

Cruz 8

S.L. 

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To clarify the affirmative defenses provision.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.**

**S. 127**

To prevent unfair and deceptive acts or practices and the dissemination of false information related to pharmacy benefit management services for prescription drugs, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CRUZ to the amendment (No. \_\_\_\_\_) proposed by Ms. CANTWELL

Viz:

- 1 Strike section 6(c) and insert the following:
- 2 (c) AFFIRMATIVE DEFENSE.—
- 3 (1) IN GENERAL.—In an action brought under
- 4 this section to enforce section 2, it shall be an af-
- 5 firmative defense, on which the defendant has the
- 6 burden of persuasion by a preponderance of the evi-
- 7 dence, that the conduct alleged to be a violation of
- 8 section 2 was nonpretextual and reasonably nec-
- 9 essary to—
- 10 (A) prevent a violation of, or comply with,
- 11 Federal or State law;

1 (B) protect patient safety; or

2 (C) protect patient access.

3 (2) CLARIFICATION.—Nothing in this sub-  
4 section shall be construed to prohibit a defendant  
5 from raising any other affirmative defense available.