121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document **No. 329**

S.P. 111 In Senate, January 28, 2003

An Act to Encourage the Use of Generic Drugs

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRENNAN of Cumberland.
Cosponsored by Senators: President DAGGETT of Kennebec, DOUGLASS of Androscoggin, HALL of Lincoln, HATCH of Somerset, MITCHELL of Penobscot, Representatives: BRANNIGAN of Portland, KANE of Saco.

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

Sec. 1. 32 MRSA §13781, as amended by PL 1997, c. 245, §§13 and 14, is further amended to read:

§ 13781. Generic and therapeutically equivalent substitution

A written prescription issued by a practitioner in this State may contain a box in the lower right-hand corner of the prescription form. The following words must appear to the left of this box: "Any drug which is the generic and therapeutic equivalent of the drug specified above in this prescription ~~may~~ must be dispensed, provided that no check mark ( ) has been handwritten in the box in the lower right-hand corner."

Any pharmacist receiving a prescription in which no handwritten check mark ( ) is found in the box provided ~~may~~ shall substitute a generic and therapeutically equivalent drug for the drug specified on the prescription if the substituted drug is distributed by a business entity doing business in the United States that is subject to suit and the service of legal process in the United States and ~~that~~ the price of the substituted drug does not exceed the price of the drug specified by the practitioner.

If a written prescription issued by a practitioner in this State does not contain the box described in this section, a pharmacist ~~may~~ shall substitute a generic and therapeutically equivalent drug for the drug specified on the prescription if the substituted drug is distributed by a business entity doing business in the United States that is subject to suit and the service of legal process in the United States and the price of the substituted drug does not exceed the price of the drug specified by the practitioner, unless a practitioner has handwritten on the prescription form, along with the practitioner's signature, "dispense as written," "DAW," "brand," "brand necessary" or "brand medically necessary."

Any pharmacist who substitutes a generic and therapeutically equivalent drug under this section shall inform the person to whom the drug is dispensed of the substitution. When any substitution is made under this section, the pharmacist shall cause the name of the generic and therapeutically equivalent drug, the name or abbreviation of the drug manufacturer or distributor of that substitute drug and all other information as required by section 13794 to appear on the container label of the drug dispensed.

This section does not apply to prescriptions ordered by practitioners for patients in hospitals when those prescriptions are filled by a hospital pharmacy or in any institution where a formulary system is established.

SUMMARY

This bill requires a pharmacist to fill a prescription with a generic and therapeutic equivalent of the drug if the prescribing physician does not affirmatively specify that a particular brand-name drug be dispensed. Current law permits a pharmacist to dispense a generic drug.