

Committee Name:

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions
(SC-PECFI)**

Appointments

01hr_SC-PECFI_Appoint_pt00

Clearinghouse Rules

01hr_SC-PECFI_CRule_01-

Committee Hearings

01hr_SC-PECFI_CH_pt00

Committee Reports

01hr_SC-PECFI_CR_pt00

Executive Sessions

01hr_SC-PECFI_ES_pt00

Hearing Records

01hr_ab0000

01hr_sb0237

Misc.

01hr_SC-PECFI_Misc_pt01

Record of Committee Proceedings

01hr_SC-PECFI_RCP_pt00

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9-20-01

BILL NO. SB 237

OR

SUBJECT Snator Epenbach

(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9/20/01

BILL NO. SB 237

OR

SUBJECT Medical

Records

Tom Enslin
(NAME)

(Street Address or Route Number)

(City and Zip Code)

Pharmacy Society of
(Representing) Wisconsin

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9-20-01

BILL NO. SB 237

OR
SUBJECT Pharmacy

Records

Doug Johnson

(NAME) I.E. Main

(Street Address or Route Number)

Madison 53703

(City and Zip Code)

WI Merchants

(Representing) Federation

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 9/20/01

BILL NO. SB 237

OR
SUBJECT _____

Rep. Mike Powers

(NAME) PO Box 8953

(Street Address or Route Number)

Madison 53708

(City and Zip Code)

80th Assembly Dist.

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

Motion: recommend passage ^{SB} 237

Made by: Erpenbach Second: Plache

	Present	Absent
Senator Erpenbach	X	_____
Senator Jauch	X	_____
Senator Plache	X	_____
Senator Fitzgerald	_____	X polling
Senator Kanavas	_____	X

09-20-2001
folder

**TO: Senator Jon Erpenbach, Chair
Members, Senate Privacy, Electronic Commerce and Financial Institutions**

**FROM: Maureen O'Brien, Associate Director, State Legislation
State Medical Society**

DATE: September 13, 2001

RE: Support for SB 237, Prescription records

The State Medical Society (SMS), representing more than 9,000 physicians, strongly supports SB 237. It protects patient privacy by specifically giving prescription records the same protection accorded to medical records, regardless of the custodian of those records.

This legislation will close the loophole in current law that allows for pharmacies to release patient identifiable prescription records. Specifically, section 146.81 defines "health care providers," to include "a pharmacist", "a physician", "a nurse" and even "an athletic trainer." Clinics, hospitals, and rural medical centers also are included. However, absent from 146.81 is pharmacies. Clearly, since pharmacies are entrusted with confidential patient health care information by virtue of their employment of pharmacists ("health care providers"), they should be included in the definition. Certainly, patients would assume that these records are confidential - and they should be.

This is critical because prescription records often reveal the type of condition(s) a patient has and most people probably understand from prescription record what condition is being treated more clearly than a medical record. For example, if someone is on AZT, that person is HIV-positive. Or if a person is taking tamoxifen, that person has had breast cancer. Lithium, used for bi-polar disorder or Prozac as another example, are drugs that by their nature, may identify what the patient is being treated for. These revelations could violate patient privacy on its face. If employers were able to obtain prescription records, they may not hire someone based on current or previous conditions.

Another consequence, though less serious, is that this can lead to direct mail or other solicitations from pharmaceutical companies. This increases the cost of prescription drugs for all patients. Patients should have control over to whom their medical and prescription records are released to, with the narrow exceptions already established by the Legislature.

According to the proposed change to the statute (146.82(2)(a)20), a pharmacy could not release the portion of the patient's record that identifies the patient's health care provider. The SMS supports this amendment since the Society also opposes the release of individual physician prescribing information for non-professional use of the prescription data by pharmaceutical companies and sales representatives. What's more, the Society opposes pharmaceutical companies from releasing this information to third parties without physician consent.

It's important to protect these records and ensure patient confidence and trust that their information will remain private and confidential. We must all be able to trust our health care providers and institutions, including physicians, clinics, pharmacists and pharmacies.

Thank you.

Laundrie, Julie

From: Ron Hermes [rhermes@tds.net]
Sent: Wednesday, September 19, 2001 8:22 PM
To: Julie Laundrie
Subject: amendment to SB 237



AmendWISB237.doc

Julie-

Attached is a proposed amendment to SB 237 that my client, Merck-Medco, would like Sen. Erpenbach to consider. Please call me if you have any questions.

Ron Hermes
Hilbert & Tenuta
Merck-Medco WI Lobbyist

**WISCONSIN SENATE BILL 237
AMENDMENTS**

EXISTING LANGUAGE:

Page 2. Lines 18-21, Page 3. Lines 1-2. Section 4. 146.84 (1) (d) of the statutes is created to read:

146.84 (1) (d) Any person who obtains a patient health care record from a pharmacy or pharmacist under circumstances that constitute a violation of s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$25,000, costs, and reasonable actual attorney fees.

AMEND AS FOLLOWS:

Page 2. Lines 18-21, Page 3. Lines 1-2. Section 4. 146.84 (1) (d) of the statutes is created to read:

146.84 (1) (d) Any person who obtains a patient health care record from a **health care provider as defined under s. 146.81(1), or any health care provider who discloses a patient health care record,** under circumstances that constitute a violation of s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any **patient as defined under s. 146.81(3)** injured as a result of the violation for actual damages to that **patient,** exemplary damages of not more than **\$10,000,** costs, and reasonable actual attorney fees.



TO: Senator Jon Erpenbach, Chair
Members, Senate Privacy, Electronic Commerce and Financial Institutions

FROM: Maureen O'Brien, Associate Director, State Legislation
State Medical Society

DATE: September 19, 2001

RE: Support for SB 237, Prescription records

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This is critical because prescription records often reveal the type of condition(s) a patient has and most people probably understand from prescription record what condition is being treated more clearly than a medical record. For example, if someone is on AZT, that person is HIV-positive. Or if a person is taking tamoxifen, that person has had breast cancer. Lithium, used for bi-polar disorder or Prozac as another example, are drugs that by their nature, may identify what the patient is being treated for. These revelations could violate patient privacy on its face. If employers were able to obtain prescription records, they may not hire someone based on current or previous conditions.

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It's important to protect these records and ensure patient confidence and trust that their information will remain private and confidential. We must all be able to trust our health care providers and institutions, including physicians, clinics, pharmacists and pharmacies.

Laundrie, Julie

From: Laundrie, Julie
Sent: Friday, September 28, 2001 10:06 AM
To: 'heidi.m.wendorf@uwrf.edu'
Subject: RE: UW students inquire about additional information as well as some questions.

Hello Heidi,

There are two legislative council staff that were at the meeting, Dan Schmidt(at the table) and Dick Sweet(sitting behind Dan).

The agenda for the meeting is the committee notice, which I will attach to this email. The Committee record is the record of committee action on that particular bill. The Committee Report is a record of committee executive action on that particular day. There are no minutes; the record and report serve that purpose.



H20010920001.doc



SB0237001.doc



Report007.doc

You can access SB 237 from the Wisconsin Legislatures webpage www.legis.state.wi.us access bill information and type senate bill 237. The bill is currently in the Senate Committee on Organization. This Committee schedules the Senate Floor Action. We expect this bill to be scheduled for floor action in October. There will be an amendment to this bill on the floor offered by Senator Erpenbach. There was some concern at the hearing that this bill may not solve all of the current problems with prescription record privacy. Therefore the Senator is authoring an amendment to tighten up the language to prohibit Pharmacy Management Bureaus from releasing information regarding prescription records and medical provider records. This amendment is still in drafting so I cannot send. If you email me next week I should have it for you.

Once this bill passes the floor it will be messaged to the Assembly, where it will be assigned to an Assembly committee for the same kind of action it received in the Senate. Once passed in both houses the bill would need the Governor's signature.

You are lucky you picked a bill that will see action on the floor of the Senate very soon. Most bills either die in committee or never get scheduled for floor action even after they are passed out of committee. I am not sure of the numbers but I would guess 1,719 bills and resolutions were introduced last session and I believe 198 were signed into law. I am not sure of SB 237's fate in the Assembly, but the bill does have a good bipartisan list of sponsors.

Email me next week for the amendment. Email back if you have any more questions or need more info on this email

Julie

-----Original Message-----

From: heidi.m.wendorf@uwrf.edu [mailto:heidi.m.wendorf@uwrf.edu]
Sent: Thursday, September 27, 2001 3:28 PM
To: Laundrie, Julie
Subject: UW students inquire about additional information as well as some questions.

Dear Julie,

We were wondering if you could share the gentlemen's name who was the legislative council on Sept. 20th so that we may be able to include him in our project.

Since we are currently reasearching the law that bill 237 was derived from, we are wondering if you could tell us if we are on the right track in our search for information. We researched chapter 146 in the Wisconsin Statutes and were wondering if this is correct as well as what subsection the bill is ammending in the law (ex. 146.13)? We were also wondering if the information you sent with the committee members present and their vote on the two bills was the agenda, minutes or something else? If the information sent was not an agenda or the minutes, would it be possible to send us a copy of both?

A copy or information as to how we may access the entire 237 bill, website addresses, information from additional meetings that may occur or any other additional information would be greatly appreciated as it will aid in our research as well as expand our knowledge on this issue.

Thank-you for your time, assistance and resources.

Sincerely,

Heidi Wendorf

104 1/2 S. 3rd St.
River Falls, WI
54022

Julie

SB 237 – Prescription Records Privacy – JON Testimony

There are laws in Wisconsin protecting patient health care information – however they don't seem to be doing the trick in regard to records created or owned by a pharmacy.

Patients are still being directly marketed, health care providers are still being marketed by pharmaceutical companies – all at a cost to patients of lost privacy of medical records and increased cost of prescription drugs.

I know the drug makers and pharmacies think we are picking on them – well maybe we are – because there is a problem of privacy of medical records and the direct marketing of patients -- and someone has to be held accountable.

This bill simply expands the definition of “health care provider” and “patient health care record” for the purposes of confidentiality of patient health care records to include a pharmacy.

This 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 health care confidentiality. The bill does not increase liability for a pharmacist – only someone who solicits personal medical information illegally from a pharmacist.

This bill simply states records created or owned by a pharmacy are medical records and are therefore subject to current laws regarding patient consent for release and confidentiality of medical records.

Spending Habits of Pharmaceutical Companies

Profits

- ◆ The pharmaceutical industry, over the past few years, has been the **most profitable industry** in the U.S. (*New England Journal of Medicine*, June 22, 2000)
- ◆ In 1999 pharmaceutical companies had profits averaging **18.6%** of revenues. In comparison, the commercial banking industry had a 15.8% return on revenue and the beverage industry had an 11.0% return. (*New England Journal of Medicine*, June 22, 2000)

Promotion/Advertising

- ◆ More than **\$11 billion** is spent each year by pharmaceutical companies on promotion and marketing. (Source: *Journal of the American Medical Association*, Jan. 19, 2000, Vol. 283, No.3)
- ◆ From 1996 to 1999, spending on **direct to consumer advertising** jumped **133%** and spending on other promotions jumped **44%**. (*Wall Street Journal*, Jan. 2, 2000)
- ◆ The U.S. pharmaceutical industry spent **\$2 billion** on direct-to-consumer advertising, including TV, radio and print in 1999. (Trend Letter, Sept. 21, 2000)
- ◆ According to market research, direct-to-consumer advertising works, which is why the spending has increased **fivefold** since 1995. In 1998, **53%** of physicians surveyed reported an increase in patient requests for brand name drugs, up 30% from mid-1997. (American Medical Association, Report, Council on Medical Service, Dec. 2000)
- ◆ Pharmaceuticals spent **\$74.3 million** for lobbying in 1998 and **\$83.6 million** in 1999. (*Newsweek*, Sept. 25, 2000)

Research and Development

- ◆ Pharmaceutical companies assert that drug prices must be high to make up for the cost of research and development (R & D). But, more is spent on marketing and promotion (close to twice as much) than on R & D. For example, in 1999 Pfizer's administrative and marketing costs made up 39% of expenses. R & D made up just 17% of its budget (source: Trend Letter, Sept. 21, 2000)

Consumer Spending

- ◆ Prescription drug prices far outpace the general rate of inflation. In 1992, prescription drugs accounted for **5%** of overall health care spending. In 1998, it had risen to **11%**. By 2002, the share of spending is estimated to reach **15%**. (Trend Letter, Sept. 21, 2000 and *New England Journal of Medicine*, June 22, 2000)
- ◆ The amount of money spent on prescription drugs has skyrocketed in the last several years. In 1995 **\$65 billion** was spent on pharmaceuticals. By 1999, **\$125 billion** was spent on prescription drugs in the US. (*Newsweek*, Sept. 25, 2000)
- ◆ The average price of a prescription has increased dramatically in the last decade. In 1991, the average cost was **\$23.68**, whereas in 1998 the average cost was over **\$37**. (*Newsweek*, September 25, 2000)

JON

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