

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/CS/SB 1208

INTRODUCER: Health Policy Committee; Criminal Justice Committee; and Senator Latvala

SUBJECT: Fraudulent Controlled Substance Prescriptions

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1208 amends s. 893.13, F.S., to increase the penalty, from a first degree misdemeanor to a third degree felony, for a first time violation of the prohibition on a non-authorized person possessing a prescription form that has not been signed and completed by the practitioner whose name is printed on the prescription form.¹

II. Present Situation:

Currently, s. 893.13(7)(a)7., F.S., prohibits any person from possessing a prescription form that has not been completed and signed by the practitioner whose name is printed on the form, unless the person possessing the form is the practitioner, the practitioner's agent, a pharmacist, or an authorized prescription form supplier. The first violation of this provision is punishable as a first degree misdemeanor² while second and subsequent violations are punishable as third degree felonies.³

¹ See s. 893.13(7)(a)7., F.S.

² A first degree misdemeanor is punishable with either or both of a prison sentence of up to 1 year and a fine of up to \$1,000. See ss. 775.082 and 775.083, F.S.

³ A third degree felony is punishable with either or both of a prison sentence of up to 5 years and a fine of up to \$5,000. If the person is a habitual felony offender, as defined in s. 775.084(1)(a), F.S., the court may increase the sentence to up to 10 years in prison and, according to s. 775.082(10), F.S., if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a non-state prison sanction, unless the court makes written findings that this sanction could present a danger to the public. See ss. 775.082, 775.083, and 775.084, F.S.

Section 893.04(1)(b) and (c), F.S., requires that a written prescription must be dated and signed by the prescribing practitioner on the same day issued and the following information must appear on the face of the prescription:

- The full name and address for whom the controlled substance is dispensed, or the owner of the animal for which the prescription was written;
- The full names and address of the prescribing practitioner and the practitioner's federal controlled substance registry number;
- The species of animal for which the prescription was writing, if written for an animal;
- The name of the controlled substance and the strength, quantity, and directions for use; and,
- The date.⁴

In addition, s. 456.42, F.S., requires that the prescription be legibly written or typed and, if written for a controlled substance listed in ch. 893, F.S., the prescription must be on a standardized counterfeit-proof prescription pad produced by a vendor approved by the Department of Health (DOH).

Currently, there are 545 vendors that are approved by the DOH to sell counterfeit-proof prescription pads.⁵ Vendors are required to apply to the DOH for approval and produce counterfeit-proof prescription pads that adhere to the DOH's specifications.⁶ Vendors are also responsible for the secure production and distribution of the pads and must adhere to the DOH's regulations including maintaining records and information about the production and distribution of the pads and submitting a monthly report to the DOH with details about each transaction they enter into.⁷

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., to increase the penalty for a first-time violation of the prohibition on a non-authorized person possessing a prescription that has not been completed and signed by the practitioner whose name is on the prescription form. The penalty is increased from a first degree misdemeanor to a third degree felony.⁸ The bill also makes other technical changes to that section of law.

The bill establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ For prescriptions written for controlled substances listed in ch. 893, F.S., the date must be written with an abbreviated month. *See* s. 456.42, F.S.

⁵ A list of vendors can be found at http://ww2.doh.state.fl.us/ppv_search/default.aspx, last visited on Mar. 14, 2014.

⁶ *See* Rule 64B-3.005, F.A.C

⁷ *Id.*

⁸ Section 893.13(7)(a)7., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Both the Department of Corrections⁹ and the Legislature's Office of Economic and Demographic Research estimate that CS/CS/SB 1208 will have an insignificant prison bed impact.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on March 19, 2014:

Reinstates current law with respect to requiring a prescription to be “completed and signed by the practitioner whose name appears thereon.”

⁹ See Department of Corrections bill analysis for SB 1208, on file with Health Policy Committee Staff.

¹⁰ See Criminal Justice Impact Conference estimate for HB 517, available at:
<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm>, last visited on Mar. 14, 2014.

CS by Criminal Justice on March 10, 2014:

Rewords the description of the prescription fraud act in s. 893.13(7)(a)7., F.S. As a result of this rewording, it appears the practitioner whose name appears printed on the form will still have to sign the form but the form can be completed by either the practitioner or another authorized person (current law: completed and signed by the practitioner).

B. Amendments:

None.