

MIRS Capitol Capsule, Wednesday, May 3, 2006

Weighing Drug Immunity Costs/Benefits

The state's prescription drug immunity law is more an argument of cost-versus-benefit, not necessarily one of right-versus-wrong, three Michigan State University (MSU) professors told a group of listeners at an Institute for Public Policy and Social Research (IPPSR) forum.

Michigan's drug immunity law is unique. Drug companies are given almost complete immunity to lawsuits if the companies get approval from the U.S. Food and Drug Administration (FDA). The law makes it nearly impossible for a person who feels they were harmed by a drug to file suit, said Paul **ARSHAGOUNI**, MSU assistant professor of Law.

The only way a person can file suit is if they can find evidence that the drug company withheld information about the drug from the FDA or gave the FDA misleading information that would have caused the FDA to change its mind about approving the drug. If the FDA would have approved the drug regardless of the misleading information, the suit doesn't have any bearing.

Other states have approached drug immunity differently. Some states say a plaintiff can sue the company if they can prove the drug is unsafe, a practice that doesn't give drug companies immunity, Arshagouni said.

"Other states, generally speaking, take a far less stringent view on how to protect pharmaceutical companies," Arshagouni said.

Democrats want to reform state law so plaintiff's can sue pharmaceutical companies if they can prove the drug was harmful. Doing so would change the state's position on drug immunity from one that gives companies some protection to one that holds the producer liable for everything, said Scot **YODER**, a MSU philosophy professor.

Yoder then went through a list of costs and benefits associated to shifting to the "strict liability approach."

When a pharmaceutical company knows that it can be held liable for its products, it figures litigation and protection costs into the making and dispersal of the drug, Yoder said. Doing this shifts the company's cost to everyone who might use the drugs, which is clearly a benefit to the drug company.

But it's also a pitfall. Drug companies who do not have to fend off lawsuits end up collecting for costs they may never incur. Also, complete immunity was originally created to decrease liability costs and it has, in Michigan, Arshagouni said. However, because other states don't share similar laws, there's no proof that overall health care and prescription drug costs have decreased, which is the intent of this kind of legislation.

Another benefit to strict liability is that it improves safety because drug companies are more hesitant to release drugs if they know they can be sued.

The counter argument to this is drug companies who know they may be sued may slow down innovation, which can decrease access to medication, Yoder said.

"If you want them to innovate and take risks, you need to lighten the load for them," Yoder said.

Yoder, Arshagouni and Harry **PERLSTADT**, an MSU sociology professor, gave the historical context of drug bills and the pros and cons to the Democratic-proposed legislation, but none of them offered a solution.

Instead, they provided the audience with information both sides have been using for their arguments and suggested lawmakers look at the pros and cons of each.

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