

DRAFTER'S NOTE LRB-3774/1dn
FROM THE DAK/RNK/PJD/JTK/MDK:wlj:kjf
LEGISLATIVE REFERENCE BUREAU

October 5, 2001

This bill adds "pharmacy" to the definition of "health care provider" under s. 146.81 (1) (fm), stats. Although both civil and criminal penalties under s. 146.84 (1) (b) and (c) and (2) (a) 2., (b), and (c), stats., would appear to apply to a pharmacy or pharmacist that *releases* a patient health care record, I drafted s. 146.84 (1) (d) to prohibit the *obtaining* of a patient health care record.

Note the amendment to s. 146.81 (4), stats.; I believe this is necessary because a pharmacy does not necessarily prepare a patient health care record and clearly does not supervise a pharmacist who does so (see s. 450.09 (1) (a), stats.). However, I was informed earlier in the year by Bill Black, an attorney who works with the Pharmacy Examining Board, that the patient health care records are the property of the pharmacy, not the pharmacist.

Note also the amendment of s. 146.82 (2) (a) 20., stats.; this clears up what otherwise would appear to be a loophole.

Lastly, reference is made in the following statutes to the definition of "health care provider" in s. 146.81 (1): 15.107 (6) (a), 48.422 (9) (b), 103.10 (1) (e), 146.36 (1) (c), 146.50 (12) (a), 146.905 (1), 153.01 (4t), 252.15 (1) (ar) 1., 302.388 (1) (a), 631.89 (2) (bm), 632.725 (1), 632.87 (4), and 857.035, stats. There does not seem to be a legal impediment to adding a pharmacy to the definition as it is cross-referenced in these statutes, but you may wish to look at them to see if there is any policy impediment as far as you are concerned.

Please let me know if you need further assistance with this bill.

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Please note that there is no penalty specified for a violation of the prohibition created in proposed s. 134.92 relating to credit card receipts issued at gas pumps. Consequently, the general penalty provisions under s. 939.61, stats., will apply to the violation under this draft. Under s. 939.61, stats., a person who violates s. 134.92, as

created in this draft, will be subject to a forfeiture of up to \$200. If you would like to create a different penalty or if you would like to create a private right of action, please contact me, and I will redraft accordingly.

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This draft includes 1999 AB-23 updated. Does the initial applicability section meet your intent? 1999 AB-23 provided that the act first applied to bills introduced in the 2001-03 legislative session.

The language of proposed s. 13.0991 (7) to the effect that a bill for which a privacy impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision, and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

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This draft does not provide any additional FTE positions for the two officers to be added to the department of electronic government. Under the draft, DEG will need to assign the functions of the officers to existing employees and to reallocate workload to accommodate this assignment. If you would like to authorize additional positions, please let me know.

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AB-459 requires telephone directories to include a listing indicating whether or not a residential customer wants to receive telephone solicitations. I did not include that

requirement in this bill because the budget act addressed the same issue, but in a different way. The budget act requires DATCP to maintain a nonsolicitation directory that lists residential customers who do not wish to receive telephone solicitations. Therefore, I assume that you no longer want to require telephone directories to include the listings. Is that okay?

Also, you may want to review the budget act's requirements regarding telephone solicitations. Is there anything that you want to change?

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