

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 517 Fraudulent Controlled Substance Prescriptions

**SPONSOR(S):** Criminal Justice Subcommittee and Hooper

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 1 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	15 Y, 0 N	Cox	Havlicak

### SUMMARY ANALYSIS

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V, which are used to regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein.

The Drug Control Act permits a practitioner, in good faith and in the course of his or her professional practice only, to prescribe a controlled substance to a patient. Written prescriptions must meet certain requirements (e.g., they must have the quantity of the drug prescribed in both textual and numerical formats and be written on a standardized counterfeit-proof prescription pad).

Currently, it is a first degree misdemeanor for a person to possess a prescription form that has not been:

- Completed; and
- Signed by the practitioner whose name appears printed thereon.

When prosecuting this offense, the State is required to prove that a prescription form is not signed and not completed. A person may not be prosecuted for possession of prescription forms that are signed or completed.

The bill prohibits a person from possessing a prescription form unless the form has been:

- Signed by the practitioner whose name appears printed thereon; and
- Completed.

This has the effect of expanding the types of prescription forms that a person is prohibited from possessing, and may make it easier to prosecute the unauthorized possession of prescription forms.

Additionally, the bill makes first violations of the offense a third degree felony (rather than a first degree misdemeanor).

On January 30, 2014, the Criminal Justice Impact Conference determined the bill will have an insignificant prison bed impact.

The bill is effective on October 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Florida's drug control laws are contained in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act). The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V. These schedules are used to regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"<sup>1</sup> of the substance listed therein and whether there is a currently accepted medical use for the substance in the United States. For example, Schedule I substances have a high potential for abuse and have no currently accepted medical use,<sup>2</sup> while Schedule II substances have a high potential for abuse and have a currently accepted, but severely restricted medical use in treatment.<sup>3</sup>

#### **Prescriptions of Controlled Substances**

The Drug Control Act permits a practitioner,<sup>4</sup> in good faith and in the course of his or her professional practice only, to prescribe a controlled substance to a patient.<sup>5</sup> Additionally, controlled substances may only be dispensed by a pharmacist upon a written or oral prescription<sup>6</sup> of a practitioner in accordance with specified conditions.<sup>7</sup>

A written prescription for a controlled substance listed in ch. 893, F.S., must:

- Have the quantity of the drug prescribed in both textual and numerical formats;<sup>8</sup>
- Be dated with the abbreviated month written out on the face of the prescription;<sup>9</sup>
- Be either written on a standardized counterfeit-proof prescription pad<sup>10</sup> produced by a Department of Health-approved vendor<sup>11</sup> or electronically prescribed;<sup>12</sup> and
- Not be issued on the same prescription blank with another prescription order for a:
  - Controlled substance that is described in a different schedule; or
  - Medicinal drug.<sup>13,14</sup>

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<sup>1</sup> Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

<sup>2</sup> Section 893.03(1), F.S.

<sup>3</sup> Section 893.03(2), F.S.

<sup>4</sup> Section 893.02(21), F.S., defines "practitioner" to mean a physician licensed pursuant to chapter 458, F.S., a dentist licensed pursuant to chapter 466, F.S., a veterinarian licensed pursuant to chapter 474, F.S., an osteopathic physician licensed pursuant to chapter 459, F.S., a naturopath licensed pursuant to chapter 462, F.S., a certified optometrist licensed pursuant to chapter 463, F.S., or a podiatric physician licensed pursuant to chapter 461, F.S., provided such practitioner holds a valid federal controlled substance registry number.

<sup>5</sup> Section 893.05, F.S.

<sup>6</sup> Section 893.02(22), F.S., defines "prescription," in part, as an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies.

<sup>7</sup> Section 893.04, F.S.

<sup>8</sup> Section 456.42, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> The Department of Health is required to develop the form and content for a counterfeit-resistant prescription blank. Practitioners must use the counterfeit-resistant prescription blank when prescribing a controlled substance listed in Schedule II, III, IV, or V. Section 893.065, F.S.

<sup>11</sup> An approved vendor is required to submit a monthly report to the Department of Health which, at a minimum, documents the number of prescription pads sold and identifies the purchasers of such prescription pads. Section 456.42, F.S.

<sup>12</sup> Section 456.42, F.S.

<sup>13</sup> Section 893.02(22), F.S.

<sup>14</sup> Section 465.003(8), F.S., defines the term "medicinal drug" to mean those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.

There are a number of controlled substances contained in Schedules II through V that are prescribed by practitioners via a prescription form. Examples of such controlled substances include codeine, morphine, oxycodone, methadone, barbiturates, benzodiazepines, amphetamine, and anabolic steroids.

### **Prohibited Acts Related to Prescriptions of Controlled Substances**

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Currently, s. 893.13(7)(a)7., F.S., makes it a first degree misdemeanor<sup>15</sup> for a person to possess a prescription form that has not been:

- Completed; and
- Signed by the practitioner whose name appears printed thereon.

The offense is a third degree felony<sup>16</sup> if committed a second or subsequent time.<sup>17</sup>

The offense does not apply to the issuing practitioner, an agent or employee of that practitioner, suppliers of prescription forms who are authorized by that practitioner to possess such forms, or pharmacists.<sup>18</sup>

When prosecuting this offense, the State is required to prove that a prescription form is not signed and not completed. A person may not be prosecuted for possession of prescription forms that are signed or completed.

### **Effect of the Bill**

The bill prohibits a person from possessing a prescription form unless the form has been:

- Signed by the practitioner whose name appears printed thereon; and
- Completed.

This has the effect of expanding the types of prescription forms that a person is prohibited from possessing, and may make it easier to prosecute the unauthorized possession of prescription forms.

Additionally, the bill makes first violations of the offense a third degree felony (rather than a first degree misdemeanor).

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 2. Provides an effective date of October 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

On January 30, 2014, the Criminal Justice Impact Conference determined the bill will have an insignificant prison bed impact.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

<sup>15</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>16</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>17</sup> Section 893.13(7)(c), F.S.

<sup>18</sup> Section 893.13(7)(a)7., F.S.

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill reclassifies a first degree misdemeanor to a third degree felony. To the extent that this reduces the number of persons subject to misdemeanor penalties, the bill may result in a negative fiscal impact on county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not define what constitutes a prescription form being completed "in its entirety."

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies language and does not make any substantive changes to the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.