

Insurance and Real Estate Committee

JOINT FAVORABLE REPORT

Bill No.: HB-6619

Title: AN ACT CONCERNING BANNING PAY FOR DELAY.

Vote Date: 3/14/2023

Vote Action: Joint Favorable

PH Date: 2/14/2023

File No.:

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SPONSORS OF BILL:

The Insurance and Real Estate Committee
Sen. Martin M. Looney, 11th Dist.

REASONS FOR BILL:

Pay for delay situations arise when a company that owns a patented/name brand drug strikes an agreement with the generic manufacturer(s)- typically following an infringement lawsuit- to delay the release of any generic and/or biosimilar alternatives. This lack of competition allows the name brand producers to maintain preferred pricing and, ultimately, drives up costs throughout the healthcare system. This legislation would presume these agreements to be inherently anticompetitive and subject to civil penalty. The burden of proof would shift to the drug companies to demonstrate reasonableness, which would be evaluated by a neutral factfinder.

RESPONSE FROM ADMINISTRATION/AGENCY:

State of Connecticut, Attorney General, William Tong: supports this bill and finds it to be "much needed prescription drug reform" that will "reduce the ever rising costs of prescription drugs" and "encourage competition that will lead to greater innovation." He suggested the language of the bill be changed from "shall" to "may" in line 221 to give the Office of the Attorney General the similar enforcement discretion present in other statutes.

State of Connecticut, Office of the Healthcare Advocate, Healthcare Advocate, Ted Doolittle: believes these contracts interfere with the market to keep prices at "unnecessarily high levels" to the detriment of consumers. He urges quick action on this bill because pharmaceutical costs "consistently and substantially [exceed] inflation and other benchmarks" resulting in "unsustainable systemic growth in healthcare costs."

NATURE AND SOURCES OF SUPPORT:

AARP Connecticut, Associate Director, Advocacy and Outreach, Anna Doroghazi: supports this bill and shared several anecdotes from members struggling to afford their prescriptions. She noted that the overwhelming majority of prescriptions dispensed are generic drugs and cited a study by the Federal Trade Commission that found delayed releases of generic drugs "cost consumers \$3.5 billion. . . each year." Furthermore, she proposed a severability clause be added to the bill's language, so if the courts find one provision of the bill invalid it would not affect the rest of the legislation.

Connecticut Association of Health Plans, Executive Director, Sue Halpin: supports this legislation and commended the Committee's efforts to outlaw "practices that prevent alternative, lower cost, equally effective drugs from coming to market." She testified that the share of healthcare spending on pharmaceuticals is growing each year, citing a Kaiser Family Foundation analysis which found 1 in 7 drugs increased in price by more than 10% in a single year. She also cited a Connecticut Department of Insurance report which found both an increase in costs and an increase in the number of prescriptions.

Connecticut General Assembly, President Pro Tempore, Senator Martin Looney: finds the practice of pay for delay to be "anti-competitive on its face" and believes the General Assembly "must do all we can" to address the high cost of prescription drugs and healthcare premiums. He noted that similar legislation was passed in California in 2019.

Pharmaceutical Care Management Association, Director of State Affairs, Sam Hallemeier: testified that "the simplest, most effective way to reduce patient cost on drugs is for more competition" and applauds the Committee for introducing this bill. He believes it is "imperative for policymakers to end the anticompetitive tactics used by big drug companies." He cited a New York Times article on the drug Humira, noting that a majority of its 165 patents were not filed until the drug was already on the market. By "gaming the patent system to block more affordable competitors," the manufacturer "generated \$114 billion in revenue since 2016" and increased the drug's list price 30 times.

Anonymous Resident: supports this bill because they have become completely disabled due to obesity and it can only be treated by medication. Medicaid will not cover the weight loss drug this individual needs.

NATURE AND SOURCES OF OPPOSITION:

Pharmaceutical Research and Manufacturers of America, Deputy Vice President, State Policy, Kelly Ryan: opposes this bill because it "seeks to inject state authority into patent settlement agreements, ignores the federal standard for evaluation of these agreements, and may have the unintended consequence of delaying generic market entry." She noted that U.S. Supreme Court case *FTC v. Actavis* and subsequent federal law already require drug manufactures to submit agreement terms to the FTC for review. She believes that the differing standards could have a "substantial chilling effect on procompetitive settlements" because the manufacturers would take a case all the way through trial for a court decision effectively preventing any generic access until the patent expires. She also noted that this bill would be vulnerable to the same U.S. Constitutional challenge that the California bill faced.

GENERAL COMMENTS:

Carol Cruz, Dr. Nofrat Schwartz, MD, Sabrina Marino, and Mary Jane Peluso: testified on other bills that were on the agenda for the 2/14 public hearing and submitted identical testimony for HB6619. Carol Cruz opposes the certification process for peer support specialists, Dr. Schwartz and Sabrina Marino support coverage for cochlear implant surgery, and Mary Jane Peluso supports coverage for bariatric surgery.

Reported by: Sean Chilson

Date: 3/17/2023