

HB 1081

2012

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.13, F.S.; prohibiting the knowing use of a
 4 Schedule II controlled substance in a form or manner
 5 other than that in which the manufacturer or
 6 prescriber intended it to be used; providing criminal
 7 penalties; amending ss. 893.055, 893.0551, and
 8 921.0022, F.S.; conforming cross-references; providing
 9 definitions; requiring the Board of Pharmacy to create
 10 a list of opioid analgesic drugs that incorporate a
 11 tamper-resistance technology and have been approved by
 12 the United States Food and Drug Administration;
 13 prohibiting substitution for such an opioid analgesic
 14 drug with another opioid analgesic drug without
 15 meeting specified requirements; providing an effective
 16 date.

17
 18 Be It Enacted by the Legislature of the State of Florida:
 19

20 Section 1. Subsection (7) of section 893.13, Florida
 21 Statutes, is amended to read:

22 893.13 Prohibited acts; penalties.—

23 (7) (a) A person may not:

24 1. Distribute or dispense a controlled substance in
 25 violation of this chapter.

26 2. Refuse or fail to make, keep, or furnish any record,
 27 notification, order form, statement, invoice, or information
 28 required under this chapter.

29 3. Refuse entry into any premises for any inspection or
30 refuse to allow any inspection authorized by this chapter.

31 4. Distribute a controlled substance named or described in
32 s. 893.03(1) or (2) except pursuant to an order form as required
33 by s. 893.06.

34 5. Keep or maintain any store, shop, warehouse, dwelling,
35 building, vehicle, boat, aircraft, or other structure or place
36 which is resorted to by persons using controlled substances in
37 violation of this chapter for the purpose of using these
38 substances, or which is used for keeping or selling them in
39 violation of this chapter.

40 6. Use to his or her own personal advantage, or reveal,
41 any information obtained in enforcement of this chapter except
42 in a prosecution or administrative hearing for a violation of
43 this chapter.

44 7. Possess a prescription form which has not been
45 completed and signed by the practitioner whose name appears
46 printed thereon, unless the person is that practitioner, is an
47 agent or employee of that practitioner, is a pharmacist, or is a
48 supplier of prescription forms who is authorized by that
49 practitioner to possess those forms.

50 8. Knowingly use a Schedule II controlled substance in a
51 form or manner other than that in which the manufacturer or
52 prescriber intended it to be used.

53 ~~9.8.~~ Withhold information from a practitioner from whom
54 the person seeks to obtain a controlled substance or a
55 prescription for a controlled substance that the person making
56 the request has received a controlled substance or a

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57 prescription for a controlled substance of like therapeutic use
58 from another practitioner within the previous 30 days.

59 ~~10.9.~~ Acquire or obtain, or attempt to acquire or obtain,
60 possession of a controlled substance by misrepresentation,
61 fraud, forgery, deception, or subterfuge.

62 ~~11.10.~~ Affix any false or forged label to a package or
63 receptacle containing a controlled substance.

64 ~~12.11.~~ Furnish false or fraudulent material information
65 in, or omit any material information from, any report or other
66 document required to be kept or filed under this chapter or any
67 record required to be kept by this chapter.

68 ~~13.12.~~ Store anhydrous ammonia in a container that is not
69 approved by the United States Department of Transportation to
70 hold anhydrous ammonia or is not constructed in accordance with
71 sound engineering, agricultural, or commercial practices.

72 ~~14.13.~~ With the intent to obtain a controlled substance or
73 combination of controlled substances that are not medically
74 necessary for the person or an amount of a controlled substance
75 or substances that is not medically necessary for the person,
76 obtain or attempt to obtain from a practitioner a controlled
77 substance or a prescription for a controlled substance by
78 misrepresentation, fraud, forgery, deception, subterfuge, or
79 concealment of a material fact. For purposes of this
80 subparagraph, a material fact includes whether the person has an
81 existing prescription for a controlled substance issued for the
82 same period of time by another practitioner or as described in
83 subparagraph 9. ~~8.~~

84 (b) A health care practitioner, with the intent to provide

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85 a controlled substance or combination of controlled substances
86 that are not medically necessary to his or her patient or an
87 amount of controlled substances that is not medically necessary
88 for his or her patient, may not provide a controlled substance
89 or a prescription for a controlled substance by
90 misrepresentation, fraud, forgery, deception, subterfuge, or
91 concealment of a material fact. For purposes of this paragraph,
92 a material fact includes whether the patient has an existing
93 prescription for a controlled substance issued for the same
94 period of time by another practitioner or as described in
95 subparagraph (a)9. ~~(a)8.~~

96 (c) Any person who violates ~~the provisions of~~
97 subparagraphs (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the
98 first degree, punishable as provided in s. 775.082 or s.
99 775.083; except that, upon a second or subsequent violation, the
100 person commits a felony of the third degree, punishable as
101 provided in s. 775.082, s. 775.083, or s. 775.084.

102 (d) Any person who violates ~~the provisions of~~
103 subparagraphs (a)9.-13. ~~(a)8.-12.~~ commits a felony of the third
104 degree, punishable as provided in s. 775.082, s. 775.083, or s.
105 775.084.

106 (e) A person or health care practitioner who violates ~~the~~
107 ~~provisions of~~ subparagraph (a)14. ~~(a)13.~~ or paragraph (b)
108 commits a felony of the third degree, punishable as provided in
109 s. 775.082, s. 775.083, or s. 775.084, if any controlled
110 substance that is the subject of the offense is listed in
111 Schedule II, Schedule III, or Schedule IV.

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112 Section 2. Paragraph (a) of subsection (1), paragraph (b)
 113 of subsection (2), and paragraph (f) of subsection (7) of
 114 section 893.055, Florida Statutes, are amended to read:

115 893.055 Prescription drug monitoring program.—

116 (1) As used in this section, the term:

117 (a) "Patient advisory report" or "advisory report" means
 118 information provided by the department in writing, or as
 119 determined by the department, to a prescriber, dispenser,
 120 pharmacy, or patient concerning the dispensing of controlled
 121 substances. All advisory reports are for informational purposes
 122 only and impose no obligations of any nature or any legal duty
 123 on a prescriber, dispenser, pharmacy, or patient. The patient
 124 advisory report shall be provided in accordance with s.

125 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The advisory reports issued by the
 126 department are not subject to discovery or introduction into
 127 evidence in any civil or administrative action against a
 128 prescriber, dispenser, pharmacy, or patient arising out of
 129 matters that are the subject of the report; and a person who
 130 participates in preparing, reviewing, issuing, or any other
 131 activity related to an advisory report may not be permitted or
 132 required to testify in any such civil action as to any findings,
 133 recommendations, evaluations, opinions, or other actions taken
 134 in connection with preparing, reviewing, or issuing such a
 135 report.

136 (2)

137 (b) The department, when the direct support organization
 138 receives at least \$20,000 in nonstate moneys or the state
 139 receives at least \$20,000 in federal grants for the prescription

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140 drug monitoring program, shall adopt rules as necessary
 141 concerning the reporting, accessing the database, evaluation,
 142 management, development, implementation, operation, security,
 143 and storage of information within the system, including rules
 144 for when patient advisory reports are provided to pharmacies and
 145 prescribers. The patient advisory report shall be provided in
 146 accordance with s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The department
 147 shall work with the professional health care licensure boards,
 148 such as the Board of Medicine, the Board of Osteopathic
 149 Medicine, and the Board of Pharmacy; other appropriate
 150 organizations, such as the Florida Pharmacy Association, the
 151 Florida Medical Association, the Florida Retail Federation, and
 152 the Florida Osteopathic Medical Association, including those
 153 relating to pain management; and the Attorney General, the
 154 Department of Law Enforcement, and the Agency for Health Care
 155 Administration to develop rules appropriate for the prescription
 156 drug monitoring program.

157 (7)

158 (f) The program manager, upon determining a pattern
 159 consistent with the rules established under paragraph (2)(d) and
 160 having cause to believe a violation of s. 893.13(7)(a)9.
 161 ~~893.13(7)(a)8.~~, (8)(a), or (8)(b) has occurred, may provide
 162 relevant information to the applicable law enforcement agency.

163 Section 3. Subsection (4) of section 893.0551, Florida
 164 Statutes, is amended to read:

165 893.0551 Public records exemption for the prescription
 166 drug monitoring program.—

167 (4) The department shall disclose such confidential and

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168 exempt information to the applicable law enforcement agency in
 169 accordance with s. 893.055(7)(f). The law enforcement agency may
 170 disclose the confidential and exempt information received from
 171 the department to a criminal justice agency as defined in s.
 172 119.011 as part of an active investigation that is specific to a
 173 violation of s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~, s. 893.13(8)(a),
 174 or s. 893.13(8)(b).

175 Section 4. Paragraph (c) of subsection (3) of section
 176 921.0022, Florida Statutes, is amended to read:

177 921.0022 Criminal Punishment Code; offense severity
 178 ranking chart.—

179 (3) OFFENSE SEVERITY RANKING CHART

180 (c) LEVEL 3

181

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude

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law enforcement officer in
patrol vehicle with siren and
lights activated.

186

319.30 (4) 3rd Possession by junkyard of motor
vehicle with identification
number plate removed.

187

319.33 (1) (a) 3rd Alter or forge any certificate
of title to a motor vehicle or
mobile home.

188

319.33 (1) (c) 3rd Procure or pass title on stolen
vehicle.

189

319.33 (4) 3rd With intent to defraud,
possess, sell, etc., a blank,
forged, or unlawfully obtained
title or registration.

190

327.35 (2) (b) 3rd Felony BUI.

191

328.05 (2) 3rd Possess, sell, or counterfeit
fictitious, stolen, or
fraudulent titles or bills of
sale of vessels.

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193	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
194	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
195	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
196	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
197	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.

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198	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
199	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
200	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
201	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
202	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
203	697.08	3rd	Equity skimming.
204	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.

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205	796.05 (1)	3rd	Live on earnings of a prostitute.
206	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
207	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
208	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
209	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
210	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
211	815.04 (4) (b)	2nd	Computer offense devised to defraud or obtain property.
	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud

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(Florida Communications Fraud Act), property valued at less than \$20,000.

212

817.233 3rd Burning to defraud insurer.

213

817.234 3rd Unlawful solicitation of persons involved in motor vehicle accidents.
(8) (b) - (c)

214

817.234 (11) (a) 3rd Insurance fraud; property value less than \$20,000.

215

817.236 3rd Filing a false motor vehicle insurance application.

216

817.2361 3rd Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.

217

817.413 (2) 3rd Sale of used goods as new.

218

817.505 (4) 3rd Patient brokering.

219

828.12 (2) 3rd Tortures any animal with intent to inflict intense pain,

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serious physical injury, or death.

220

831.28 (2) (a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

221

831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.

222

838.021 (3) (b) 3rd Threatens unlawful harm to public servant.

223

843.19 3rd Injure, disable, or kill police dog or horse.

224

860.15 (3) 3rd Overcharging for repairs and parts.

225

870.01 (2) 3rd Riot; inciting or encouraging.

226

893.13 (1) (a) 2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1.,

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(2) (c) 2., (2) (c) 3., (2) (c) 5.,
 (2) (c) 6., (2) (c) 7., (2) (c) 8.,
 (2) (c) 9., (3), or (4) drugs).

227

893.13(1)(d)2. 2nd Sell, manufacture, or deliver
 s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4) drugs
 within 1,000 feet of
 university.

228

893.13(1)(f)2. 2nd Sell, manufacture, or deliver
 s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4) drugs
 within 1,000 feet of public
 housing facility.

229

893.13(6)(a) 3rd Possession of any controlled
 substance other than felony
 possession of cannabis.

230

893.13(7)(a)9. 3rd Withhold information from
~~893.13(7)(a)8.~~ practitioner regarding previous
 receipt of or prescription for

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a controlled substance.

231

893.13(7)(a)10.

3rd

Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

~~893.13(7)(a)9.~~

232

893.13(7)(a)11.

3rd

Affix false or forged label to package of controlled substance.

~~893.13(7)(a)10.~~

233

893.13(7)(a)12.

3rd

Furnish false or fraudulent material information on any document or record required by chapter 893.

~~893.13(7)(a)11.~~

234

893.13(8)(a)1.

3rd

Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

235

893.13(8)(a)2.

3rd

Employ a trick or scheme in the practitioner's practice to

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assist a patient, other person,
or owner of an animal in
obtaining a controlled
substance.

236

893.13(8)(a)3. 3rd Knowingly write a prescription
for a controlled substance for
a fictitious person.

237

893.13(8)(a)4. 3rd Write a prescription for a
controlled substance for a
patient, other person, or an
animal if the sole purpose of
writing the prescription is a
monetary benefit for the
practitioner.

238

918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

239

944.47
(1)(a)1.-2. 3rd Introduce contraband to
correctional facility.

240

944.47(1)(c) 2nd Possess contraband while upon
the grounds of a correctional
institution.

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266 incorporates a tamper-resistance technology and has been
267 approved by the United States Food and Drug Administration
268 pursuant to an application that includes at least one human
269 tampering or abuse potential study or a laboratory study
270 comparing the tamper or abuse resistance properties of the drug
271 to one or more opioid analgesic drugs that have been approved by
272 the United States Food and Drug Administration and serve as a
273 positive control.

274 (2) The Board of Pharmacy shall create a list of opioid
275 analgesic drugs for which information has been submitted as
276 described in paragraph (1)(c). Inclusion of a drug on the list
277 does not require that the drug bear a labeling claim with
278 respect to reduction of tampering, abuse, or abuse potential at
279 the time of listing. Such a list must also include a
280 determination by the Board of Pharmacy as to which listed opioid
281 analgesic drugs incorporating tamper-resistance technologies
282 provide substantially similar tamper-resistance properties based
283 solely upon studies submitted by the drug manufacturer
284 consistent with paragraph (1)(c).

285 (3) Notwithstanding s. 465.025, Florida Statutes, a
286 pharmacist may not interchange or substitute an opioid analgesic
287 drug, whether brand-name or generic, for an opioid analgesic
288 drug incorporating a tamper-resistance technology that is listed
289 pursuant to subsection (2) without:

290 (a) Verifying that the opioid analgesic drug has been
291 listed by the Board of Pharmacy under subsection (2) as
292 providing tamper-resistant properties substantially similar to
293 the prescribed opioid analgesic drug incorporating a tamper-

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294 resistance technology; or

295 (b) Obtaining written, signed consent from the prescribing
296 physician for the interchange or substitution.

297 Section 6. This act shall take effect October 1, 2012.