By the Committees on Governmental Operations; Criminal Justice; and Senators Saunders, Bennett, Deutch and Aronberg

585-2543-07

A bill to be entitled

An act relating to controlled substances; creating s. 831.311, F.S.; prohibiting the sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances with the intent to injure or defraud; providing penalties; amending s. 893.04, F.S.; providing additional requirements for the dispensing of a controlled substance listed in Schedule II, Schedule III, or Schedule IV; specifying circumstances under which a pharmacist who dispenses controlled substances by mail is exempt from certain requirements governing patient identification; providing requirements and limitations for dispensing controlled substances upon an oral prescription; creating s. 408.0611, F.S.; providing legislative intent; providing definitions; requiring the Agency for Health Care Administration to create a clearinghouse of information on electronic prescribing; requiring the agency to monitor and report on the implementation of electronic prescribing; creating s. 893.065, F.S.; requiring the department to develop and adopt by rule the form and content for a counterfeit-proof prescription blank for voluntary use by physicians in prescribing a controlled substance listed in Schedule II, Schedule III, or Schedule IV; providing that penalties shall

become effective only upon adoption of rules; prescribing duties of law enforcement agencies and medical examiners when a person dies of an apparent drug overdose; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 831.311, Florida Statutes, is created to read:

831.311 Unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.--

(1) It is unlawful for any person having the intent to injure or defraud any person or to facilitate any violation of s. 893.13 to sell, manufacture, alter, deliver, utter, or possess with intent to injure or defraud any person, or to facilitate any violation of s. 893.13, any counterfeit-resistant prescription blanks for controlled substances, the form and content of which are adopted by rule of the Department of Health pursuant to s. 893.065.

(2) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 893.04, Florida Statutes, is amended to read:

893.04 Pharmacist and practitioner.--

(1) 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:

(a) Oral prescriptions must be promptly reduced to writing by the pharmacist or recorded electronically if permitted by federal law.

(b) The written prescription must be dated and signed by the prescribing practitioner on the day when issued.

(c) There shall appear on the face of the prescription or written record thereof for the controlled substance the following information:

1. The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed.

2. The full name and address of the prescribing practitioner and the practitioner's federal controlled substance registry number shall be printed thereon.

3. If the prescription is for an animal, the species of animal for which the controlled substance is prescribed.

4. The name of the controlled substance prescribed and the strength, quantity, and directions for use thereof.

5. The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled.

6. The initials of the pharmacist filling the prescription and the date filled.

(d) The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years.

(e) 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 following information:

1. The name and address of the pharmacy from which such controlled substance was dispensed.

2. The date on which the prescription for such controlled substance was filled.

3. The number of such prescription, as recorded in the prescription files of the pharmacy in which it is filled.

4. The name of the prescribing practitioner.

5. The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed.

6. The directions for the use of the controlled substance prescribed in the prescription.

7. A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(f) 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 but is limited to a 72-hour supply. A ~~No~~ prescription for a controlled substance listed in Schedule II may not be refilled.

(g) A ~~No~~ prescription for a controlled substance listed in Schedule ~~Schedules~~ III, Schedule IV, or Schedule V may not 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.

(2)(a) A pharmacist may not dispense a controlled substance listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the

order is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(b) Any pharmacist who dispenses by mail a controlled substance listed in Schedule II, Schedule III, or Schedule IV is exempt from the requirement to obtain suitable identification for the prescription dispensed by mail if the pharmacist has obtained the patient's identification through the patient's prescription benefit plan.

(c) Any controlled substance listed in Schedule III or Schedule IV may be dispensed by a pharmacist upon an oral prescription if, before filling the prescription, the pharmacist reduces it to writing or records the prescription electronically if permitted by federal law. Such prescriptions must contain the date of the oral authorization.

(d) Each written prescription prescribed by a practitioner in this state for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and a numerical notation of the quantity on the face of the prescription and a notation of the date, with the abbreviated month written out on the face of the prescription. A pharmacist may, upon verification by the prescriber, document any information required by this paragraph.

(e) A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state.

(f) A pharmacist may not knowingly fill a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

(3)~~(2)~~ Notwithstanding ~~the provisions of~~ subsection (1), 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 medicinal drug listed in Schedule II, in compliance with the provisions of s. 465.0275.

(4)~~(3)~~ The legal owner of any stock of controlled substances in a pharmacy, upon discontinuance of dealing in controlled substances, may sell said stock to a manufacturer, wholesaler, or pharmacy. Such controlled substances may be sold only upon an order form, when such an order form is required for sale by the drug abuse laws of the United States or this state, or regulations pursuant thereto.

Section 3. Section 408.0611, Florida Statutes, is created to read:

408.0611 Electronic prescribing clearinghouse.--

(1) It is the intent of the Legislature to promote the implementation of electronic prescribing by health care practitioners, health care facilities, and pharmacies in order to prevent prescription drug abuse, improve patient safety, and reduce unnecessary prescriptions. To that end, it is the intent of the Legislature to create a clearinghouse of information on electronic prescribing to convey the process and advantages of electronic prescribing; to provide information regarding the availability of electronic prescribing products, including no-cost or low-cost products; and to regularly convene stakeholders to assess and accelerate the implementation of electronic prescribing.

(2) As used in this section, the term:

(a) "Electronic prescribing" means, at a minimum, the electronic review of the patient's medication history, the electronic generation of the patient's prescription, and the

electronic transmission of the patient's prescription to a pharmacy.

(b) "Health care practitioner" means an individual authorized by law to prescribe drugs.

(3) The agency shall work in collaboration with private-sector electronic prescribing initiatives and relevant stakeholders to create a clearinghouse of information on electronic prescribing for health care practitioners, health care facilities, and pharmacies. These stakeholders shall include organizations that represent health care practitioners; organizations that represent health care facilities; organizations that represent pharmacies; organizations that operate electronic prescribing networks; organizations that create electronic prescribing products; and regional health information organizations. Specifically, the agency shall, by October 1, 2007:

(a) Provide on its website:

1. Information regarding the process of electronic prescribing and the availability of electronic prescribing products, including no-cost or low-cost products;

2. Information regarding the advantages of electronic prescribing, including using medication history data to prevent drug interactions, prevent allergic reactions, and deter doctor and pharmacy shopping for controlled substances;

3. Links to federal and private-sector websites that provide guidance on selecting an appropriate electronic prescribing product; and

4. Links to state, federal, and private-sector incentive programs for the implementation of electronic prescribing.

(b) Convene quarterly meetings of the stakeholders to assess and accelerate the implementation of electronic prescribing.

(4) Pursuant to s. 408.061, the agency shall monitor the implementation of electronic prescribing by health care practitioners, health care facilities, and pharmacies. By January 31 of each year, the agency shall report on the progress of implementation of electronic prescribing to the Governor and the Legislature. Information reported pursuant to this subsection shall include federal and private-sector electronic prescribing initiatives and, to the extent that data is readily available from organizations that operate electronic prescribing networks, the number of health care practitioners using electronic prescribing and the number of prescriptions electronically transmitted.

Section 4. Section 893.065, Florida Statutes, is created to read:

893.065 Counterfeit-resistant prescription blanks for controlled substances listed in Schedule II, Schedule III, or Schedule IV.--The Department of Health shall develop and adopt by rule the form and content for a counterfeit-resistant prescription blank which may be used by practitioners for the purpose of prescribing a controlled substance listed in Schedule II, Schedule III, or Schedule IV. The Department of Health may require the prescription blanks to be printed on distinctive, watermarked paper and to bear the preprinted name, address, and category of professional licensure of the practitioner and that practitioner's federal registry number for controlled substances. The prescription blanks may not be transferred.

Section 5. The penalties created in s. 831.311(2), Florida Statutes, by this act shall be effective only upon the adoption of the rules required pursuant to s. 893.065, Florida Statutes, as created by this act.

Section 6. If a person dies of an apparent drug overdose:

(1) A law enforcement agency shall prepare a report identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, Florida Statutes, which is found on or near the deceased or among the deceased's possessions. The report must identify the person who prescribed the controlled substance, if known or ascertainable. Thereafter, the law enforcement agency shall submit a copy of the report to the medical examiner.

(2) A medical examiner who is preparing a report pursuant to s. 406.11, Florida Statutes, shall include in the report information identifying each prescribed controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, Florida Statutes, that was found in, on, or near the deceased or among the deceased's possessions.

Section 7. The sum of $100,000 in nonrecurring general revenue is appropriated to the Agency for Health Care Administration to implement this act.

Section 8. This act shall take effect July 1, 2007.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR CS/SB 518

CS/CS/SB 518 modifies the criminal penalty contained in s. 1 of the bill to include the elements of intent to injure or defraud. The CS for the CS also creates an electronic clearinghouse within AHCA to monitor developments in the use and expansion of electronic prescribing.