventative services and regular care and can improve health outcomes.² Unfortunately, as our state faces ongoing budget pressures and unprecedented federal threats to coverage, this progress is in jeopardy. When Marylanders lose coverage, we all pay the price. These federal policy changes will have rippling effects across our health care systems, raising uncompensated care, increasing emergency room utilization, and driving up costs for Marylanders around the State as premium rates are destabilized.

Without state action, hundreds of thousands of Marylanders could lose their coverage in the coming years due to Congress's termination of enhanced advance premium tax credits and the administrative burdens and budget cuts found in HR 1. These consequences will disproportionately harm communities of color, rural Marylanders, and those with disabilities, as they are more likely to rely on Medicaid or marketplace coverage to access primary care, mental

¹ "Analysis of Hospital Uncompensated Care, Related Hospital Assessments, and Health Care Expansion".
<https://healthcareforall.com/wp-content/uploads/2023/12/Analysis-of-HC-Expansion-and-Hospital-UC-120523.pdf>.

² Soni, Aparna, Laura Wherry, and Kosali Simon. 2020. "How Have ACA Insurance Expansions Affected Health Outcomes? Findings From The Literature." *Health Affairs* 39, no. 3 (March): 371-378.
<https://doi.org/10.1377/hlthaff.2019.01436>.

health services, and prescription drug coverage. **Senate Bill 987** serves as an important tool in combating these federal attacks to health coverage, securing critical funding for Medicaid eligibility operations and protecting the health care infrastructure in our state. This legislation is an innovative approach to generate revenue for the growing health care coverage demands while simultaneously addressing an unnecessary burden on our taxpayers. Under federal law, pharmaceutical manufacturers are allowed to deduct the money spent on direct-to-consumer advertisements of prescription drug products from their federal taxable income. This bill requires pharmaceutical corporations to report these deductions as taxable corporate income in their Maryland returns and prohibits them from taking a state tax deduction for direct to consumer advertising expenditures.

As one of only two countries that allows this form of advertising, the United States are an outlier in this practice, and our patients and health care system pay the price. Spending for this marketing is significant, with over \$14 billion spent on these advertisements in 2023 alone.³ While the pharmaceutical industry has long claimed that their skyrocketing prices are used to offset the cost of innovation, we know that this marketing is a major driver for the increasing costs of blockbuster drugs. In 2022, the manufacturers of the first ten prescription drug products selected for Medicare Maximum Fair Price negotiation spent a combined \$22 billion more on self-enriching activities and advertisements than on research and development.⁴ As a result, our taxpayers are footing the bill for patients to be flooded with aggressive advertising for medications they may not even be able to afford.

While SB 987 does model federal legislation introduced, to date, no state has implemented a similar approach.⁵ As sponsors, we have consulted with the Maryland Comptroller and Office of the Attorney General to ensure we are best designing this innovative process. **You'll see in my attached sponsor amendment** the language that the Comptroller's office has advised to help to ensure relevant expenses are reported while reducing the burden to the State. This can be accomplished by requiring that businesses that file Maryland returns, and also deduct direct-to-consumer prescription drug ads as a business expense on their federal return, file an annual report with the State declaring the deducted amount. Subsequently, this amount based on the total reported can be included in the budget for the relevant agencies (Medicaid and the Maryland Health Benefit Exchange).

³ The Campaign for Sustainable Rx Pricing. 2025. "CSRxP ANALYSIS FINDS BIG PHARMA'S DIRECT-TO-CONSUMER (DTC) ADVERTISING COSTS U.S. TAXPAYERS BILLIONS OF DOLLARS." The Campaign for Sustainable Rx Pricing. <https://www.csrxp.org/csrxp-analysis-finds-big-pharmas-direct-to-consumer-dtc-advertising-costs-u-s-taxpayers-billions-of-dollars/>.

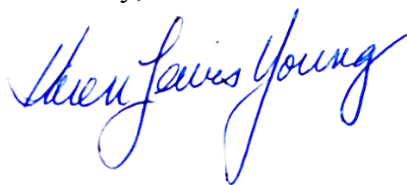
⁴ Ravinthiran, Jishian. 2024. "Profits over Patients." Public Citizen. <https://www.citizen.org/article/profits-over-patients/>.

⁵ Congress. 2024. "S.4691 - No Tax Breaks for Drug Ads Act." Congress.gov. <https://www.congress.gov/bill/118th-congress/senate-bill/4691/text>.

Additionally, you can view the [attached opinion from the Office of the Attorney General](#), which deems this legislation to be defensible if challenged on First Amendment grounds, especially if a substantial governmental interest can be demonstrated. Given the pressing needs for increased funding for health coverage, there is an abundance of evidence towards how increased revenues could benefit the State. It is significantly harder to find the benefit in direct-to-consumer advertising. It is important to note that pharmaceutical advertisements differ significantly from traditional marketing, as prescription drugs cannot be purchased directly and require an order from a prescribing provider. Studies have found that these advertisements can misinform patients, strain the patient-physician relationship, and ultimately, can drive up spending due to the overprescribing of brand-name medications.⁶ This legislation does not limit a pharmaceutical corporation's ability to advertise, it simply prevents these risks and costs from being shifted onto Maryland consumers.

By treating direct-to-consumer advertising as a non-deductible corporate expense, SB 987 would redirect the revenue from this misaligned federal tax break by requiring pharmaceutical manufacturers to include the deducted amount in their Maryland modified income. The language ensures that the first \$5 million in revenue will go toward the State's Medicaid obligations, with the remaining funds designated to support state insurance subsidy programs through the Maryland Health Benefit Exchange. This legislation will help to protect the State's gains in health coverage, ensuring Marylanders have access to critical care without threatening the budget. It is time to prioritize patient care and affordability over pharmaceutical windfall profits, I urge a favorable report.

Sincerely,



Senator Karen Lewis Young

⁶ Parekh, Natasha, and William Shrank. 2018. "Dangers and Opportunities of Direct-to-Consumer Advertising." *Journal of General Internal Medicine* 33, no. 2 (2): 586-587. <https://doi.org/10.1007/s11606-018-4342-9>.



SB0987/793127/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

09 MAR 26
12:32:13

BY: Senator Lewis Young
(To be offered in the Budget and Taxation Committee)

AMENDMENTS TO SENATE BILL 987
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “providing” in line 7 down through the semicolon in line 8 and substitute “requiring the Governor to include an appropriation of a certain amount in the annual budget bill;”; in line 17, strike “31–107(e)(2)” and substitute “31–107(e)(13) and (14)”; and in line 22, strike “31–107(g)(6)” and substitute “31–107(e)(14) and (g)(6)”.

On pages 1 and 2, strike in their entirety the lines beginning with line 25 on page 1 through line 2 on page 2, inclusive.

On page 2, strike in their entirety lines 3 through 7, inclusive; and after line 12, insert:

“BY adding to
Article – Tax – General
Section 10–305(e)
Annotated Code of Maryland
(2022 Replacement Volume and 2025 Supplement)”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 25 through 29, inclusive, and substitute:

“(13) any federal funds received in accordance with § 31–121 of this subtitle for the administration of small business tax credits; [and]

(14) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

AND

[(14)] (15) any other money from any other source accepted for the benefit of the Fund.”;

and strike beginning with the first “**THE**” in line 30 down through “**ARTICLE**” in line 31 and substitute “**THE APPROPRIATION REQUIRED UNDER § 10-305(E)(3)(III) OF THE TAX – GENERAL ARTICLE**”.

On page 3, strike beginning with “**THE**” in line 5 down through “**ARTICLE**” in line 7 and substitute “**THE APPROPRIATION REQUIRED UNDER § 10-305(E)(3)(III) OF THE TAX – GENERAL ARTICLE**”; and strike in their entirety lines 9 through 28, inclusive.

On page 5, after line 2, insert:

“(3) (I) A CORPORATION SHALL ATTACH TO THE CORPORATION’S INCOME TAX RETURN A STATEMENT OF ANY EXPENSES REQUIRED TO BE ADDED TO THE FEDERAL TAXABLE INCOME OF THE CORPORATION TO DETERMINE MARYLAND MODIFIED INCOME UNDER THIS SUBSECTION.

(II) ON OR BEFORE DECEMBER 1 EACH YEAR, THE COMPTROLLER SHALL DETERMINE, FOR THE IMMEDIATELY PRECEDING TAXABLE YEAR, THE AMOUNT OF ADDITIONAL STATE REVENUE THAT IS THE RESULT OF THE ADDITION REQUIRED UNDER THIS SUBSECTION AND REPORT THAT AMOUNT TO THE GOVERNOR.

(III) FOR EACH FISCAL YEAR, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION EQUAL TO:

1. THE LESSER OF \$5,000,000 OR THE AMOUNT THE COMPTROLLER REPORTS UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH TO THE MARYLAND DEPARTMENT OF HEALTH TO BE USED FOR MEDICAID ELIGIBILITY OPERATIONS; AND

2. THE AMOUNT BY WHICH THE AMOUNT THE COMPTROLLER REPORTS UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH EXCEEDS \$5,000,000 TO THE MARYLAND HEALTH BENEFIT EXCHANGE FUND ESTABLISHED UNDER § 31-107 OF THE INSURANCE ARTICLE.”;

strike beginning with the first “the” in line 7 down through “Article” in line 8 and substitute “the appropriation required under § 10-305(e)(3)(iii) of the Tax – General Article”; and strike beginning with “the” in line 14 down through “Article” in line 15 and substitute “the appropriation required under § 10-305(e)(3)(iii) of the Tax – General Article”.

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Deputy Attorney General



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

ANTHONY G. BROWN
Attorney General

SANDRA BENSON BRANTLEY
Principal Counsel

DAVID W. STAMPER
Deputy Principal Counsel

PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief of Staff

SHAUNEE L. HARRISON
Assistant Attorney General

March 5, 2026

The Honorable Natalie Ziegler
Maryland General Assembly
214 Lowe House Office Building
Annapolis, Maryland 21401
Via email

RE: House Bill 484, “Corporate Income Tax – Addition Modification – Direct-to-Consumer Pharmaceutical Advertising”

Dear Delegate Ziegler:

You have requested advice on the constitutionality of House Bill 484 (“Corporate Income Tax – Addition Modification – Direct-to-Consumer Pharmaceutical Advertising”) with respect to the First Amendment. House Bill 484 requires an addition modification under the corporate income tax for the amount of any expenses paid or incurred during the tax year that are deducted under Internal Revenue Code (“IRC”) § 162 for direct-to-consumer advertising of covered drugs. It is my view that the bill as introduced is not clearly unconstitutional on its face, though it presents a risk of violating the First Amendment Free Speech Clause because it could limit truthful and lawful advertising.

Arguably, under analogous Supreme Court precedent, HB 484 does not infringe upon any First Amendment rights or regulate any First Amendment activity by not allowing a tax deduction for expenses incurred from direct-to-consumer pharmaceutical advertising. *See Regan v. Taxation With Representation of Washington*, 461 U.S. 540 (1983). But if a court were to conclude that the bill, if passed, implicates the First Amendment, the State would have to show that it has a “substantial” government interest and that HB 484 is proportional to that interest.

The First Amendment of the U.S. Constitution and Article 40 of the Maryland Declaration of Rights¹ protect commercial speech, such as prescription drug advertising, as long as the advertising is truthful and lawful. See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976) (holding that state ban on pharmacists' advertising of prescription drug prices violates the First Amendment); *Maryland Bd. of Pharmacy v. Sav-A-Lot, Inc.*, 270 Md. 103, 121 (1973) (striking down similar law on First Amendment and State constitutional grounds).

The Supreme Court has reviewed the implications of tax laws² on First Amendment rights, particularly as it pertains to the Government denying deductions. For instance, in *Regan v. Taxation With Representation of Washington*, the Court held that Congress did not infringe upon any First Amendment right or regulate any First Amendment activity when it chose not to extend a tax deduction for lobbying expenses to Taxation With Representation of Washington ("TWR"). 461 U.S. 540; see also *Cammarano v. United States*, 38 U.S. 498 (1959) (upholding a regulation that denied business expense deductions for lobbying activities). The issue in *Regan* came about when Congress decided not to subsidize TWR's (a nonprofit organization) lobbying expenses, in which the organization claimed that this decision was a violation under the First Amendment as it infringed upon their freedom of speech. *Id.* at 545.

The Court reasoned that the First Amendment does not require Congress to subsidize lobbying and choosing not to do so does not impair First Amendment rights. *Id.* at 546. Further, the *Regan* Court explained that denying a subsidy does not equate to placing an obstacle in the path of a person trying to exercise freedom of speech as the denial of a deduction does not equate to a prohibition. *Id.* at 549-50. "Although TWR does not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution 'does not confer an entitlement to such funds[.]'" *Id.* at 550.

A reviewing court could similarly find that no First Amendment right is implicated by HB 484, which, in effect, decreases the value of a federal tax deduction for expenses on direct-to-consumer advertising of prescription drugs by adding that amount to the federal taxable income of a corporation to determine Maryland modified income. Here, like in *Regan*, a court could reason that HB 484 does not interfere with free speech because it does not restrict a corporation's freedom to advertise. As *Regan* recognized, the state is not required to subsidize or allow a tax deduction for advertising activities. Even if the bill would reduce certain cost advantages of certain advertising, which is commercial speech entitled to less protection under the First Amendment than the political speech considered in *Regan*, that reduction does not amount to regulation of speech.

¹ According to the Supreme Court of Maryland, the "legal effect" of both the First Amendment and Article 40 of the Declaration of Rights "is substantially the same." *Pack Shack, Inc. v. Howard Cnty.*, 377 Md. 55, 64, n.3 (2003) (quoting *Sigma Delta Chi v. Speaker*, 270 Md. 1, 4 (1973)).

² Maryland courts have previously noted that "[t]he inevitable classifications and distinctions made by legislatures in designing a tax statute are entitled to a strong presumption of constitutionality." *Clear Channel Outdoor, Inc. v. Director, Department of Finance of Baltimore City*, 472 Md. 444, 463-64 (2021); citing *Leathers v. Medlock*, 499 U.S. 439, 451-52 (1991); (reasoning that tax laws are presumed to be valid and constitutional, even in the context of a First Amendment challenge).

In contrast to the above, if a reviewing court determined that HB 484 *does* regulate commercial speech, it would use the test articulated by the U.S. Supreme Court in *Central Hudson Gas and Electric Corp. v. Public Service Commission of New York*, laws restricting or limiting commercial speech must serve a “substantial” government interest and the regulatory means employed must be in proportion to that interest. 447 U.S. 557, 563-64. A reviewing court would apply a 4-part intermediate scrutiny analysis to determine constitutionality. *Id.* First, to be protected, the speech must concern lawful activity and not be misleading. *Id.* at 566; *see Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983) (the First Amendment does not protect commercial speech for unlawful activities); *see also Friedman v. Rogers*, 440 U.S. 1, 12 (1979) (government may ban forms of communication more likely to deceive the public than to inform it). The bill applies to all covered direct-to-consumer advertising, not just advertising that is deceptive or unlawful.

Second, the State must show a substantial governmental interest in regulating the speech, and third, that the regulation directly advances that interest. *Id.* Finally, the State must show that the regulation is no more extensive than necessary. *See Recht v. Morrissey*, 32 F.4th 398 (4th Cir. 2022) (involving legal advertisements about medical devices or medications).

Whether a court would conclude that a state denying a tax deduction on direct-to-consumer marketing of prescription medication violates the First Amendment depends on the strength of the asserted state interest and evidence—which should be in the legislative record—supporting the necessity of the regulatory means chosen. The State has several potentially relevant interests, the most obvious being increasing State revenue.

While the proposed State income calculation law in HB 484 does not ban direct-to-consumer prescription drug advertising, in its application, it might make these types of advertisements more costly. Nonetheless, if the State can show evidence that the proposed law is a direct means to advance a substantial State interest, then the bill is more likely to be upheld if challenged under the First Amendment.

For these reasons, it is my view that HB 484 is not clearly unconstitutional and is defensible if challenged under the First Amendment.

Sincerely,



Shaune L. Harrison
Assistant Attorney General