

115TH CONGRESS  
2D SESSION

# H. R. 7251

To amend the Federal Food, Drug, and Cosmetic Act and the Securities Exchange Act of 1934 to prevent the inter partes review process for challenging patents from diminishing competition in the pharmaceutical industry and with respect to drug innovation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2018

Mr. FLORES introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act and the Securities Exchange Act of 1934 to prevent the inter partes review process for challenging patents from diminishing competition in the pharmaceutical industry and with respect to drug innovation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hatch-Waxman Integ-  
5 rity Act of 2018”.

1 **SEC. 2. PREVENTING THE INTER PARTES REVIEW PROCESS**  
2 **FOR CHALLENGING PATENTS FROM DIMIN-**  
3 **ISHING COMPETITION IN THE PHARMA-**  
4 **CEUTICAL INDUSTRY AND WITH RESPECT TO**  
5 **DRUG INNOVATION.**

6 (a) BRAND NAME DRUGS.—Section 505(b)(2) of the  
7 Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
8 355(b)(2)) is amended—

9 (1) in subparagraph (A)(iv), by striking “and”  
10 at the end;

11 (2) in subparagraph (B), by striking the period  
12 at the end and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(C) in each certification required under sub-  
15 paragraph (A) with respect to a patent, a certifi-  
16 cation that—

17 “(i) neither the applicant nor any party in  
18 privity with, related to, or cooperating with the  
19 applicant has filed, or will file, a petition to in-  
20 stitute inter partes review or post-grant review  
21 of that patent under chapter 31 or 32, respec-  
22 tively, of title 35, United States Code; and

23 “(ii) in making the certification required  
24 under subparagraph (A), the applicant is not  
25 relying in whole or in part on any decision  
26 issued by the Patent Trial and Appeal Board in

1 an inter partes review or post-grant review  
2 under chapter 31 or 32, respectively, of title 35,  
3 United States Code.”.

4 (b) GENERIC DRUGS.—Section 505(j)(2)(A) of the  
5 Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
6 355(j)(2)(A)) is amended—

7 (1) in clause (vii)(IV), by striking “and” at the  
8 end;

9 (2) in clause (viii), by striking the period at the  
10 end and inserting “; and”;

11 (3) by inserting after clause (viii), as amended  
12 by paragraph (2), the following:

13 “(ix) in each certification required under  
14 clause (vii) with respect to a patent, a certifi-  
15 cation that—

16 “(I) neither the applicant nor any  
17 party in privity with, related to, or cooper-  
18 ating with the applicant has filed, or will  
19 file, a petition to institute inter partes re-  
20 view or post-grant review of that patent  
21 under chapter 31 or 32, respectively, of  
22 title 35, United States Code; and

23 “(II) in making the certification re-  
24 quired under clause (vii), the applicant is  
25 not relying in whole or in part on any deci-

1           sion issued by the Patent Trial and Appeal  
2           Board in an inter partes review or post-  
3           grant review under chapter 31 or 32, re-  
4           spectively, of title 35, United States  
5           Code.”; and

6           (4) in the flush text following clause (ix), as  
7           added by paragraph (3), by striking “(viii)” and in-  
8           serting “(ix)”.

9           (c) BIOSIMILAR DRUGS; EVALUATION BY THE SEC-  
10          RETARY.—Section 351(k) of the Public Health Service Act  
11          (42 U.S.C. 262(k)) is amended—

12           (1) in paragraph (2)(A)(iii)—

13           (A) by redesignating subclauses (I) and  
14           (II) as items (aa) and (bb), respectively, and  
15           adjusting the margins accordingly;

16           (B) in the matter preceding item (aa), as  
17           so redesignated, by striking “An application”  
18           and inserting the following:

19           “(I) IN GENERAL.—An application”;

20           (C) in subclause (I), as so designated—

21           (i) in item (aa), as so redesignated, by  
22           striking “and” at the end;

23           (ii) in item (bb), as so redesignated,  
24           by striking the period at the end and in-  
25           serting “; and”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(cc) shall, with respect to a  
4 patent described in subclause  
5 (II), include a certification that  
6 neither the applicant nor any  
7 party in privity with, related to,  
8 or cooperating with the applicant  
9 has filed, or will file, a petition to  
10 institute inter partes review or  
11 post-grant review of the patent  
12 under chapter 31 or 32, respec-  
13 tively, of title 35, United States  
14 Code.”; and

15 (D) by adding at the end the following:

16 “(II) PATENT DESCRIBED.—A  
17 patent is described in this subclause  
18 if—

19 “(aa) the patent covers the  
20 reference product or a method  
21 for using the reference product;  
22 and

23 “(bb)(AA) the reference  
24 product described in item (aa) is

1 marked under section 287(a) of  
2 title 35, United States Code; or

3 “(BB) there is otherwise  
4 public notice regarding the appli-  
5 cability of the reference product  
6 described in item (aa).”; and

7 (2) in paragraph (3)—

8 (A) in subparagraph (A)(ii), by striking  
9 “and” at the end;

10 (B) in subparagraph (B), by striking the  
11 period at the end and inserting “; and”; and

12 (C) by adding at the end the following:

13 “(C) the Secretary determines that the ap-  
14 plication fully complies with the requirements  
15 under paragraph (2)(A)(iii).”.

16 **SEC. 3. PREVENTING THE MANIPULATIVE AND DECEPTIVE**  
17 **USE OF INTER PARTES REVIEW.**

18 Section 10(b) of the Securities Exchange Act of 1934  
19 (15 U.S.C. 78j(b)) is amended—

20 (1) by inserting “(1)” after “(b)”; and

21 (2) by adding at the end the following:

22 “(2) For purposes of paragraph (1), a person shall  
23 be considered to be using a manipulative or deceptive de-  
24 vice if—

1           “(A) the person, or an affiliate of the person,  
2           files a petition to institute an inter partes review  
3           under chapter 31 of title 35, United States Code,  
4           with respect to a patent; and

5           “(B) the person, or an affiliate of the person,  
6           during the 180-day period beginning on the date  
7           that is 90 days before the date on which the person  
8           files the petition described in subparagraph (A), en-  
9           gages in a short sale of any publicly traded security  
10          of the owner of the patent that is the subject of the  
11          petition.”.

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