

SECOND REGULAR SESSION

# SENATE BILL NO. 762

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4654S.011

## 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:*

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

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

**2. As used in sections 195.450 to 195.468, the following terms shall 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, or IV controlled substance to a patient, but does not include:**

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

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

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

**(4) "Narcotics control program" or "program", a program established by the department under sections 195.450 to 195.468 to monitor the prescription and dispensation of all Schedule II, III, and**

20 IV controlled substances;

21 (5) "Patient", a person who is the ultimate user of a drug for  
22 whom a prescription is issued or for whom a drug is dispensed, not  
23 including a hospice patient enrolled in a Medicare-certified hospice  
24 program who has controlled substances dispensed to him or her by  
25 such hospice program;

26 (6) "Prescriber", a person who prescribes a Schedule II, III, or IV  
27 controlled substance to a patient;

28 (7) "Schedule II, III, or IV controlled substance", a controlled  
29 substance that is listed in Schedule II, III, or IV of the schedules  
30 provided under this chapter or the Controlled Substances Act, 21 U.S.C.  
31 Section 812.

32 3. Notwithstanding any other law to the contrary, the provisions  
33 of this section shall not apply to 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 all  
4 professionals licensed to prescribe or dispense such substances in this  
5 state. The funding of the program shall be subject to appropriations.  
6 In addition to appropriations from the general assembly, the  
7 department may apply for available grants and shall be able to accept  
8 other gifts, grants, and donations to develop and maintain the program.

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  
12 dispensation shall include, but not be limited to:

13 (1) The dispenser's Drug Enforcement Administration (DEA)  
14 number;

15 (2) The date of the dispensation;

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

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

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

19 (c) The prescriber's DEA or National Provider Identifier (NPI)  
20 number;

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

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

23 (6) The patient's identification number including, but not limited

24 to, any one of the following:

- 25 (a) The patient's driver's license number;
- 26 (b) The patient's government-issued identification number; or
- 27 (c) The patient's insurance cardholder identification number;
- 28 and
- 29 (7) The patient's name, address, and date of birth.

30 3. Each dispenser shall submit the information in accordance  
31 with transmission standards established by the American Society for  
32 Automation in Pharmacy or any successor organization and shall report  
33 data within twenty-four hours of dispensation. Beginning January 1,  
34 2020, the department shall begin phasing in a requirement that  
35 dispensers report data in real time with all report data to be submitted  
36 in real time by January 1, 2021.

37 4. (1) The department may issue a waiver to a dispenser who is  
38 unable to submit dispensation information by electronic means. Such  
39 waiver may permit the dispenser to submit dispensation information  
40 by paper form or other means, provided all information required in  
41 subsection 2 of this section is submitted in such alternative format.

42 (2) The department may grant an extension to dispensers who  
43 are temporarily unable to electronically submit the dispensation  
44 information required in subsection 2 of this section in accordance with  
45 the time frame established in subsection 3 of this section due to  
46 unforeseen circumstances. In cases in which an extension is granted,  
47 dispensers shall be responsible for reporting the required data in a  
48 subsequent submission.

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

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

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

56 (3) When the patient has a terminal illness or resides in a facility  
57 licensed under chapter 198;

58 (4) When the patient is under the care of a hospital, as defined  
59 in section 197.020, or an ambulatory surgical center, as defined in  
60 section 197.200, that distributes controlled substances for the purpose

61 of inpatient care or issues prescriptions for controlled substances at  
62 the time of discharge from the facility in which the prescription does  
63 not exceed a five-day supply; provided that such prescriber utilizes the  
64 program or ensures that the program has been utilized since the  
65 patient's admission;

66 (5) When the controlled substance is administered directly to the  
67 patient in an emergency room setting; or

68 (6) When there is a previously established prescriber-patient  
69 relationship and a nonopioid controlled substance, other than a  
70 benzodiazepine, is being prescribed.

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 personal information  
7 collected, recorded, transmitted, and maintained are 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 any  
14 dispensation information required for an investigation.

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

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

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

22 (3) The state board of pharmacy;

23 (4) 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           **(5) Local, state, and federal law enforcement or prosecutorial**  
29 **officials, both in-state and out-of-state, engaged in the administration,**  
30 **investigation, or enforcement of the laws governing prescription drugs**  
31 **based on a specific case and under a subpoena issued by a court of**  
32 **competent jurisdiction or court order;**

33           **(6) The MO HealthNet division within the department of social**  
34 **services regarding MO HealthNet program recipients; and**

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

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, dispensers, or persons who received dispensations from**  
41 **dispensers.**

42           **6. Nothing in sections 195.450 to 195.468 shall be construed to**  
43 **require a dispenser or prescriber, except as otherwise provided in**  
44 **subsection 5 of section 195.453, to obtain information about a patient**  
45 **from the database.**

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

49           **8. No dispensation information submitted to the department**  
50 **under sections 195.450 to 195.468 shall be the sole basis for probable**  
51 **cause to obtain an arrest or search warrant as part of a criminal**  
52 **investigation.**

53           **9. Beginning August 28, 2020, the department shall maintain an**  
54 **individual's prescription and dispensation information obtained under**  
55 **sections 195.450 to 195.468 for a maximum of six years. Such**  
56 **prescription or dispensation information shall thereafter be deleted**  
57 **from the program after six years.**

58           **10. Any individual who has authority under sections 195.450 to**  
59 **195.468 to access the program's database shall complete a department-**  
60 **approved training course prior to accessing the database for the first**  
61 **time.**

**195.459. The department is authorized to contract with any other**  
2 **agency of this state, any state government that currently runs a**  
3 **narcotics control program, or any private vendor. Any contractor shall**

4 comply with the provisions regarding confidentiality of prescription  
5 and dispensation information in section 195.456.

195.462. 1. The department shall promulgate rules setting forth  
2 the procedures and methods of implementing sections 195.450 to  
3 195.468. 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, 2018, shall  
12 be invalid and void.

13 2. Under section 23.253 of the Missouri sunset act:

14 (1) The provisions of the new program authorized under sections  
15 195.450 to 195.468 shall automatically sunset six years after the  
16 effective date of sections 195.450 to 195.468 unless reauthorized by an  
17 act of the general assembly;

18 (2) If such program is reauthorized, the program authorized  
19 under sections 195.450 to 195.468 shall automatically sunset twelve  
20 years after the effective date of the reauthorization of sections 195.450  
21 to 195.468; and

22 (3) Sections 195.450 to 195.468 shall terminate on September first  
23 of the calendar year immediately following the calendar year in which  
24 the program authorized under sections 195.450 to 195.468 is sunset.

195.465. 1. A dispenser who knowingly fails to submit  
2 dispensation information to the department as required in sections  
3 195.450 to 195.468 or knowingly submits 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 dispensation

12 information under sections 195.450 to 195.468 who knowingly discloses  
13 such information in violation of sections 195.450 to 195.468 or  
14 knowingly uses such information in a manner and for a purpose in  
15 violation of sections 195.450 to 195.468, is guilty of a class E felony.

195.468. If a political subdivision of this state is operating a  
2 program for the monitoring of the prescribing and dispensing of all  
3 Schedule II, III, and IV controlled substances by professionals licensed  
4 to prescribe or dispense such substances in this state, the political  
5 subdivision's program shall be permitted to continue operating until  
6 such time as the department's program is available for utilization by  
7 prescribers and dispensers throughout the state.

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Bill

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