

By the Committee on Health, Aging and Long-Term Care; and
Senator Burt

317-1766A-02

1 A bill to be entitled
2 An act relating to criminal offenses involving
3 health care practitioners; creating s. 456.075,
4 F.S.; authorizing a representative of the
5 Department of Health to appear in a criminal
6 proceeding against a health care professional
7 to furnish information, make recommendations,
8 or provide other assistance; providing that the
9 court may order the representative to appear in
10 a criminal proceeding that relates to the
11 qualifications, functions, or duties of a
12 health care professional; amending s. 893.13,
13 F.S.; increasing the penalty imposed for
14 withholding information from a practitioner
15 concerning a controlled substance; prohibiting
16 a practitioner from knowingly assisting a
17 person in obtaining a controlled substance
18 through fraud or scheme, knowingly prescribing
19 a controlled substance for a fictitious person,
20 or prescribing a controlled substance for
21 purposes of monetary benefit; providing for a
22 permissive inference that a prescribing
23 practitioner knowingly assisted a person to
24 obtain a controlled substance through fraud;
25 providing penalties; amending s. 921.0022,
26 F.S., relating to the offense severity ranking
27 chart of the Criminal Punishment Code;
28 conforming provisions to changes made by the
29 act; amending s. 921.187, F.S.; conforming
30 cross-references; providing an effective date.
31

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 456.075, Florida Statutes, is
4 created to read:

5 456.075 In any criminal proceeding against a person
6 licensed by the department to practice a health care
7 profession in this state, a representative of the department
8 may voluntarily appear and furnish pertinent information, make
9 recommendations regarding specific conditions of probation, or
10 provide any other assistance necessary to promote justice or
11 protect the public. The court may order a representative of
12 the department to appear in any criminal proceeding if the
13 crime charged is substantially related to the qualifications,
14 functions, or duties of a health care professional licensed by
15 the department.

16 Section 2. Subsection (7) of section 893.13, Florida
17 Statutes, is amended, and present subsections (8), (9), and
18 (10) of that section are amended and redesignated as
19 subsections (9), (10), and (11), respectively, and a new
20 subsection (8) is added to that section, to read:

21 893.13 Prohibited acts; penalties.--

22 (7)(a) It is unlawful for any person:

23 1. To distribute or dispense a controlled substance in
24 violation of this chapter.

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

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

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1 4. To distribute a controlled substance named or
2 described in s. 893.03(1) or (2) except pursuant to an order
3 form as required by s. 893.06.

4 5. To keep or maintain any store, shop, warehouse,
5 dwelling, building, vehicle, boat, aircraft, or other
6 structure or place which is resorted to by persons using
7 controlled substances in violation of this chapter for the
8 purpose of using these substances, or which is used for
9 keeping or selling them in violation of this chapter.

10 6. To use to his or her own personal advantage, or to
11 reveal, any information obtained in enforcement of this
12 chapter except in a prosecution or administrative hearing for
13 a violation of this chapter.

14 ~~7. To withhold information from a practitioner from
15 whom the person seeks to obtain a controlled substance or a
16 prescription for a controlled substance that the person has
17 received a controlled substance or a prescription for a
18 controlled substance of like therapeutic use from another
19 practitioner within the last 30 days.~~

20 7.8. To possess a prescription form which has not been
21 completed and signed by the practitioner whose name appears
22 printed thereon, unless the person is that practitioner, is an
23 agent or employee of that practitioner, is a pharmacist, or is
24 a supplier of prescription forms who is authorized by that
25 practitioner to possess those forms.

26 8. To withhold information from a practitioner from
27 whom the person seeks to obtain a controlled substance or a
28 prescription for a controlled substance that the person making
29 the request has received a controlled substance or a
30 prescription for a controlled substance of like therapeutic
31 use from another practitioner within the previous 30 days.

1 9. To acquire or obtain, or attempt to acquire or
2 obtain, possession of a controlled substance by
3 misrepresentation, fraud, forgery, deception, or subterfuge.

4 10. To affix any false or forged label to a package or
5 receptacle containing a controlled substance.

6 11. To furnish false or fraudulent material
7 information in, or omit any material information from, any
8 report or other document required to be kept or filed under
9 this chapter or any record required to be kept by this
10 chapter.

11 (b) Any person who violates the provisions of
12 subparagraphs (a)1.-7. ~~(a)1.-8.~~ commits a misdemeanor of the
13 first degree, punishable as provided in s. 775.082 or s.
14 775.083; except that, upon a second or subsequent violation,
15 the person commits a felony of the third degree, punishable as
16 provided in s. 775.082, s. 775.083, or s. 775.084.

17 (c) Any person who violates the provisions of
18 subparagraphs (a)8.-11. ~~(a)9.-11.~~ commits a felony of the
19 third degree, punishable as provided in s. 775.082, s.
20 775.083, or s. 775.084.

21 (8)(a) Notwithstanding subsection (9), a prescribing
22 practitioner may not:

23 1. Knowingly assist a patient, other person, or the
24 owner of an animal in obtaining a controlled substance through
25 deceptive, untrue, or fraudulent representations in or related
26 to the practice of the prescribing practitioner's professional
27 practice;

28 2. Employ a trick or scheme in the practice of the
29 prescribing practitioner's professional practice to assist a
30 patient, other person, or the owner of an animal in obtaining
31 a controlled substance;

1 3. Knowingly write a prescription for a controlled
2 substance for a fictitious person; or

3 4. Write a prescription for a controlled substance for
4 a patient, other person, or an animal if the sole purpose of
5 writing such prescription is to provide a monetary benefit to,
6 or obtain a monetary benefit for, the prescribing
7 practitioner.

8 (b) A permissive inference is created that a
9 prescribing practitioner knowingly assisted a patient, other
10 person, or the owner of an animal to obtain a controlled
11 substance in violation of subparagraph (a)1., if the
12 prescribing practitioner wrote a prescription or multiple
13 prescriptions for a controlled substance for the patient,
14 other person, or animal for which there was no medical
15 necessity, or that was in excess of what was medically
16 necessary to treat the patient, other person, or animal.

17 (c) A person who violates paragraph (a) commits a
18 felony of the third degree, punishable as provided in s.
19 775.082, s. 775.083, or s. 775.084.

20 (d) Notwithstanding paragraph (c), if a prescribing
21 practitioner has violated paragraph (a) and received \$1,000 or
22 more in payment for writing one or more prescriptions or, in
23 the case of a prescription written for a controlled substance
24 described in s. 893.135, has written one or more prescriptions
25 for a quantity of a controlled substance which, individually
26 or in the aggregate, meets the threshold for the offense of
27 trafficking in a controlled substance under s. 893.15, the
28 violation is reclassified as a felony of the second degree and
29 ranked in level 4 of the Criminal Punishment Code.

30 (9)(8) The provisions of subsections (1)-(8)(1)-(7)
31 are not applicable to the delivery to, or actual or

1 constructive possession for medical or scientific use or
2 purpose only of controlled substances by, persons included in
3 any of the following classes, or the agents or employees of
4 such persons, for use in the usual course of their business or
5 profession or in the performance of their official duties:

- 6 (a) Pharmacists.
- 7 (b) Practitioners.
- 8 (c) Persons who procure controlled substances in good
9 faith and in the course of professional practice only, by or
10 under the supervision of pharmacists or practitioners employed
11 by them, or for the purpose of lawful research, teaching, or
12 testing, and not for resale.

13 (d) Hospitals that procure controlled substances for
14 lawful administration by practitioners, but only for use by or
15 in the particular hospital.

16 (e) Officers or employees of state, federal, or local
17 governments acting in their official capacity only, or
18 informers acting under their jurisdiction.

19 (f) Common carriers.

20 (g) Manufacturers, wholesalers, and distributors.

21 (h) Law enforcement officers for bona fide law
22 enforcement purposes in the course of an active criminal
23 investigation.

24 (10)~~(9)~~ Notwithstanding any provision of the
25 sentencing guidelines or the Criminal Punishment Code to the
26 contrary, on or after October 1, 1993, any defendant who:

27 (a) Violates subparagraph (1)(a)1., subparagraph
28 (1)(c)2., subparagraph (1)(d)2., subparagraph (2)(a)1., or
29 paragraph (5)(a); and

30 (b) Has not previously been convicted, regardless of
31 whether adjudication was withheld, of any felony, other than a

1 violation of subparagraph (1)(a)1., subparagraph (1)(c)2.,
2 subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph
3 (5)(a),

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5 may be required by the court to successfully complete a term
6 of probation pursuant to the terms and conditions set forth in
7 s. 948.034(1), in lieu of serving a term of imprisonment.

8 (11)~~(10)~~ Notwithstanding any provision of the
9 sentencing guidelines or the Criminal Punishment Code to the
10 contrary, on or after January 1, 1994, any defendant who:

11 (a) Violates subparagraph (1)(a)2., subparagraph
12 (2)(a)2., paragraph (5)(b), or paragraph (6)(a); and

13 (b) Has not previously been convicted, regardless of
14 whether adjudication was withheld, of any felony, other than a
15 violation of subparagraph (1)(a)2., subparagraph (2)(a)2.,
16 paragraph (5)(b), or paragraph (6)(a),

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18 may be required by the court to successfully complete a term
19 of probation pursuant to the terms and conditions set forth in
20 s. 948.034(2), in lieu of serving a term of imprisonment.

21 Section 3. Paragraphs (a) and (c) of subsection (3) of
22 section 921.0022, Florida Statutes, as amended by section 2 of
23 chapter 2001-358, Laws of Florida, are amended to read:

24 921.0022 Criminal Punishment Code; offense severity
25 ranking chart.--

26 (3) OFFENSE SEVERITY RANKING CHART

27

28 Florida	Felony	
29 Statute	Degree	Description

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31 (a) LEVEL 1

1	24.118(3)(a)	3rd	Counterfeit or altered state
2			lottery ticket.
3	212.054(2)(b)	3rd	Discretionary sales surtax;
4			limitations, administration, and
5			collection.
6	212.15(2)(b)	3rd	Failure to remit sales taxes,
7			amount greater than \$300 but less
8			than \$20,000.
9	319.30(5)	3rd	Sell, exchange, give away
10			certificate of title or
11			identification number plate.
12	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
13			odometer.
14	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
15			registration license plates or
16			validation stickers.
17	322.212(1)	3rd	Possession of forged, stolen,
18			counterfeit, or unlawfully issued
19			driver's license; possession of
20			simulated identification.
21	322.212(4)	3rd	Supply or aid in supplying
22			unauthorized driver's license or
23			identification card.
24	322.212(5)(a)	3rd	False application for driver's
25			license or identification card.
26	370.13(3)(a)	3rd	Molest any stone crab trap, line,
27			or buoy which is property of
28			licenseholder.
29	370.135(1)	3rd	Molest any blue crab trap, line,
30			or buoy which is property of
31			licenseholder.

1	372.663(1)	3rd	Poach any alligator or
2			crocodilia.
3	414.39(2)	3rd	Unauthorized use, possession,
4			forgery, or alteration of food
5			stamps, Medicaid ID, value
6			greater than \$200.
7	414.39(3)(a)	3rd	Fraudulent misappropriation of
8			public assistance funds by
9			employee/official, value more
10			than \$200.
11	443.071(1)	3rd	False statement or representation
12			to obtain or increase
13			unemployment compensation
14			benefits.
15	509.151(1)	3rd	Defraud an innkeeper, food or
16			lodging value greater than \$300.
17	517.302(1)	3rd	Violation of the Florida
18			Securities and Investor
19			Protection Act.
20	562.27(1)	3rd	Possess still or still apparatus.
21	713.69	3rd	Tenant removes property upon
22			which lien has accrued, value
23			more than \$50.
24	812.014(3)(c)	3rd	Petit theft (3rd conviction);
25			theft of any property not
26			specified in subsection (2).
27	812.081(2)	3rd	Unlawfully makes or causes to be
28			made a reproduction of a trade
29			secret.
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1	815.04(4)(a)	3rd	Offense against intellectual
2			property (i.e., computer
3			programs, data).
4	817.52(2)	3rd	Hiring with intent to defraud,
5			motor vehicle services.
6	826.01	3rd	Bigamy.
7	828.122(3)	3rd	Fighting or baiting animals.
8	831.04(1)	3rd	Any erasure, alteration, etc., of
9			any replacement deed, map, plat,
10			or other document listed in s.
11			92.28.
12	831.31(1)(a)	3rd	Sell, deliver, or possess
13			counterfeit controlled
14			substances, all but s. 893.03(5)
15			drugs.
16	832.041(1)	3rd	Stopping payment with intent to
17			defraud \$150 or more.
18	832.05		
19	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
20			worthless checks \$150 or more or
21			obtaining property in return for
22			worthless check \$150 or more.
23	838.015(3)	3rd	Bribery.
24	838.016(1)	3rd	Public servant receiving unlawful
25			compensation.
26	838.15(2)	3rd	Commercial bribe receiving.
27	838.16	3rd	Commercial bribery.
28	843.18	3rd	Fleeing by boat to elude a law
29			enforcement officer.
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1	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
2			lewd, etc., material (2nd
3			conviction).
4	849.01	3rd	Keeping gambling house.
5	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
6			or assist therein, conduct or
7			advertise drawing for prizes, or
8			dispose of property or money by
9			means of lottery.
10	849.23	3rd	Gambling-related machines;
11			"common offender" as to property
12			rights.
13	849.25(2)	3rd	Engaging in bookmaking.
14	860.08	3rd	Interfere with a railroad signal.
15	860.13(1)(a)	3rd	Operate aircraft while under the
16			influence.
17	893.13(2)(a)2.	3rd	Purchase of cannabis.
18	893.13(6)(a)	3rd	Possession of cannabis (more than
19			20 grams).
20	893.13(7)(a)10.	3rd	Affix false or forged label to
21			package of controlled substance.
22	934.03(1)(a)	3rd	Intercepts, or procures any other
23			person to intercept, any wire or
24			oral communication.
25			(c) LEVEL 3
26	316.1935(2)	3rd	Fleeing or attempting to elude
27			law enforcement officer in marked
28			patrol vehicle with siren and
29			lights activated.
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1	319.30(4)	3rd	Possession by junkyard of motor
2			vehicle with identification
3			number plate removed.
4	319.33(1)(a)	3rd	Alter or forge any certificate of
5			title to a motor vehicle or
6			mobile home.
7	319.33(1)(c)	3rd	Procure or pass title on stolen
8			vehicle.
9	319.33(4)	3rd	With intent to defraud, possess,
10			sell, etc., a blank, forged, or
11			unlawfully obtained title or
12			registration.
13	328.05(2)	3rd	Possess, sell, or counterfeit
14			fictitious, stolen, or fraudulent
15			titles or bills of sale of
16			vessels.
17	328.07(4)	3rd	Manufacture, exchange, or possess
18			vessel with counterfeit or wrong
19			ID number.
20	376.302(5)	3rd	Fraud related to reimbursement
21			for cleanup expenses under the
22			Inland Protection Trust Fund.
23	501.001(2)(b)	2nd	Tampers with a consumer product
24			or the container using materially
25			false/misleading information.
26	697.08	3rd	Equity skimming.
27	790.15(3)	3rd	Person directs another to
28			discharge firearm from a vehicle.
29	796.05(1)	3rd	Live on earnings of a prostitute.
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1	806.10(1)	3rd	Maliciously injure, destroy, or
2			interfere with vehicles or
3			equipment used in firefighting.
4	806.10(2)	3rd	Interferes with or assaults
5			firefighter in performance of
6			duty.
7	810.09(2)(c)	3rd	Trespass on property other than
8			structure or conveyance armed
9			with firearm or dangerous weapon.
10	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
11			less than \$10,000.
12	815.04(4)(b)	2nd	Computer offense devised to
13			defraud or obtain property.
14	817.034(4)(a)3.	3rd	Engages in scheme to defraud
15			(Florida Communications Fraud
16			Act), property valued at less
17			than \$20,000.
18	817.233	3rd	Burning to defraud insurer.
19	817.234(8)&(9)	3rd	Unlawful solicitation of persons
20			involved in motor vehicle
21			accidents.
22	817.234(11)(a)	3rd	Insurance fraud; property value
23			less than \$20,000.
24	817.505(4)	3rd	Patient brokering.
25	828.12(2)	3rd	Tortures any animal with intent
26			to inflict intense pain, serious
27			physical injury, or death.
28	831.28(2)(a)	3rd	Counterfeiting a payment
29			instrument with intent to defraud
30			or possessing a counterfeit
31			payment instrument.

1	831.29	2nd	Possession of instruments for
2			counterfeiting drivers' licenses
3			or identification cards.
4	838.021(3)(b)	3rd	Threatens unlawful harm to public
5			servant.
6	843.19	3rd	Injure, disable, or kill police
7			dog or horse.
8	870.01(2)	3rd	Riot; inciting or encouraging.
9	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
10			cannabis (or other s.
11			893.03(1)(c), (2)(c)1., (2)(c)2.,
12			(2)(c)3., (2)(c)5., (2)(c)6.,
13			(2)(c)7., (2)(c)8., (2)(c)9.,
14			(3), or (4) drugs).
15	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
16			893.03(1)(c), (2)(c)1., (2)(c)2.,
17			(2)(c)3., (2)(c)5., (2)(c)6.,
18			(2)(c)7., (2)(c)8., (2)(c)9.,
19			(3), or (4) drugs within 200 feet
20			of university or public park.
21	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
22			893.03(1)(c), (2)(c)1., (2)(c)2.,
23			(2)(c)3., (2)(c)5., (2)(c)6.,
24			(2)(c)7., (2)(c)8., (2)(c)9.,
25			(3), or (4) drugs within 200 feet
26			of public housing facility.
27	893.13(6)(a)	3rd	Possession of any controlled
28			substance other than felony
29			possession of cannabis.
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1	<u>893.13(7)(a)8.</u>	<u>3rd</u>	<u>Withhold information from</u>
2			<u>practitioner regarding previous</u>
3			<u>receipt of or prescription for a</u>
4			<u>controlled substance.</u>
5	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
6			controlled substance by fraud,
7			forgery, misrepresentation, etc.
8	<u>893.13(7)(a)10.</u>	<u>3rd</u>	<u>Affix false or forged label to</u>
9			<u>package of controlled substance.</u>
10	893.13(7)(a)11.	3rd	Furnish false or fraudulent
11			material information on any
12			document or record required by
13			chapter 893.
14	<u>893.13(8)(a)1.</u>	<u>3rd</u>	<u>Knowingly assist a patient, other</u>
15			<u>person, or owner of an animal in</u>
16			<u>obtaining a controlled substance</u>
17			<u>through deceptive, untrue, or</u>
18			<u>fraudulent representations in or</u>
19			<u>related to the practitioner's</u>
20			<u>practice.</u>
21	<u>893.13(8)(a)2.</u>	<u>3rd</u>	<u>Employ a trick or scheme in the</u>
22			<u>practitioner's practice to assist</u>
23			<u>a patient, other person, or owner</u>
24			<u>of an animal in obtaining a</u>
25			<u>controlled substance.</u>
26	<u>893.13(8)(a)3.</u>	<u>3rd</u>	<u>Knowingly write a prescription</u>
27			<u>for a controlled substance for a</u>
28			<u>fictitious person.</u>
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1	<u>893.13(8)(a)4.</u>	<u>3rd</u>	<u>Write a prescription for a</u>
2			<u>controlled substance for a</u>
3			<u>patient, other person, or an</u>
4			<u>animal if the sole purpose of</u>
5			<u>writing the prescription is a</u>
6			<u>monetary benefit for the</u>
7			<u>practitioner.</u>
8	918.13(1)(a)	3rd	Alter, destroy, or conceal
9			investigation evidence.
10	944.47		
11	(1)(a)1.-2.	3rd	Introduce contraband to
12			correctional facility.
13	944.47(1)(c)	2nd	Possess contraband while upon the
14			grounds of a correctional
15			institution.
16	985.3141	3rd	Escapes from a juvenile facility
17			(secure detention or residential
18			commitment facility).
19	Section 4. Paragraph (b) of subsection (1) of section		
20	921.187, Florida Statutes, is amended to read:		
21	921.187 Disposition and sentencing; alternatives;		
22	restitution.--		
23	(1) The alternatives provided in this section for the		
24	disposition of criminal cases shall be used in a manner that		
25	will best serve the needs of society, punish criminal		
26	offenders, and provide the opportunity for rehabilitation.		
27	(b)1. Notwithstanding any provision of former s.		
28	921.001 or s. 921.002 to the contrary, on or after October 1,		
29	1993, the court may require any defendant who violates s.		
30	893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and		
31	meets the criteria described in <u>s. 893.13(10)</u> s. 893.13(9) , to		

1 successfully complete a term of probation pursuant to the
2 terms and conditions set forth in s. 948.034(1), in lieu of
3 serving a term of imprisonment.

4 2. Notwithstanding any provision of former s. 921.001
5 or s. 921.002 to the contrary, on or after October 1, 1993,
6 the court may require any defendant who violates s.
7 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), and meets the
8 criteria described in s. 893.13(11)~~s. 893.13(10)~~, to
9 successfully complete a term of probation pursuant to the
10 terms and conditions set forth in s. 948.034(2), in lieu of
11 serving a term of imprisonment.

12 Section 5. This act shall take effect July 1, 2002.

13
14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill 640

17 The Committee Substitute for SB 640 deletes a third degree
18 felony offense for a health care practitioner to prescribe a
19 controlled substance that is excessive or inappropriate and
20 the offense severity ranking for that offense. The bill
21 creates a permissive inference which applies to the offense of
22 knowingly assisting a patient, other person, or the owner of
23 an animal in obtaining a controlled substance through
24 deceptive, untrue, or fraudulent representations in or related
25 to the practice of the prescribing practitioner's professional
26 practice to allow the trier of fact to infer that the
27 prescribing practitioner knowingly assisted a patient, other
28 person, or the owner of an animal to obtain a controlled
29 substance if the practitioner wrote a prescription or multiple
30 prescriptions for the patient, other person, or animal for
31 which there was no medical necessity, or that was in excess of
what was medically necessary to treat the patient, other
person, or animal.