

SENATE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1892

AN ACT

To repeal section 195.015 as enacted by senate bill nos. 215 & 58, eighty-fifth general assembly, first regular session, RSMo, and to enact in lieu thereof eleven new sections relating to the narcotics control act, with penalty provisions.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 195.015 as enacted by senate bill nos.  
2 215 & 58, eighty-fifth general assembly, first regular session,  
3 RSMo, is repealed and eleven new sections enacted in lieu  
4 thereof, to be known as sections 195.015, 195.450, 195.453,  
5 195.456, 195.457, 195.459, 195.462, 195.465, 195.466, 195.468,  
6 and 195.471, to read as follows:

7           195.015. 1. The department of health and senior services  
8 shall administer sections 195.005 to ~~[195.425]~~ 195.471 and may  
9 add substances to the schedules after public notice and hearing.  
10 In making a determination regarding a substance, the department  
11 of health and senior services shall consider the following:

- 12           (1) The actual or relative potential for abuse;
- 13           (2) The scientific evidence of its pharmacological effect,  
14 if known;
- 15           (3) The state of current scientific knowledge regarding the  
16 substance;
- 17           (4) The history and current pattern of abuse;
- 18           (5) The scope, duration, and significance of abuse;

1 (6) The risk to the public health;

2 (7) The potential of the substance to produce psychic or  
3 physiological dependence liability; and

4 (8) Whether the substance is an immediate precursor of a  
5 substance already controlled under sections 195.005 to [195.425]  
6 195.471.

7 2. After considering the factors enumerated in subsection 1  
8 of this section the department of health and senior services  
9 shall make findings with respect thereto and issue a rule  
10 controlling the substance if it finds the substance has a  
11 potential for abuse.

12 3. If the department of health and senior services  
13 designates a substance as an immediate precursor, substances  
14 which are precursors of the controlled precursor shall not be  
15 subject to control solely because they are precursors of the  
16 controlled precursor.

17 4. If any substance is designated, rescheduled, or deleted  
18 as a controlled substance under federal law and notice thereof is  
19 given to the department of health and senior services, the  
20 department of health and senior services shall similarly control  
21 the substance under sections 195.005 to [195.425] 195.471 after  
22 the expiration of thirty days from publication in the federal  
23 register of a final order designating a substance as a controlled  
24 substance or rescheduling or deleting a substance, unless within  
25 that thirty-day period, the department of health and senior  
26 services objects to inclusion, rescheduling, or deletion. In  
27 that case, the department of health and senior services shall  
28 publish the reasons for objection and afford all interested

1 parties an opportunity to be heard. At the conclusion of the  
2 hearing, the department of health and senior services shall  
3 publish its decision, which shall be final unless altered by  
4 statute. Upon publication of objection to inclusion,  
5 rescheduling or deletion under sections 195.005 to ~~[195.425]~~  
6 195.471 by the department of health and senior services, control  
7 under sections 195.005 to ~~[195.425]~~ 195.471 is stayed as to the  
8 substance in question until the department of health and senior  
9 services publishes its decision.

10 5. The department of health and senior services shall  
11 exclude any nonnarcotic substance from a schedule if such  
12 substance may, under the federal Food, Drug, and Cosmetic Act and  
13 the law of this state, be lawfully sold over the counter without  
14 a prescription.

15 6. The department of health and senior services shall  
16 prepare a list of all drugs falling within the purview of  
17 controlled substances. Upon preparation, a copy of the list  
18 shall be filed in the office of the secretary of state.

19 195.450. 1. Sections 195.450 to 195.471 shall be known and  
20 may be cited as the "Narcotics Control Act".

21 2. As used in sections 195.450 to 195.471, the following  
22 terms shall mean:

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

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

27 (3) "Dispenser", a person who delivers a Schedule II, III,  
28 or IV controlled substance to the patient, but does not include:

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

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

7       (c) A wholesale distributor of a Schedule II, III, or IV  
8 controlled substance;

9       (4) "Patient", a person, sixteen years of age or older, who  
10 is the ultimate user of a drug for whom a prescription is issued  
11 or for whom a drug is dispensed, not including a hospice patient  
12 enrolled in a Medicare-certified hospice program who has  
13 controlled substances dispensed to him or her by such hospice  
14 program;

15       (5) "Schedule II, III, or IV controlled substance", a  
16 controlled substance that is listed in Schedule II, III, or IV of  
17 the schedules provided under this chapter or the Controlled  
18 Substances Act, 21 U.S.C. Section 812.

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

22       195.453. 1. The department of health and senior services  
23 shall establish and maintain a program for the monitoring of  
24 prescribing and dispensing of all Schedule II, III, and IV  
25 controlled substances by all professionals licensed to prescribe  
26 or dispense such substances in this state. The funding of the  
27 narcotics control program shall be subject to appropriations. In  
28 addition to appropriations from the general assembly, the

1 department may apply for available grants and shall be able to  
2 accept other gifts, grants, and donations to develop and maintain  
3 the program.

4 2. Each dispenser shall submit to the department by  
5 electronic means information regarding each dispensation of a  
6 drug included in subsection 1 of this section. The information  
7 submitted for each dispensation shall include, but not be limited  
8 to:

9 (1) The pharmacy's Drug Enforcement Administration (DEA)  
10 number;

11 (2) The date of the dispensation;

12 (3) The following, if there is a prescription:

13 (a) The prescription number;

14 (b) Whether the prescription is new or a refill;

15 (c) The prescriber's DEA or National Provider Identifier  
16 (NPI) number;

17 (d) The date the prescription is issued by the prescriber;

18 and

19 (e) The source of payment for the prescription;

20 (4) The National Drug Code (NDC) for the drug dispensed;

21 (5) The number of days' supply of the drug;

22 (6) The quantity dispensed;

23 (7) The patient's identification number including, but not  
24 limited to, any one of the following:

25 (a) The patient's driver's license number;

26 (b) The patient's government-issued identification number;

27 or

28 (c) The patient's insurance cardholder identification

1 number; and

2 (8) The patient's name, address, and date of birth.

3 3. Each dispenser shall submit the information in  
4 accordance with transmission standards established by the  
5 American Society for Automation in Pharmacy or any successor  
6 organization and shall report data within twenty-four hours of  
7 dispensation.

8 4. (1) The department may issue a waiver to a dispenser  
9 that is unable to submit dispensation information by electronic  
10 means. Such waiver may permit the dispenser to submit  
11 dispensation information by paper form or other means, provided  
12 all information required in subsection 2 of this section is  
13 submitted in such alternative format.

14 (2) The department may grant an extension to dispensers who  
15 are temporarily unable to electronically submit the dispensation  
16 information required in subsection 2 of this section in  
17 accordance with the time frame established in subsection 3 of  
18 this section due to unforeseen circumstances. In cases in which  
19 an extension is granted, dispensers shall be responsible for  
20 reporting the required data in a subsequent submission.

21 5. The department shall reimburse each dispenser for the  
22 fees and other direct costs of transmitting the information  
23 required by this section.

24 6. Dispensation information submitted to the department  
25 shall be retained by the department for no longer than two years  
26 from the date of submission.

27 7. All communications and data transmitted under this  
28 section shall be encrypted.

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

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

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

17          4. The department may provide data in the narcotics control  
18 program to the following persons:

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

22           (2) An individual who requests his or her own dispensation  
23 information in accordance with state law;

24           (3) The state board of pharmacy;

25           (4) Any state board charged with regulating a professional  
26 who has the authority to prescribe or dispense controlled  
27 substances that requests data related to a specific professional  
28 under the authority of such board if such board has a current and

1 open investigation into such professional and the data provided  
2 is limited to such professional;

3 (5) Local, state, and federal law enforcement or  
4 prosecutorial officials, both in-state and out-of-state, engaged  
5 in the administration, investigation, or enforcement of the laws  
6 governing prescription drugs based on a specific case and under a  
7 subpoena issued by a court of competent jurisdiction or court  
8 order;

9 (6) The MO HealthNet division within the department of  
10 social services regarding MO HealthNet program recipients;

11 (7) A judge or other judicial authority under a subpoena  
12 issued by a court of competent jurisdiction or court order; and

13 (8) Personnel of the department of health and senior  
14 services for the administration and enforcement of sections  
15 195.450 to 195.471.

16 5. The department may provide data to public or private  
17 entities for statistical, research, or educational purposes after  
18 removing information that could be used to identify individual  
19 patients, prescribers, dispensers, or persons who received  
20 dispensations from dispensers.

21 6. No dispensation information submitted to the department  
22 shall be used by any local, state, or federal authority to  
23 prevent an individual from owning or obtaining a firearm or  
24 obtaining a concealed carry permit.

25 7. Nothing in sections 195.450 to 195.471 shall be  
26 construed to require a pharmacist or prescriber to obtain  
27 information about a patient from the database. No pharmacist or  
28 prescriber shall be held liable for damages to any person in any



1 civil action for injury, death, or loss to person or property on  
2 the basis that the pharmacist or prescriber did or did not seek  
3 or obtain information from the database.

4 8. Any person harmed or damaged by any violation of this  
5 section may bring a civil action for damages, as well as  
6 injunctive relief, in the circuit court where that person resided  
7 at the time of the violation or in the circuit court of Cole  
8 County to recover such damages from the department of health and  
9 senior services or any persons participating in such violation.  
10 Sovereign immunity shall not be available as a defense for the  
11 department of health and senior services in such an action. In  
12 the event the plaintiff prevails on any count of his or her  
13 claim, the plaintiff shall be entitled to recover reasonable  
14 attorney fees from the defendants.

15 9. No dispensation information submitted to the department  
16 shall be the sole basis for probable cause to obtain an arrest or  
17 search warrant as part of a criminal investigation.

18 195.457. The state auditor shall audit the security of the  
19 data electronically submitted under the program authorized by  
20 sections 195.450 to 195.471 no later than one year after the  
21 program is implemented and may audit the program every two years  
22 thereafter. The state auditor shall notify the general assembly  
23 of the report as provided by section 29.200.

24 195.459. The department is authorized to contract with any  
25 other agency of this state or any other state with a private  
26 vendor, or any state government that currently runs a narcotics  
27 control program. Any contractor shall comply with the provisions  
28 regarding confidentiality of prescription information in section

1 195.456.

2 195.462. The department shall promulgate rules setting  
3 forth the procedures and methods of implementing sections 195.450  
4 to 195.471. Any rule or portion of a rule, as that term is  
5 defined in section 536.010, that is created under the authority  
6 delegated in this section shall become effective only if it  
7 complies with and is subject to all of the provisions of chapter  
8 536 and, if applicable, section 536.028. This section and  
9 chapter 536 are nonseverable and if any of the powers vested with  
10 the general assembly pursuant to chapter 536 to review, to delay  
11 the effective date, or to disapprove and annul a rule are  
12 subsequently held unconstitutional, then the grant of rulemaking  
13 authority and any rule proposed or adopted after August 28, 2016,  
14 shall be invalid and void.

15 195.465. 1. A dispenser who knowingly fails to submit  
16 dispensation information to the department as required in  
17 sections 195.450 to 195.471 or knowingly submits the incorrect  
18 dispensation information shall be subject to an administrative  
19 penalty in the amount of one thousand dollars for each violation.  
20 The penalty shall be assessed through an order issued by the  
21 director of the department. Any person subject to an  
22 administrative penalty may appeal to the administrative hearing  
23 commission under the provisions of chapter 621.

24 2. Any person who unlawfully and knowingly accesses or  
25 discloses, or any person authorized to have prescription or  
26 dispensation information under sections 195.450 to 195.471 who  
27 knowingly discloses such information in violation of sections  
28 195.450 to 195.471 or knowingly uses such information in a manner

1 and for a purpose in violation of sections 195.450 to 195.471 is  
2 guilty of a class D felony until December 31, 2016, and a class E  
3 felony beginning January 1, 2017.

4 195.466. The department shall annually provide to the  
5 general assembly a report as to the number of controlled  
6 substances dispensed, broken down by drug, the number of  
7 incidents of fraudulent prescriptions identified, and any other  
8 pertinent information requested by the general assembly.

9 195.468. 1. The department shall create and implement the  
10 following education courses:

11 (1) An orientation course during the implementation phase  
12 of the narcotics control program established under section  
13 195.453;

14 (2) A course for persons who are authorized to access the  
15 dispensation information but who did not participate in the  
16 orientation course; and

17 (3) A course for persons who are authorized to access the  
18 dispensation information but who have violated laws or breached  
19 occupational standards involving dispensing, prescribing, and  
20 using substances monitored by the narcotics control program  
21 established under section 195.453.

22  
23 If appropriate, the department shall develop the content of the  
24 education courses described in this subsection.

25 2. The department shall, if appropriate:

26 (1) Work with associations for impaired professionals to  
27 ensure intervention, treatment, and ongoing monitoring and  
28 followup; and

1       (2) Encourage individual patients who are identified and  
2 who have become addicted to substances monitored by the narcotics  
3 control program established under section 195.453 to receive  
4 addiction treatment.

5       195.471. Under section 23.253 of the Missouri sunset act:

6       (1) The provisions of the new program authorized under  
7 sections 195.450 to 195.471 shall automatically sunset six years  
8 after the effective date of sections 195.450 to 195.471 unless  
9 reauthorized by an act of the general assembly;

10       (2) If such program is reauthorized, the program authorized  
11 under sections 195.450 to 195.471 shall automatically sunset  
12 twelve years after the effective date of the reauthorization of  
13 sections 195.450 to 195.471; and

14       (3) Sections 195.450 to 195.471 shall terminate on  
15 September first of the calendar year immediately following the  
16 calendar year in which the program authorized under sections  
17 195.450 to 195.471 is sunset.