

SECOND REGULAR SESSION

# SENATE BILL NO. 710

96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS ENGLER, DEMPSEY, RICHARD, McKENNA,  
SCHMITT, PARSON AND LAMPING.

Read 1st time January 26, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4886S.031

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## AN ACT

To amend chapter 195, RSMo, by adding thereto nine new sections relating to a prescription drug monitoring program, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 195, RSMo, is amended by adding thereto nine new sections, to be known as sections 195.450, 195.453, 195.456, 195.459, 195.462, 195.465, 195.468, 195.474, and 195.477, to read as follows:

**195.450. 1. Sections 195.450 to 195.477 shall be known and may be cited as the "Prescription Drug Monitoring Program Act".**

**2. As used in sections 195.450 to 195.477, the following terms mean:**

**(1) "Controlled substance", the same meaning given such term in section 195.010;**

**(2) "Department", the department of health and senior services;**

**(3) "Dispenser", a person who delivers a schedule II, III, IV, or V controlled substance to the ultimate user, but does not include:**

**(a) A hospital, as defined in section 197.020, that distributes such substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from an inpatient stay at such facility;**

**(b) A practitioner or other authorized person who administers such a substance; or**

**(c) A wholesale distributor of a schedule II, III, IV, or V controlled substance;**

**(4) "Patient", a person who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed;**

20           (5) "Schedule II, III, IV, or V controlled substance", a controlled  
21 substance that is listed in schedules II, III, IV, or V of the schedules  
22 provided under this chapter or the Federal Controlled Substances Act,  
23 21 U.S.C. Section 812.

24           3. Notwithstanding any other law to the contrary, the provisions  
25 of this section shall not apply to persons licensed under chapter 340.

195.453. 1. The department of health and senior services shall  
2 establish and maintain a program for the monitoring of prescribing and  
3 dispensing of all schedule II, III, IV, and V controlled substances by all  
4 professionals licensed to prescribe or dispense such substances in this  
5 state. The department may apply for any available grants and shall  
6 accept any gifts, grants, or donations to develop and maintain the  
7 program. All funding for prescription drug monitoring program shall  
8 be provided exclusively by gifts, grants, and donations.

9           2. Each dispenser shall submit to the department by electronic  
10 means information regarding each dispensation of a drug included in  
11 subsection 1 of this section. The information submitted for each shall  
12 include, but not be limited to:

- 13           (1) The dispenser identification number;
- 14           (2) The date of the dispensation;
- 15           (3) If there is a prescription:
  - 16           (a) The prescription number;
  - 17           (b) Whether the prescription is new or a refill;
  - 18           (c) The prescriber identification number;
  - 19           (d) The date the prescription is issued by the prescriber;
  - 20           (e) The person who receives the prescription from the dispenser,  
21 if other than the patient;
  - 22           (f) The source of payment for the prescription;
- 23           (4) The NDC code for the drug dispensed;
- 24           (5) The number of days' supply of the drug;
- 25           (6) The quantity dispensed;
- 26           (7) The patient identification number;
- 27           (8) The patient's name, address, and date of birth.

28           3. Each dispenser shall submit the information in accordance  
29 with transmission methods and frequency established by the  
30 department; except that, each dispenser shall report at least every  
31 seven days.

32           4. The department may issue a waiver to a dispenser that is  
33 unable to submit dispensation information by electronic means. Such  
34 waiver may permit the dispenser to submit dispensation information  
35 by paper form or other means, provided all information required in  
36 subsection 2 of this section is submitted in such alternative format.

37           5. The department shall reimburse each dispenser for the fees  
38 and other direct costs of transmitting the information required by this  
39 section.

          195.456. 1. Dispensation information submitted to the  
2 department shall be confidential and not subject to public disclosure  
3 under chapter 610 except as provided in subsections 3 to 5 of this  
4 section.

5           2. The department shall maintain procedures to ensure that the  
6 privacy and confidentiality of patients and personnel information  
7 collected, recorded, transmitted, and maintained is not disclosed to  
8 persons except as provided in subsections 3 to 5 of this section.

9           3. The department shall review the dispensation information  
10 and, if there is reasonable cause to believe a violation of law or breach  
11 of professional standards may have occurred, the department shall  
12 notify the appropriate law enforcement or professional licensing,  
13 certification, or regulatory agency or entity, and provide dispensation  
14 information required for an investigation.

15           4. The department may provide data in the controlled substances  
16 dispensation monitoring program to the following persons:

17           (1) Persons, both in-state and out-of-state, authorized to  
18 prescribe or dispense controlled substances for the purpose of  
19 providing medical or pharmaceutical care for their patients;

20           (2) An individual who requests his or her own dispensation  
21 monitoring information in accordance with state law;

22           (3) The state board of pharmacy;

23           (4) Any state board charged with regulating a professional that  
24 has the authority to prescribe or dispense controlled substances that  
25 requests data related to a specific professional under the authority of  
26 that board;

27           (5) Local, state, and federal law enforcement or prosecutorial  
28 officials, both in-state and out-of-state engaged in the administration,  
29 investigation, or enforcement of the laws governing licit drugs based

30 on a specific case and under a subpoena or court order;

31 (6) The family support division within the department of social  
32 services regarding Medicaid program recipients;

33 (7) A judge or other judicial authority under a subpoena or court  
34 order; and

35 (8) Personnel of the department of health and senior services for  
36 the administration and enforcement of sections 195.450 to 195.477.

37 5. The department may provide data to public or private entities  
38 for statistical, research, or educational purposes after removing  
39 information that could be used to identify individual patients,  
40 prescribers, or persons who received dispensations from dispensers.

41 6. Nothing in sections 195.450 to 195.477 shall be construed to  
42 require a pharmacist or prescriber to obtain information about a  
43 patient from the database. A pharmacist or prescriber shall not be held  
44 liable for damages to any person in any civil action for injury, death,  
45 or loss to person or property on the basis that the pharmacist or  
46 prescriber did or did not seek or obtain information from the database.

195.459. The department is authorized to contract with any other  
2 agency of this state or any other state with a private vendor, as  
3 necessary, to ensure the effective operation of the prescription  
4 monitoring program. Any contractor shall comply with the provisions  
5 regarding confidentiality of prescription information in section 195.456.

195.462. The department shall promulgate rules setting forth the  
2 procedures and methods of implementing sections 195.450 to  
3 195.474. Any rule or portion of a rule, as that term is defined in section  
4 536.010, that is created under the authority delegated in this section  
5 shall become effective only if it complies with and is subject to all of  
6 the provisions of chapter 536 and, if applicable, section 536.028. This  
7 section and chapter 536 are nonseverable and if any of the powers  
8 vested with the general assembly pursuant to chapter 536 to review, to  
9 delay the effective date, or to disapprove and annul a rule are  
10 subsequently held unconstitutional, then the grant of rulemaking  
11 authority and any rule proposed or adopted after August 28, 2012, shall  
12 be invalid and void.

195.465. 1. A dispenser who knowingly fails to submit  
2 dispensation monitoring information to the department as required in  
3 sections 195.450 to 195.477 or knowingly submits the incorrect

4 dispensation information shall be subject to an administrative penalty  
5 in the amount of one thousand dollars for each violation. The penalty  
6 shall be assessed through an order issued by the director of the  
7 department. Any person subject to an administrative penalty may  
8 appeal to the administrative hearing commission under the provisions  
9 of chapter 621.

10 2. A person authorized to have dispensation monitoring  
11 information under sections 195.450 to 195.477 who knowingly discloses  
12 such information in violation of sections 195.450 to 195.477 or who uses  
13 such information in a manner and for a purpose in violation of sections  
14 195.450 to 195.477 is guilty of a class A misdemeanor.

195.468. 1. The department shall implement the following  
2 education courses:

3 (1) An orientation course during the implementation phase of the  
4 dispensation monitoring program established in section 195.453;

5 (2) A course for persons who are authorized to access the  
6 dispensation monitoring information but who did not participate in the  
7 orientation course;

8 (3) A course for persons who are authorized to access the  
9 dispensation monitoring information but who have violated laws or  
10 breached occupational standards involving dispensing, prescribing, and  
11 use of substances monitored by the dispensation monitoring program  
12 established in section 195.453.

13 When appropriate, the department shall develop the content of the  
14 education courses described in subdivisions (1) to (3) of this subsection.

15 2. The department shall, when appropriate:

16 (1) Work with associations for impaired professionals to ensure  
17 intervention, treatment, and ongoing monitoring and followup; and

18 (2) Encourage individual patients who are identified and who  
19 have become addicted to substances monitored by the dispensation  
20 monitoring program established in section 195.453 to receive addiction  
21 treatment.

195.474. Under section 23.253 of the Missouri sunset act:

2 (1) The provisions of the new program authorized under sections  
3 195.450 to 195.474 shall automatically sunset six years after the  
4 effective date of sections 195.450 to 195.474 unless reauthorized by an  
5 act of the general assembly; and

6 (2) If such program is reauthorized, the program authorized  
7 under sections 195.450 to 195.474 shall automatically sunset six years  
8 after the effective date of the reauthorization of sections 195.450 to  
9 195.474; and

10 (3) Sections 195.450 to 195.474 shall terminate on September first  
11 of the calendar year immediately following the calendar year in which  
12 the program authorized under sections 195.450 to 195.474 is sunset.

195.477. 1. By no later than January 1, 2014, the bureau of  
2 narcotics and dangerous drugs within the department of health and  
3 senior services shall establish a two-year statewide pilot project for the  
4 reporting of fraudulently obtained prescription controlled  
5 substances. The pilot project shall include the following:

6 (1) Provide a toll-free number for reporting to the bureau by  
7 physicians, pharmacists, and other health care professionals with  
8 prescriptive authority who have reason to believe that a person is  
9 fraudulently attempting to obtain a prescription for a controlled  
10 substance or is attempting to obtain an excessive amount of a  
11 controlled substance by prescription;

12 (2) Establish a system within the bureau for receiving such  
13 reports under subdivision (1) of this subsection along with any  
14 evidence offered or submitted by the reporter which indicates the  
15 fraud; and

16 (3) Forward such reports, along with any evidence offered or  
17 submitted to the appropriate prosecuting attorney or the state attorney  
18 general for investigation and prosecution.

19 2. On or before February 1, 2014, and February 1, 2015, the  
20 bureau of narcotics and dangerous drugs shall submit a report to the  
21 general assembly detailing the following specifics regarding the pilot  
22 project:

23 (1) The number of reports received under this section;

24 (2) The type of evidence offered or submitted indicating the  
25 fraud;

26 (3) The number of referrals to the attorney general and each  
27 local prosecuting attorney;

28 (4) The number of cases investigated and prosecuted as a result  
29 of such reporting, and the number of convictions or pleas resulting  
30 from such investigations and prosecutions. The attorney general and

31 local prosecuting attorneys shall cooperate with the bureau in the  
32 submission and collection of the information necessary for inclusion in  
33 the report; and

34 (5) Any recommendations regarding continuance of and  
35 improvements in the pilot project.

36 Nothing in this section shall be construed as authorizing the inclusion  
37 or release of any identifying information of any reporter or person who  
38 is identified as a person who is attempting to fraudulently obtain  
39 prescription controlled substances.

40 3. Any person who in good faith reports to the bureau under this  
41 section shall be immune from any civil or criminal liability as the  
42 result of such good faith reporting.

43 4. The department of health and senior services may promulgate  
44 rules to implement the provisions of this section. Any rule or portion  
45 of a rule, as that term is defined in section 536.010, that is created  
46 under the authority delegated in this section shall become effective  
47 only if it complies with and is subject to all of the provisions of chapter  
48 536 and, if applicable, section 536.028. This section and chapter 536 are  
49 nonseverable and if any of the powers vested with the general assembly  
50 pursuant to chapter 536 to review, to delay the effective date, or to  
51 disapprove and annul a rule are subsequently held unconstitutional,  
52 then the grant of rulemaking authority and any rule proposed or  
53 adopted after August 28, 2012, shall be invalid and void.

54 5. The department shall implement and provide all monitoring  
55 under the pilot project with existing department employees. Nothing  
56 in this section shall be construed as authorizing the hiring of  
57 additional employees to implement this pilot project and the  
58 department is required to implement this pilot project upon receipt of  
59 gifts, grants, and donations received for such purpose, without any  
60 additional state appropriations or department staff; except that, the  
61 department may enter into agreements with other state agencies or a  
62 private vendor, as necessary, to ensure the effective operations of the  
63 program if such agreements are funded solely from gifts, grants, and  
64 donations. Any agency or private vendor entering into an agreement  
65 with the department for the pilot project shall comply with the  
66 confidentiality provisions regarding the prescription information under  
67 section 195.456.

68           **6. Under section 23.253 of the Missouri sunset act:**

69           **(1) The provisions of the new program authorized under this**  
70 **section shall automatically sunset three years after the effective date**  
71 **of this section unless reauthorized by an act of the general assembly;**  
72 **and**

73           **(2) If such program is reauthorized, the program authorized**  
74 **under this section shall automatically sunset twelve years after the**  
75 **effective date of the reauthorization of this section; and**

76           **(3) This section shall terminate on September first of the**  
77 **calendar year immediately following the calendar year in which the**  
78 **program authorized under this section is sunset.**

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Bill

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