

ACT 193

S.B. NO. 2454

A Bill for an Act Relating to Drug Product Selection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 328-92, Hawaii Revised Statutes, is amended to read as follows:

**“§328-92 Drug product selection.** (a) A dispenser or the dispenser’s authorized agent shall:

- (1) Offer to the consumer substitutable and lower cost equivalent drug products from the formulary[,] adopted pursuant to section 328-96;
- (2) Inform the consumer of the retail price difference between the brand name drug product and the substitutable drug product; and
- (3) Inform the consumer [on his or her] of the consumer’s right to refuse substitution.

The dispenser shall substitute if the consumer consents, the prescriber does not prohibit substitution under subsection (b), and the price of the substitute equivalent drug product is less than the price of the prescribed drug product. The dispenser shall not substitute if the consumer refuses.

(b) In filling initial or original prescriptions, the dispenser shall not substitute an equivalent drug product if the prescriber, and only the prescriber, handwrites “do not substitute” or “brand medically necessary” on the written prescription. The dispenser shall not substitute an equivalent drug product if a prescription is ordered orally and the prescriber or authorized employee of the prescriber orally orders “do not substitute”[,] or “brand medically necessary”.

The dispenser shall note the prescriber’s instructions on the prescription record required to be maintained under section 328-100.

In refilling prior written prescriptions, the dispenser shall not substitute an equivalent drug product if the oral prescription is a refill of a prior written prescription for which selection of an equivalent drug product was not permitted; provided that if the prior written prescription permitted the selection of an equivalent drug product, [such] substitution [may be allowed. However, the dispenser] shall be permitted. The dispenser, however, shall not substitute an equivalent drug product if a refill of a prescription is ordered orally and the prescriber or authorized employee of the prescriber orally orders “do not substitute”[.

The designation of “do not substitute” and the physician’s signature shall not be preprinted or stamped on the prescription.] or “brand medically necessary”.

(c) The dispenser shall not substitute an equivalent drug product unless its price to the purchaser is less than the price of the prescribed drug product.

(d) The dispenser shall not substitute an equivalent drug product for any prescription for an anti-epileptic drug, except upon the consent of the prescriber and the patient or the patient’s parent or guardian. This rare exception for epileptic patients is not to be construed as a policy decision to make exceptions for any other conditions.

[(d)] (e) Enforcement. Any wilful violation of this part shall be a misdemeanor. The county prosecutors and the attorney general may bring an action upon a complaint by an aggrieved person or upon their own motion in the name of the State against any person to enjoin any violation of this part.”

SECTION 2. Section 328-100, Hawaii Revised Statutes, is amended to

read as follows:

“[[§328-100]] Record of prescriptions. Every licensed physician[, druggist, or apothecary,] or pharmacist who compounds, sells, or delivers any prescription containing any poisonous drug, or substance deleterious to human life, to be used as medicine, shall enter upon [his] the physician's or pharmacist's books the prescription written out in full, with the date thereof, [with his] the physician's or pharmacist's own name [appended thereto,] or the name of the physician who prescribed the same, [and] the person to whom the same was delivered[.], and the prescriber's instruction regarding substitution with an equivalent drug product. No [such] prescription shall be compounded, sold, or delivered, unless the name of the person compounding, selling, or delivering the same, or the name of the physician prescribing the same, [be] is appended to the prescription in full[, and every such]. Every prescription shall be preserved for a period of not less than five years[. The], and all books and prescriptions shall be subject at all times to the inspection of the director of health or [his] the director's agent.”

SECTION 3. Section 2 of this bill is amended to conform with Section 2 of S.B. No. 2453, S.D. 1, if S.B. No. 2453, S.D. 1, is enacted into law<sup>1</sup> in any form containing the substance of Section 2. The Revisor of Statutes shall conform the language to reconcile any conflict.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1992; provided that Section 1 shall be repealed on July 1, 1995, and section 328-92, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 1992.

(Approved June 12, 1992.)

**Note**

1. Not enacted into law.