

HOUSE BILL REPORT

SSB 6241

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to prohibiting the sale and use of prescriber-identifiable prescription data for marketing or promotional purposes.

Brief Description: Prohibiting the sale or use of prescriber-identifiable prescription data for commercial or marketing purposes.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley, Pflug, Kohl-Welles, Kline and Franklin).

Brief History:

Committee Activity:

Health Care & Wellness: 2/25/08, 2/27/08 [DP].

Brief Summary of Substitute Bill

- Prohibits the sale or use of prescriber's identifiable prescription data for marketing or promotional purposes.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 9 members: Representatives Cody, Chair; Morrell, Vice Chair; Barlow, Campbell, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

Minority Report: Do not pass. Signed by 4 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Condotta and DeBolt.

Staff: Dave Knutson (786-7146).

Background:

Health care information companies purchase electronic records of prescriptions from pharmacies and other sources and link them with information about doctors that are licensed from the Physician Masterfile of the American Medical Association (AMA). The Physician Masterfile contains information on virtually every physician in the United States, including physicians who do not belong to the AMA. This information can then be sold to

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pharmaceutical companies who may use it to target individual physicians using their personal prescribing patterns. In 2005 the AMA received \$44.5 million from sales of physician prescription information from the Physician Masterfile. The AMA recently began a prescribing data restriction program which allows physicians to prevent their prescribing data from being released to pharmaceutical companies through an opt-out process.

Summary of Bill:

No person shall knowingly sell, disclose, or use regulated records that include prescriber identifiable information to market or promote a prescription drug. A pharmaceutical marketer that violates this prohibition is subject to a fine of up to \$50,000 per violation. A violation of this prohibition is also considered an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act. Records held by an agency administering a state purchased health care program that contain prescription information containing prescriber-identifiable data that can identify a prescriber are exempt from disclosure under the Public Records Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The practice of data mining violates the sanctity of the doctor-patient relationship. Pharmaceutical companies use this data to manipulate doctors into prescribing new drugs that are more expensive and could be harmful to their patients.

(Opposed) A federal judge has ruled this type of restriction is an unconstitutional violation of a company's first amendment right to free speech. There are several inaccurate findings contained in section 1. This legislation will not save any money for the state, and if passed, could result in a federal lawsuit.

Persons Testifying: (In support) Brian Wicks, Washington State Medical Association; Bruce Reeves, Washington Senior Lobby and American Association of Retired Persons, Washington; Robby Stern, Washington State Labor Council; and Art Zoloth, Washington Coalition for Prescribing Integrity.

(Opposed) Randy Frankel and Robert Hunkler, IMS Health; Julie Corcoran, Pharmaceutical Research and Manufacturers of America; and Vicki Austin, Washington Biotechnology and Biomedical Association.

Persons Signed In To Testify But Not Testifying: None.