

SECOND REGULAR SESSION

SENATE BILL NO. 677

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

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ADRIANE D. CROUSE, Secretary.

3053S.01I

AN ACT

To repeal section 195.140, RSMo, and to enact in lieu thereof seven new sections relating to the monitoring of certain prescribed controlled substances, with penalty provisions.

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

Section A. Section 195.140, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 195.140, 195.450, 195.453, 195.456, 195.459, 195.462, and 195.465, to read as follows:

195.140. 1. All controlled substances, imitation controlled substances or drug paraphernalia for the administration, use or manufacture of controlled substances or imitation controlled substances and which have come into the custody of a peace officer or officer or agent of the department of health and senior services as provided by this chapter or chapter 579, the lawful possession of which is not established or the title to which cannot be ascertained after a hearing as prescribed in Rule 34 of Rules of Criminal Procedure for the courts of Missouri or some other appropriate hearing, shall be forfeited, and disposed of as follows:

(1) Except as in this section otherwise provided, the court or associate circuit judge having jurisdiction shall order such controlled substances, imitation controlled substances, or drug paraphernalia forfeited and destroyed. A record of the place where said controlled substances, imitation controlled substances, or drug paraphernalia were seized, of the kinds and quantities of controlled substances, imitation controlled substances, or drug paraphernalia so destroyed, and of the time, place and manner of destructions, shall be kept, and a return under oath, reporting the destruction of the controlled substances, imitation controlled substances, or drug paraphernalia shall be made to the court or

19 associate circuit judge;

20 (2) The department of health and senior services shall keep a complete
21 record of all controlled substances, imitation controlled substances, or drug
22 paraphernalia received and disposed of, together with the dates of such receipt
23 and disposal, showing the exact kinds, quantities, and forms of such controlled
24 substances, imitation controlled substances, or drug paraphernalia; the persons
25 from whom received and to whom delivered; and by whose authority they were
26 received, delivered or destroyed; which record shall be open to inspection by all
27 federal or state officers charged with the enforcement of federal and state narcotic
28 or controlled substances laws.

29 2. (1) Everything of value furnished, or intended to be furnished, in
30 exchange for a controlled substance, imitation controlled substance or drug
31 paraphernalia in violation of this chapter or chapter 579, all proceeds traceable
32 to such an exchange, and all moneys, negotiable instruments, or securities used,
33 or intended to be used, to facilitate any violation of this chapter or chapter 579,
34 shall be forfeited, except that no property shall be forfeited under this subsection
35 to the extent of the interest of an owner by reason of any act or omission
36 established by him to have been committed without his or her knowledge or
37 consent.

38 (2) Any moneys, coin, or currency found in close proximity to forfeitable
39 controlled substances, imitation controlled substances, or drug paraphernalia, or
40 forfeitable records of the importation, manufacture, or distribution of controlled
41 substances, imitation controlled substances or drug paraphernalia are presumed
42 to be forfeitable under this subsection. The burden of proof shall be upon
43 claimants of the property to rebut this presumption.

44 (3) All forfeiture proceedings shall be conducted pursuant to the
45 provisions of sections 513.600 to 513.653.

46 **3. Notwithstanding any other provision of law to the contrary,**
47 **all controlled substances which have come into the custody of a peace**
48 **officer or officer or agent of the department of health and senior**
49 **services under section 195.265 may be disposed of through incineration**
50 **in either a hazardous waste combuster, a large or small municipal**
51 **waste combuster, or other controlled substance incinerators owned by**
52 **a governmental agency, to the extent permissible under federal law.**

195.450. 1. Sections 195.450 to 195.465 shall be known and may
2 be cited as the "Narcotics Control Act".

3 2. As used in sections 195.450 to 195.465, the following terms shall
4 mean:

5 (1) "Controlled substance", the same meaning as given to such
6 term in section 195.010;

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

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

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

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

15 (c) A wholesale distributor of a controlled substance;

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

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

25 3. The provisions of sections 195.450 to 195.465 shall not apply to
26 persons licensed under chapter 340.

195.453. 1. The department shall establish and maintain a
2 narcotics control program for the monitoring of prescribing and
3 dispensing of all Schedule II, III, and IV controlled substances by
4 professionals licensed to prescribe or dispense such substances in this
5 state. The funding of the narcotics control program shall be subject to
6 appropriations. In addition to appropriations from the general
7 assembly, the department may apply for available grants and shall be
8 able to accept other gifts, grants, and donations to develop and
9 maintain the program.

10 2. Each dispenser shall submit to the department by electronic
11 means information regarding each dispensation of a drug included in
12 subsection 1 of this section. The information submitted for each
13 dispensation shall include:

14 (1) The pharmacy's Drug Enforcement Administration (DEA)
15 number;
16 (2) The date of the dispensation;
17 (3) The following, if there is a prescription:
18 (a) The prescription number or other unique identifier;
19 (b) Whether the prescription is new or a refill; and
20 (c) The prescriber's DEA or National Provider Identifier (NPI)
21 number;
22 (4) The National Drug Code (NDC) for the drug dispensed;
23 (5) The quantity and dosage of the drug dispensed;
24 (6) The patient's identification number including, but not limited
25 to, any one of the following:
26 (a) The patient's drivers license number;
27 (b) The patient's government-issued identification number; or
28 (c) The patient's insurance cardholder identification number;
29 and
30 (7) The patient's name, address, and date of birth.
31 The addition of any further information to the list of data required to
32 be submitted in this subsection shall be the sole purview of the general
33 assembly.

34 3. Each dispenser shall submit the information in accordance
35 with transmission standards established by the American Society for
36 Automation in Pharmacy or any successor organization and shall report
37 data within twenty-four hours of dispensation. Beginning January 1,
38 2022, the department shall begin phasing in a requirement that
39 dispensers report data in real time with all report data to be submitted
40 in real time by January 1, 2023.

41 4. (1) The department may issue a waiver to a dispenser who is
42 unable to submit the dispensation information by electronic
43 means. Such waiver may permit the dispenser to submit dispensation
44 information by paper form or other means, provided all information
45 required in subsection 2 of this section is submitted in such alternative
46 format.

47 (2) The department may grant an extension to dispensers who
48 are temporarily unable to electronically submit the dispensation
49 information required in subsection 2 of this section in accordance with
50 the time frame established in subsection 3 of this section due to

51 unforeseen circumstances. In cases in which an extension is granted,
52 dispensers shall be responsible for reporting the required data in a
53 subsequent submission.

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 establish procedures to ensure that the
6 privacy and confidentiality of patients is maintained and that personal
7 information collected, recorded, transmitted, and maintained is not
8 disclosed, except as otherwise provided in subsections 3 to 5 of this
9 section.

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

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

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

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

23 (3) Any state board charged with regulating a professional who
24 has the authority to prescribe or dispense controlled substances that
25 requests data related to a specific professional under the authority of
26 such board if such board has a current and open investigation into such
27 professional and the data provided is limited to such professional;

28 (4) Local, state, and federal law enforcement or prosecutorial
29 officials, both in-state and out-of-state, engaged in the investigation or
30 enforcement of the laws governing prescription drugs only when based
31 on a specific case and under a subpoena or court order issued by a
32 court of competent jurisdiction; and

33 (5) The MO HealthNet division within the department of social
34 services regarding MO HealthNet program recipients.

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

40 6. Nothing in sections 195.450 to 195.465 shall be construed to
41 require a pharmacist or prescriber to obtain information about a
42 patient from the database.

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

46 8. No dispensation information submitted to the department shall
47 be the sole basis for probable cause to obtain an arrest or search
48 warrant as part of a criminal investigation.

49 9. Beginning August 28, 2022, the department shall maintain an
50 individual's prescription and dispensation information obtained under
51 sections 195.450 to 195.465 for a maximum of three years from the date
52 of dispensation, after which such information shall be deleted from the
53 program.

195.459. 1. The department is authorized to contract with any
2 other agency of this state, a political subdivision of this state, any other
3 state with a private vendor, or any state government that currently
4 operates a narcotics control program. Any contractor shall comply
5 with the provisions regarding confidentiality of dispensation
6 information in section 195.456.

7 2. If a political subdivision of this state operates a narcotics
8 control program, or an equivalent program, prior to August 28, 2020,
9 such program may continue operating until such time as the
10 department's program is available for utilization by prescribers and
11 dispensers throughout the state.

195.462. The department shall promulgate rules setting forth the
2 procedures and methods of implementing sections 195.450 to
3 195.465. 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 powers vested in

8 the general assembly pursuant to chapter 536 to review, to delay the
9 effective date, or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2020, shall be invalid and void.

195.465. 1. A dispenser who knowingly fails to submit
2 dispensation information to the department as required in sections
3 195.450 to 195.465 or knowingly submits the incorrect dispensation
4 information shall be subject to an administrative penalty in the amount
5 of one thousand dollars for each violation. The penalty shall be
6 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. Any person who unlawfully and knowingly accesses or
11 discloses, or any person authorized to have prescription or
12 dispensation information under sections 195.450 to 195.465 who
13 knowingly discloses, such information in violation of sections 195.450
14 to 195.465 or knowingly uses such information in a manner and for a
15 purpose in violation of sections 195.450 to 195.465 is guilty of a class E
16 felony.

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