

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 214

SPONSOR: Criminal Justice Committee and Senators Crist and Fasano

SUBJECT: Dispensing RXs/Controlled Substances

DATE: March 3, 2004

REVISED: \_\_\_\_\_

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE                   | ACTION                      |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Erickson</u>             | <u>Cannon</u>               | <u>CJ</u>                   | <u>Fav/CS</u>               |
| 2. | <u>                    </u> | <u>                    </u> | <u>HC</u>                   | <u>                    </u> |
| 3. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 4. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 5. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 6. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |

## I. Summary:

Committee Substitute for Senate Bill 214 provides that it is a third degree felony for a person to knowingly use or knowingly attempt to use a forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card to obtain a prescription drug from a pharmacy or dispensing practitioner.

This CS substantially amends ss. 499.005 and 499.0691, F.S., and reenacts s. 895.02(1)(a), F.S.

## II. Present Situation:

### Unlawful Possession of and Unlawful Acts Relating to a Driver's License or Identification Card (Section 322.212, F.S.)

Section 322.212, F.S., provides, in part, that it is a third degree felony for any person to:

- ▶ Knowingly have in his or her possession or to display any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card or any instrument in the similitude of a driver's license or identification card unless possession by such person has been duly authorized by the department;
- ▶ Knowingly have in his or her possession any instrument in the similitude of a driver's license issued by the department or its duly authorized agents or those of any state or jurisdiction issuing licenses recognized in this state for the operation of a motor vehicle;
- ▶ Knowingly have in his or her possession any instrument in the similitude of an identification card issued by the department or its duly authorized agents or those of any state or

jurisdiction issuing identification cards recognized in this state for the purpose of indicating a person's true name and age; or

- ▶ Knowingly sell, manufacture, or deliver, or knowingly offer to sell, manufacture, or deliver, a blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card, or an instrument in the similitude of a driver's license or identification card, unless that person is authorized to do so by the department.

*See* s. 322.212(1)(a)-(d) and (6), F.S.

The term "driver's license" includes a driver's license issued by the department or its agents or a driver's license issued by any state or jurisdiction that issues licenses recognized in this state for the operation of a motor vehicle. The term "identification card" includes any identification card issued by the department or its agents or any identification card issued by any state or jurisdiction that issues identification cards recognized in this state for the purpose of indicating a person's true name and age. *See* s. 322.212(1), F.S.

#### **Violations and Penalties Under Ch. 465, F.S., Relating to the Practice of Pharmacy (Section 465.015, F.S.)**

Section 465.015, F.S., provides, in part, that it a third degree felony for any person to:

- ▶ Make a false or fraudulent statement, either for herself or himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board;
- ▶ Fill, compound, or dispense prescriptions or to dispense medicinal drugs if such person does not hold an active license as a pharmacist in this state, is not registered as an intern in this state, or is an intern not acting under the direct and immediate personal supervision of a licensed pharmacist;
- ▶ Sell or dispense drugs as defined in s. 465.003(8), F.S., without first being furnished with a prescription; or
- ▶ Sell samples or complimentary packages of drug products.

*See* s. 465.015(2)(a)–(d) and (4), F.S.

#### **Conditions for the Dispensing of a Controlled Substance by a Pharmacist (Section 893.04, F.S.)**

Section 893.04, F.S., provides, in part, that a pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances upon a written or oral prescription of a practitioner, under the following conditions:

- ▶ Oral prescriptions must be promptly reduced to writing by the pharmacist.

- ▶ The written prescription must be dated and signed by the prescribing practitioner on the day when issued.
- ▶ There shall appear on the face of the prescription or written record thereof for the controlled substance certain information as specified in the statute.
- ▶ The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years.
- ▶ Affixed to the original container in which a controlled substance is delivered upon a prescription or authorized refill thereof, as hereinafter provided, there shall be a label bearing the certain information as specified in the statute.
- ▶ A prescription for a controlled substance listed in Schedule II may be dispensed only upon a written prescription of a practitioner, except that in an emergency situation, as defined by regulation of the Department of Health, such controlled substance may be dispensed upon oral prescription. No prescription for a controlled substance listed in Schedule II may be refilled.
- ▶ No prescription for a controlled substance listed in Schedules III, IV, or V may be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.

Notwithstanding these conditions, a pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication for any medicinal drug other than a Schedule II medicinal drug, in compliance with the provisions of s. 465.0275, F.S.

*See s. 893.04(1)(a)-(g) and (2).*

#### **Definition of Legend Drug, Prescription Drug, and Medicinal Drug (s. 499.03, F.S.)**

Section 499.003(25), F.S., defines the terms “legend drug,” “prescription drug,” or “medicinal drug” as any drug, including, but not limited to, finished dosage forms, or active ingredients subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act or s. 465.003(8), F.S., s. 499.007(12), F.S., or s. 499.0122(1)(b) or (c), F.S. (Subsection (8) of s. 465.003(8), F.S., defines “medicinal drugs” as 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. Subsection (12) of s. 499.007, F.S., does not actually define a term but rather states requirements for the dispensing of certain habit-forming drugs that are not safe for use except under circumscribed circumstances. Paragraphs (a) and (b) of subsection (1) of s. 499.0122, F.S., define, respectively, the terms “prescription medical oxygen” and “veterinary legend drug.”)

**Some Unlawful Acts Relating to Obtaining or Distributing Prescription Drugs and Unlawful Possession of a Prescription Drug or Controlled Substance (Sections 499.005, 499.03, 499.0691, and 893.13, F.S.)**

Subsection (23) of s. 499.005, F.S., provides that it is unlawful for a person to perform or cause the performance of these acts in this state: obtaining or attempting to obtain a prescription drug or device by fraud, deceit, misrepresentation or subterfuge, or engaging in misrepresentation or fraud in the distribution of a drug or device. A person who possesses any drug in violation of ss. 499.001-499.081, F.S., except if the violation relates to a deficiency in pedigree papers, commits a second degree misdemeanor; but, if the violation is committed after a conviction of such person under s. 499.0691, F.S., has become final, such person commits a first degree misdemeanor. *See* s. 499.0691(1) and (1)(i), F.S. Presumably the possession of a prescription drug obtained through the unlawful act specified in s. 499.005(23), F.S., would constitute a possession proscribed by s. 499.0691(1) and (1)(i), F.S.

Subsection (1) of s. 499.03, F.S., provides, in part, that it is unlawful for a person to possess any legend drug, unless the possession of the drug has been obtained by a valid prescription of a practitioner licensed by law to prescribe the drug. Violation of subsection (1) is a misdemeanor of the second degree, except that possession with the intent to sell, dispense, or deliver is a third degree felony. *See* s. 499.03(3), F.S.

Section 893.13, F.S., provides, in part, that it is a third degree felony for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. However, if the person possesses in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance, it is a first degree felony. *See* s. 893.13(6)(a) and (c), F.S.

It is a first degree misdemeanor (or a third degree felony for a second or subsequent violation) to distribute or dispense a controlled substance in violation of ch. 893, F.S. *See* s. 893.13(7)(a)1. and (b), F.S.

It is a third degree felony to acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. *See* s. 893.13(7)(a)9. and (c), F.S.

**III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 214 amends s. 499.005, F.S., to specify as a prohibited act the knowing use or knowing attempt to use a forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card to obtain a prescription drug from a pharmacy, as defined in s. 465.003, F.S., or a dispensing practitioner authorized to dispense medicinal drugs pursuant to s. 465.0276, F.S.

The CS also amends s. 499.0691, F.S., to provide that it is a third degree felony for a person to knowingly use or knowingly attempt to use a forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card to obtain a prescription drug from a pharmacy, as defined in s. 465.003, F.S., or a dispensing practitioner authorized to dispense medicinal drugs pursuant to s. 465.0276, F.S.

The CS also reenacts s. 895.02(1)(a), F.S., which references s. 499.0691, F.S., a section amended by the CS.

The CS provides that the act takes effect July 1, 2004.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not yet met to review and determine if CS/SB 214 has a prison bed impact. The Division of Economic and Demographic Research (EDR) provided a preliminary estimate on SB 214. EDR staff stated that the bill should not have much of an impact. "There were 20 admissions to prison in FY 02-03 for offenses related to unauthorized use of a driver's license, etc."

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---