

SENATE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NOS. 90 & 68

AN ACT

To amend chapter 195, RSMo, by adding thereto seven new sections relating to a program for the monitoring of certain prescribed controlled substances, with penalty provisions.

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

1 Section A. Chapter 195, RSMo, is amended by adding thereto
2 seven new sections, to be known as sections 195.450, 195.453,
3 195.456, 195.459, 195.462, 195.465, and 195.468, to read as
4 follows:

5 195.450. 1. Sections 195.450 to 195.468 shall be known and
6 may be cited as the "Narcotics Control Act".

7 2. As used in sections 195.450 to 195.468, the following
8 terms shall mean:

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

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

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

15 (a) A hospital, as defined in section 197.020, that
16 distributes such substances for the purpose of inpatient care or

1 dispenses prescriptions for controlled substances at the time of
2 discharge from such facility;

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

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

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

12 (5) "Prescriber", a person who prescribes a Schedule II,
13 III, or IV controlled substance to a patient;

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

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

21 195.453. 1. The department shall establish and maintain a
22 program for the monitoring of prescribing and dispensing of all
23 Schedule II, III, and IV controlled substances by all
24 professionals licensed to prescribe or dispense such substances
25 in this state. The funding of the narcotics control program
26 shall be subject to appropriations. In addition to
27 appropriations from the general assembly, the department may
28 apply for available grants and shall be able to accept other

1 gifts, grants, and donations to develop and maintain the program.

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

7 (1) The dispenser's Drug Enforcement Administration (DEA)
8 number;

9 (2) The date of the dispensation;

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

11 (a) The prescription number or other unique identifier;

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

13 (c) The prescriber's DEA or National Provider Identifier
14 (NPI) number;

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

16 (5) The quantity and dosage of the drug dispensed;

17 (6) The patient's identification number including, but not
18 limited to, any one of the following:

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

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

21 or

22 (c) The patient's insurance cardholder identification
23 number; and

24 (7) The patient's name, address, and date of birth.

25 3. Each dispenser shall submit the information in
26 accordance with transmission standards established by the
27 American Society for Automation in Pharmacy or any successor
28 organization and shall report data within twenty-four hours of

1 dispensation. Beginning January 1, 2019, the department shall
2 begin phasing in a requirement that dispensers report data in
3 real time with all report data to be submitted in real time by
4 January 1, 2020.

5 4. (1) The department may issue a waiver to a dispenser
6 who is unable to submit dispensation information by electronic
7 means. Such waiver may permit the dispenser to submit
8 dispensation information by paper form or other means, provided
9 all information required in subsection 2 of this section is
10 submitted in such alternative format.

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

18 5. A prescriber shall utilize the program prior to
19 prescribing any Schedule II, III, or IV controlled substance.
20 The provisions of this subsection shall not apply in the
21 following circumstances:

22 (1) During a medical emergency which, in the professional
23 opinion of the prescriber, is likely to result in harm to the
24 patient;

25 (2) When it is not reasonably possible to utilize the
26 program due to circumstances beyond the control of the
27 prescriber;

28 (3) When the patient has a terminal illness, or resides in

1 a facility licensed under chapter 198; or

2 (4) For the treatment of pain resulting from a surgical or
3 invasive procedure in which the prescription does not exceed a
4 five-day supply.

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

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

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

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

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

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

28 (3) The state board of pharmacy;

1 (4) Any state board charged with regulating a professional
2 who has the authority to prescribe or dispense controlled
3 substances that requests data related to a specific professional
4 under the authority of such board if such board has a current and
5 open investigation into such professional and the data provided
6 is limited to such professional;

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

13 (6) The MO HealthNet division within the department of
14 social services regarding MO HealthNet program recipients; and

15 (7) A judge or other judicial authority under a subpoena
16 issued by a court of competent jurisdiction or court order.

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

22 6. Nothing in sections 195.450 to 195.468 shall be
23 construed to require a dispenser or prescriber, except as
24 otherwise provided in subsection 5 of section 195.453, to obtain
25 information about a patient from the database.

26 7. No dispensation information submitted to the department
27 shall be used by any local, state, or federal authority to
28 prevent an individual from owning or obtaining a firearm.

1 8. No dispensation information submitted to the department
2 under sections 195.450 to 195.468 shall be the sole basis for
3 probable cause to obtain an arrest or search warrant as part of a
4 criminal investigation.

5 195.459. The department is authorized to contract with any
6 other agency of this state, any state government that currently
7 runs a narcotics control program, or any private vendor. Any
8 contractor shall comply with the provisions regarding
9 confidentiality of prescription and dispensation information in
10 section 195.456.

11 195.462. 1. The department shall promulgate rules setting
12 forth the procedures and methods of implementing sections 195.450
13 to 195.468. Any rule or portion of a rule, as that term is
14 defined in section 536.010, that is created under the authority
15 delegated in this section shall become effective only if it
16 complies with and is subject to all of the provisions of chapter
17 536 and, if applicable, section 536.028. This section and
18 chapter 536 are nonseverable, and if any of the powers vested
19 with the general assembly pursuant to chapter 536 to review, to
20 delay the effective date, or to disapprove and annul a rule are
21 subsequently held unconstitutional, then the grant of rulemaking
22 authority and any rule proposed or adopted after August 28, 2017,
23 shall be invalid and void.

24 2. The provisions of section 23.253 of the Missouri sunset
25 act shall not apply to sections 195.450 to 195.468.

26 195.465. 1. A dispenser who knowingly fails to submit
27 dispensation information to the department as required in
28 sections 195.450 to 195.468 or knowingly submits the incorrect

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

7 2. Any person who unlawfully and knowingly accesses or
8 discloses, or any person authorized to have prescription or
9 dispensation information under sections 195.450 to 195.468 who
10 knowingly discloses such information in violation of sections
11 195.450 to 195.468 or knowingly uses such information in a manner
12 and for a purpose in violation of sections 195.450 to 195.468 is
13 guilty of a class E felony.

14 3. A prescriber required to utilize the program under
15 subsection 5 of section 195.453 who knowingly fails to comply
16 with the provisions of such subsection shall be subject to
17 disciplinary action by the prescriber's respective professional
18 state regulatory board.

19 195.468. If a political subdivision of this state is
20 operating a program for the monitoring of the prescribing and
21 dispensing of all Schedule II, III, and IV controlled substances
22 by professionals licensed to prescribe or dispense such
23 substances in this state, the political subdivision shall
24 surrender and the state shall assume all obligations of the
25 political subdivision under any existing user or other agreement
26 for such program, and be responsible for its continued
27 functioning until such time as sections 195.450 to 195.468 and
28 the rules promulgated under section 195.462 become effective. If

1 an unforeseen issue arises that prevents the state from assuming
2 the obligations of the political subdivision's program, this
3 subsection shall be void and control of the political
4 subdivision's program shall revert to the political subdivision
5 and not be prohibited.