

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1269**

S. P. 410

In Senate, March 16, 1979

Referred to the Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

Presented by Senator Perkins of Hancock.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT to Facilitate the Dispensing of Generic Drugs.**

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1.** 14 MRSA § 753 is amended to read:

**§ 753. Two years**

Actions for assault and battery, and for false imprisonment, slander, libel, **negligence of pharmacists dispensing generic or chemically equivalent drugs** and malpractice of physicians and all others engaged in the healing art shall be commenced within 2 years after the cause of action accrues.

**Sec. 2.** 32 MRSA § 2807 is enacted to read:

**§ 2807. Limitation**

**No pharmacist substituting a generic or chemically equivalent drug under the provisions of this chapter shall be held liable as expressly or impliedly warranting the product dispensed.**

**Sec. 3.** 32 MRSA § 2912, sub-§ 7, as enacted by PL 1975, c. 526 is repealed and the following enacted in its place:

**7. Identity of drug.**

- A. The name, strength and quantity of the drug dispensed; and**
- B. If a generic or chemically equivalent drug is dispensed, the pharmacy file copy shall include the trade or brand name, if any, and the name of the manufacturer, packer or distributor of the drug product dispensed; and**

#### STATEMENT OF FACT

The purpose of this bill is to facilitate the dispensing of generic drugs by limiting the liability of pharmacists dispensing generic drugs by confining a person alleging harm caused by the drug to an action for negligence against the pharmacist. This provision is intended to bring the pharmacist's potential liability for dispensing generic drugs into conformance with the potential liability he now has with respect to any other prescription drug by confining actions based on breach of express or implied warranty to actions against the manufacturers of generic drugs.

Where the physician has left an element of choice in the brand of drug dispensed to the pharmacist the pharmacist may not be held liable in the event harm is caused by the drug dispensed unless the pharmacist dispenses an inferior brand which he knows to be inferior or which he should have discovered was inferior in the exercise of the care ordinarily employed by reputable pharmacists.

The pharmacist's potential liability for dispensing generic drugs is further limited by reducing the time during which suit may be brought from 6 years to 2 years. The 2-year statute of limitations is the same as that allowed for suits for malpractice against physicians.