HOUSE AMENDMENTS TO HOUSE BILL 3103

By COMMITTEE ON HEALTH CARE

April 27

On page 5 of the printed bill, delete lines 22 through 45.

On page 6, delete lines 1 through 38 and insert:

"**SECTION 4.** ORS 689.515 is amended to read:

"689.515. (1) As used in this section unless the context requires otherwise:

"(a) 'Brand name' means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging.

"(b) 'Dosage form' means the physical formulation or medium in which the product is intended, manufactured and made available for use, including but not limited to tablets, capsules, oral solutions, aerosols, ointments, inhalers and suppositories, and the particular form of which utilizes a specific technology or mechanism to control, enhance or direct the release, targeting, systemic absorption or other delivery of a dosage regimen in the body.

"(c) 'Generic name' means the official title of a drug or drug ingredients published in the latest edition of the official Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary.

"(d) 'Substitute' means to dispense without the prescriber's express authorization a different drug product in place of the drug ordered or prescribed.

"(e) 'Therapeutically equivalent' means drugs that are approved by the United States Food and Drug Administration for interstate distribution and the Food and Drug Administration has determined that the drugs will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

"(2) Except as limited by subsections (3) and (5) of this section, unless the purchaser instructs otherwise, [*the*] **a** pharmacist may substitute as follows:

"(a) A drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent.

"(b) When the prescriber is not reasonably available for consultation and the prescribed drug does not utilize a unique delivery system technology, an oral tablet, capsule or liquid form of the prescribed drug so long as the form dispensed or administered has the same strength, dose and dose schedule and is therapeutically equivalent to the drug prescribed.

"(3) A practitioner may specify in writing, by a telephonic communication or by electronic transmission that there [*shall*] **may** be no substitution for the specified brand name drug in [*any*] **a** prescription. [*The phrase 'no substitution' or the notation 'N.S.' must be in the practitioner's handwriting or, if the prohibition was communicated by telephonic communication or electronic transmission, in the pharmacist's handwriting and shall not be preprinted or stamped or initialed on the prescription form.*]

"(4) [*Every*] **A** pharmacy shall post a sign in a location easily seen by patrons at the counter

where prescriptions are dispensed or administered stating that, 'This pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor unless you do not approve.' The printing on the sign [*shall*] **must** be in block letters not less than one inch in height. If the pharmacist has reasonable cause to believe that the purchaser cannot read the sign or comprehend its content, the pharmacist shall endeavor to explain the meaning of the sign.

"(5) A pharmacist [*shall*] **may** substitute a drug product under this section only when there will be a savings in or no increase in cost to the purchaser.

"(6) If the practitioner prescribes a drug by its generic name, the pharmacist shall, consistent with reasonable professional judgment, dispense or administer the lowest retail cost, effective brand which is in stock.

"(7) Except as provided in subsection (8) of this section, when a pharmacist dispenses a substituted drug as authorized by subsection (2) of this section, the pharmacist [*must*] **shall** label the prescription container with the name of the dispensed drug. If the dispensed drug does not have a brand name, [*the prescription label shall indicate*] **the pharmacist shall label the prescription container with** the generic name of the drug dispensed along with the name of the drug manufacturer.

"(8) A prescription dispensed by a pharmacist [*shall*] **must** bear upon the label the name of the medication in the container or shall be labeled as intended by the prescriber.

"(9) The substitution of any drug by a [*licensed*] pharmacist or the pharmacist's employer pursuant to this section does not constitute the practice of medicine.

"(10) [*No*] **A** substitution of drugs made by a pharmacist or the pharmacist's employer in accordance with this section and any rules that the State Board of Pharmacy may adopt thereunder [*shall*] **does not** constitute evidence of negligence if the substitution was made within reasonable and prudent practice of pharmacy or if the substituted drug was accepted in a generally recognized formulary or government list.

"(11) Failure of a practitioner to specify that no substitution is authorized does not constitute evidence of negligence unless the practitioner knows that the health condition of the patient for whom the practitioner is prescribing warrants the use of the brand name drug product and not the substituted drug.".
