

As Introduced

**127th General Assembly
Regular Session
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S. B. No. 114

Senator Coughlin

Cosponsors: Senators Gardner, Cafaro

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A B I L L

To amend sections 4729.38 and 4729.99 and to enact 1
section 4729.382 of the Revised Code regarding 2
substitution of drugs intended to treat epilepsy. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4729.38 and 4729.99 be amended and 4
section 4729.382 of the Revised Code be enacted to read as 5
follows: 6

Sec. 4729.38. (A) Unless instructed otherwise by the person 7
receiving the drug pursuant to the prescription, a pharmacist 8
filling a prescription for a drug prescribed by its brand name may 9
select a generically equivalent drug, as defined in section 10
3715.01 of the Revised Code, subject to the following conditions: 11

(1) The pharmacist shall not select a generically equivalent 12
drug if the prescriber handwrites "dispense as written," or 13
"D.A.W.," on the written prescription, or, when ordering a 14
prescription electronically or orally, the prescriber specifies 15
that the prescribed drug is medically necessary. These 16
designations shall not be preprinted or stamped on the 17
prescription. Division (A)(1) of this section does not preclude a 18
reminder of the procedure required to prohibit the selection of a 19

generically equivalent drug from being preprinted on the 20
prescription. 21

(2) The pharmacist shall not select a generically equivalent 22
drug unless its price to the patient is less than or equal to the 23
price of the prescribed drug. 24

(3) The pharmacist, or the pharmacist's agent, assistant, or 25
employee shall inform the patient or the patient's agent if a 26
generically equivalent drug is available at a lower or equal cost, 27
and of the person's right to refuse the drug selected. Division 28
(A)(3) of this section does not apply to any: 29

(a) Prescription that is billed to any agency, division, or 30
department of this state which will reimburse the pharmacy; 31

(b) Prescriptions for patients of a hospital, nursing home, 32
or similar patient care facility. 33

(4) If the drug is prescribed to treat epilepsy, the 34
pharmacist receives the statement required by section 4729.382 of 35
the Revised Code. 36

(B) Unless the prescriber instructs otherwise, the label for 37
every drug dispensed shall include the drug's brand name, if any, 38
or its generic name and the name of the distributor, using 39
abbreviations if necessary. When dispensing at retail a 40
generically equivalent drug for the brand name drug prescribed, 41
the pharmacist shall indicate on the drug's label or container 42
that a generic substitution was made. The labeling requirements 43
established by this division are in addition to all other labeling 44
requirements of Chapter 3715. of the Revised Code. 45

(C) A pharmacist who selects a generically equivalent drug 46
pursuant to this section assumes no greater liability for 47
selecting the dispensed drug than would be incurred in filling a 48
prescription for a drug prescribed by its brand name. 49

(D) The failure of a prescriber to restrict a prescription by specifying "dispense as written," or "D.A.W.," pursuant to division (A)(1) of this section shall not constitute evidence of the prescriber's negligence unless the prescriber had reasonable cause to believe that the health condition of the patient for whom the drug was intended warranted the prescription of a specific brand name drug and no other. No prescriber shall be liable for civil damages or in any criminal prosecution arising from the interchange of a generically equivalent drug for a prescribed brand name drug by a pharmacist, unless the prescribed brand name drug would have reasonably caused the same loss, damage, injury, or death.

Sec. 4729.382. (A) As used in this section:

(1) "Epilepsy drug" means a drug prescribed for the treatment of epilepsy or a drug prescribed to treat or prevent seizures.

(2) "Epilepsy" means a neurological condition characterized by recurrent seizures.

(3) "Seizure" means a brief disturbance in the electrical activity of the brain.

(4) "Interchange" means the substitution of a generically equivalent drug for the prescribed drug, or substitution of a different drug for the drug prescribed, including any of the following:

(a) The substitution of a generic brand of the drug for the brand prescribed;

(b) The substitution of one generic brand of the drug for another generic brand;

(c) The substitution of one formulation of the drug for another;

(d) The substitution of one therapeutic drug treatment for

another. 80

(B) A pharmacist shall not knowingly interchange a prescribed 81
epilepsy drug without notifying the prescriber and receiving a 82
signed statement consenting to the interchange from the prescriber 83
and either the patient or the patient's parent, legal guardian, or 84
spouse. 85

Sec. 4729.99. (A) Whoever violates section 4729.16, division 86
(A) or (B) of section 4729.38, or section 4729.382 or 4729.57 of 87
the Revised Code is guilty of a minor misdemeanor. Each day's 88
violation constitutes a separate offense. 89

(B) Whoever violates section 4729.27, 4729.28, or 4729.36 of 90
the Revised Code is guilty of a misdemeanor of the third degree. 91
Each day's violation constitutes a separate offense. If the 92
offender previously has been convicted of or pleaded guilty to a 93
violation of this chapter, that person is guilty of a misdemeanor 94
of the second degree. 95

(C) Whoever violates section 4729.32, 4729.33, or 4729.34 of 96
the Revised Code is guilty of a misdemeanor. 97

(D) Whoever violates division (A), (B), (D), or (E) of 98
section 4729.51 of the Revised Code is guilty of a misdemeanor of 99
the first degree. 100

(E)(1) Whoever violates section 4729.37, division (C)(2) of 101
section 4729.51, division (J) of section 4729.54, or section 102
4729.61 of the Revised Code is guilty of a felony of the fifth 103
degree. If the offender previously has been convicted of or 104
pleaded guilty to a violation of this chapter or a violation of 105
Chapter 2925. or 3719. of the Revised Code, that person is guilty 106
of a felony of the fourth degree. 107

(2) If an offender is convicted of or pleads guilty to a 108
violation of section 4729.37, division (C) of section 4729.51, 109

division (J) of section 4729.54, or section 4729.61 of the Revised Code, if the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender, as defined in section 2929.01 of the Revised Code, and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term authorized or required by division (E)(1) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under sections 2929.11 to 2929.18 of the Revised Code, shall impose upon the offender, in accordance with division (D)(3)(a) of section 2929.14 of the Revised Code, the mandatory prison term specified in that division and may impose an additional prison term under division (D)(3)(b) of that section.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of court shall pay any fine imposed for a violation of section 4729.37, division (C) of section 4729.51, division (J) of section 4729.54, or section 4729.61 of the Revised Code pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(F) Whoever violates section 4729.531 of the Revised Code or any rule adopted thereunder or section 4729.532 of the Revised Code is guilty of a misdemeanor of the first degree.

(G) Whoever violates division (C)(1) of section 4729.51 of the Revised Code is guilty of a felony of the fourth degree. If the offender has previously been convicted of or pleaded guilty to a violation of this chapter, or of a violation of Chapter 2925. or

3719. of the Revised Code, that person is guilty of a felony of 142
the third degree. 143

(H) Whoever violates division (C)(3) of section 4729.51 of 144
the Revised Code is guilty of a misdemeanor of the first degree. 145
If the offender has previously been convicted of or pleaded guilty 146
to a violation of this chapter, or of a violation of Chapter 2925. 147
or 3719. of the Revised Code, that person is guilty of a felony of 148
the fifth degree. 149

Section 2. That existing sections 4729.38 and 4729.99 of the 150
Revised Code are hereby repealed. 151