2001 SENATE BILL 237

September 5, 2001 – Introduced by Senators ERPENBACH, HANSEN, MOEN, GEORGE, HUELSMAN, PLACHE and RISSER, cosponsored by Representatives POWERS, WALKER, MUSSER, SYKORA, KRUG, TURNER, MILLER, MEYERHOFER, BLACK, GRONEMUS, STONE, OTT, YOUNG, POCAN, BOYLE, AINSWORTH, PLOUFF, STASKUNAS, GUNDERSON, LASSA, SINICKI, CULLEN, J. LEHMAN, CARPENTER and LA FAVE. Referred to Committee on Privacy, Electronic Commerce and Financial Institutions.

1 AN ACT *to amend* 146.81 (1) (fm), 146.81 (4) and 146.82 (2) (a) 20.; and *to create*

2 146.84 (1) (d) of the statutes; **relating to:** requiring pharmacies to keep patient

3 health care records confidential.

Analysis by the Legislative Reference Bureau

Under current law, all records, related to the health of a patient, that are prepared by or under the supervision of a health care provider (patient health care records) are confidential and may be released only to persons with the informed consent of the patient or of a person authorized by the patient. There are numerous exceptions to this prohibition, including the instance in which the patient health care records and the circumstances of the release do not provide information that would permit the patient to be identified. Both civil liability and criminal penalties apply to violations related to the unauthorized release of patient health care records. Also under current law, the pharmacy examining board may deny, revoke, suspend, or limit the license of or reprimand a pharmacy or pharmacist that violates state law.

This bill expands the definitions of "health care provider," and "patient health care record," for the purposes of confidentiality of patient health care records, to include a pharmacy that is licensed by the pharmacy examining board. The bill also establishes civil liability for a person who solicits a patient health care record from a pharmacy or pharmacist under circumstances that constitute a violation of the patient health care confidentiality laws.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. 146.81 (1) (fm) of the statutes is amended to read:

2   146.81 **(1)** (fm) A pharmacist or pharmacy licensed under ch. 450.

3   SECTION 2. 146.81 (4) of the statutes is amended to read:

4   146.81 **(4)** "Patient health care records" means all records related to the health

5   of a patient prepared by or under the supervision of or owned by a health care

6   provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not

7   those records subject to s. 51.30, reports collected under s. 69.186, records of tests

8   administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or

9   (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health

10   records maintained by a school under s. 118.125. "Patient health care records" also

11   includes health summary forms prepared under s. 302.388 (2).

12   SECTION 3. 146.82 (2) (a) 20. of the statutes is amended to read:

13   146.82 **(2)** (a) 20. If the patient health care records do not contain information

14   and the circumstances of the release do not provide information that would permit

15   the identification of the patient and, in the instance of a patient health care record

16   prepared by or under the supervision of a pharmacist or owned by a pharmacy,

17   identification of the patient's health care provider.

18   SECTION 4. 146.84 (1) (d) of the statutes is created to read:

19   146.84 **(1)** (d) Any person who obtains a patient health care record from a

20   pharmacy or pharmacist under circumstances that constitute a violation of s. 146.82

21   or 146.83 in a manner that is knowing and willful shall be liable to any person injured

1   as a result of the violation for actual damages to that person, exemplary damages of

2   not more than $25,000, costs, and reasonable actual attorney fees.

3   **(END)**