

SENATE BILL 2031

Presented by: Jon Godfread
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Before: Senate Human Services Committee
Senator Lee, Chairwoman

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Good morning, Chairwoman Lee and members of the committee. My name is Jon Godfread, and I am the North Dakota Insurance Commissioner. I am here today in opposition of Senate Bill 2031.

The intent behind this bill has merit because we too agree that drug prices are too expensive for consumers, however there are many logistical issues with the concept of the Insurance Department creating and running a pilot program to attempt to bring prices down.

First, SB 2031 would require the Insurance Department to create and administer a program for which we have no current staff expertise. therefore, as indicated in our fiscal note, we would require authorization for 2 FTE's and funding for consultants with expertise in the field. We project an appropriation of \$3.1 million for the biennium to stand up this pilot program.

The Department arrived at this conclusion based on an analysis of SB 2031 conducted by an independent consultant, whom we had on retainer for other studies completed during the interim. Analysis showed that this bill, as it is currently written, would require 2 FTEs and approximately 2,500 consultant hours per year or 5,000 hours over the course of the biennium. The reason for this large number is due to the specific requirements and the consistent and constant monitoring of those requirements to properly implement the legislation. The world of prescription drugs is a very niche market and so we are also concerned that we would struggle to find staff to fill those positions.

This bill also states, on page 2 line 7, that it is a violation for state entities and health plans to purchase drugs for a cost higher than the referenced rate, but our question is would the Commissioner then impose a penalty to another state agency if there is a violation? We understand that this would need to be referred to the Attorney General as the bill states that a violation is a Class A misdemeanor and we do not have prosecutorial authority.

Additionally, there is another issue related to the enforcement of this bill as the Insurance Commissioner would have authority to enforce penalties on drug manufacturers and distributors if there are violations, but if they choose not to pay then we do not believe that we have any legal recourse.

Finally, we are also unsure of who is responsible for defending the state if this bill is ultimately litigated. We are a special funded agency and thus any litigation that directly involves the Insurance Commissioner is generally defended by our staff attorneys. However, in this instance we lack the capacity and expertise to defend a lawsuit around pharmaceutical regulation. Again, the Department currently has no experience or expertise in this area, and that includes within our legal team. In the past we have relied on the Attorney General and their expertise to assist in this kind of litigation, however that comes at a cost to a special funded agency. If SB 2031 is passed, we would like to have the bill amended to clearly outline that any litigation stemming from this legislation shall be handled by the Attorney General's office. The Insurance Department, as the administrator of the program, would assist with the defense, but cannot be responsible for the costs associated with any litigation that results from this program.

We understand that this bill is a pilot program, and it is designed to help bring drug prices down, but the requirements under this bill are extensive and we struggle to understand how the Insurance Department would effectively administer this program if enacted. I believe that my record shows that I stand in support of trying to lower health care and prescription drug costs for North Dakotans, but as to this specific legislation the Department must stand in opposition.

Thank Mr. Chairwoman and members of the committee, happy to take questions.