

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

308-1930-02

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) If the prescribing practitioner wrote a
9 prescription or multiple prescriptions for a controlled
10 substance for the patient, other person, or animal for which
11 there was no medical necessity, or which was in excess of what
12 was medically necessary to treat the patient, other person, or
13 animal, that fact does not give rise to any presumption that
14 the prescribing practitioner violated subparagraph (a)1., but
15 may be considered with other competent evidence in determining
16 whether the prescribing practitioner knowingly assisted a
17 patient, other person, or the owner of an animal to obtain a
18 controlled substance in violation of subparagraph (a)1.

19 (c) A person who violates paragraph (a) commits a
20 felony of the third degree, punishable as provided in s.
21 775.082, s. 775.083, or s. 775.084.

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

1 ~~(9)(8)~~ The provisions of subsections (1)-(8)~~(1)-(7)~~
2 are not applicable to the delivery to, or actual or
3 constructive possession for medical or scientific use or
4 purpose only of controlled substances by, persons included in
5 any of the following classes, or the agents or employees of
6 such persons, for use in the usual course of their business or
7 profession or in the performance of their official duties:

8 (a) Pharmacists.

9 (b) Practitioners.

10 (c) Persons who procure controlled substances in good
11 faith and in the course of professional practice only, by or
12 under the supervision of pharmacists or practitioners employed
13 by them, or for the purpose of lawful research, teaching, or
14 testing, and not for resale.

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

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

21 (f) Common carriers.

22 (g) Manufacturers, wholesalers, and distributors.

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

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

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

1 (b) Has not previously been convicted, regardless of
2 whether adjudication was withheld, of any felony, other than a
3 violation of subparagraph (1)(a)1., subparagraph (1)(c)2.,
4 subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph
5 (5)(a),

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

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

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

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

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

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

26 921.0022 Criminal Punishment Code; offense severity
27 ranking chart.--

28 (3) OFFENSE SEVERITY RANKING CHART
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1	Florida	Felony	
2	Statute	Degree	Description
3			
4			(a) LEVEL 1
5	24.118(3)(a)	3rd	Counterfeit or altered state
6			lottery ticket.
7	212.054(2)(b)	3rd	Discretionary sales surtax;
8			limitations, administration, and
9			collection.
10	212.15(2)(b)	3rd	Failure to remit sales taxes,
11			amount greater than \$300 but less
12			than \$20,000.
13	319.30(5)	3rd	Sell, exchange, give away
14			certificate of title or
15			identification number plate.
16	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
17			odometer.
18	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
19			registration license plates or
20			validation stickers.
21	322.212(1)	3rd	Possession of forged, stolen,
22			counterfeit, or unlawfully issued
23			driver's license; possession of
24			simulated identification.
25	322.212(4)	3rd	Supply or aid in supplying
26			unauthorized driver's license or
27			identification card.
28	322.212(5)(a)	3rd	False application for driver's
29			license or identification card.
30			
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1	370.13(3)(a)	3rd	Molest any stone crab trap, line,
2			or buoy which is property of
3			licenseholder.
4	370.135(1)	3rd	Molest any blue crab trap, line,
5			or buoy which is property of
6			licenseholder.
7	372.663(1)	3rd	Poach any alligator or
8			crocodilia.
9	414.39(2)	3rd	Unauthorized use, possession,
10			forgery, or alteration of food
11			stamps, Medicaid ID, value
12			greater than \$200.
13	414.39(3)(a)	3rd	Fraudulent misappropriation of
14			public assistance funds by
15			employee/official, value more
16			than \$200.
17	443.071(1)	3rd	False statement or representation
18			to obtain or increase
19			unemployment compensation
20			benefits.
21	509.151(1)	3rd	Defraud an innkeeper, food or
22			lodging value greater than \$300.
23	517.302(1)	3rd	Violation of the Florida
24			Securities and Investor
25			Protection Act.
26	562.27(1)	3rd	Possess still or still apparatus.
27	713.69	3rd	Tenant removes property upon
28			which lien has accrued, value
29			more than \$50.
30			
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1	812.014(3)(c)	3rd	Petit theft (3rd conviction);
2			theft of any property not
3			specified in subsection (2).
4	812.081(2)	3rd	Unlawfully makes or causes to be
5			made a reproduction of a trade
6			secret.
7	815.04(4)(a)	3rd	Offense against intellectual
8			property (i.e., computer
9			programs, data).
10	817.52(2)	3rd	Hiring with intent to defraud,
11			motor vehicle services.
12	826.01	3rd	Bigamy.
13	828.122(3)	3rd	Fighting or baiting animals.
14	831.04(1)	3rd	Any erasure, alteration, etc., of
15			any replacement deed, map, plat,
16			or other document listed in s.
17			92.28.
18	831.31(1)(a)	3rd	Sell, deliver, or possess
19			counterfeit controlled
20			substances, all but s. 893.03(5)
21			drugs.
22	832.041(1)	3rd	Stopping payment with intent to
23			defraud \$150 or more.
24	832.05		
25	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
26			worthless checks \$150 or more or
27			obtaining property in return for
28			worthless check \$150 or more.
29	838.015(3)	3rd	Bribery.
30	838.016(1)	3rd	Public servant receiving unlawful
31			compensation.

1	838.15(2)	3rd	Commercial bribe receiving.
2	838.16	3rd	Commercial bribery.
3	843.18	3rd	Fleeing by boat to elude a law
4			enforcement officer.
5	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
6			lewd, etc., material (2nd
7			conviction).
8	849.01	3rd	Keeping gambling house.
9	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
10			or assist therein, conduct or
11			advertise drawing for prizes, or
12			dispose of property or money by
13			means of lottery.
14	849.23	3rd	Gambling-related machines;
15			"common offender" as to property
16			rights.
17	849.25(2)	3rd	Engaging in bookmaking.
18	860.08	3rd	Interfere with a railroad signal.
19	860.13(1)(a)	3rd	Operate aircraft while under the
20			influence.
21	893.13(2)(a)2.	3rd	Purchase of cannabis.
22	893.13(6)(a)	3rd	Possession of cannabis (more than
23			20 grams).
24	893.13(7)(a)10.	3rd	Affix false or forged label to
25			package of controlled substance.
26	934.03(1)(a)	3rd	Intercepts, or procures any other
27			person to intercept, any wire or
28			oral communication.
29			(c) LEVEL 3
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1	316.1935(2)	3rd	Fleeing or attempting to elude
2			law enforcement officer in marked
3			patrol vehicle with siren and
4			lights activated.
5	319.30(4)	3rd	Possession by junkyard of motor
6			vehicle with identification
7			number plate removed.
8	319.33(1)(a)	3rd	Alter or forge any certificate of
9			title to a motor vehicle or
10			mobile home.
11	319.33(1)(c)	3rd	Procure or pass title on stolen
12			vehicle.
13	319.33(4)	3rd	With intent to defraud, possess,
14			sell, etc., a blank, forged, or
15			unlawfully obtained title or
16			registration.
17	328.05(2)	3rd	Possess, sell, or counterfeit
18			fictitious, stolen, or fraudulent
19			titles or bills of sale of
20			vessels.
21	328.07(4)	3rd	Manufacture, exchange, or possess
22			vessel with counterfeit or wrong
23			ID number.
24	376.302(5)	3rd	Fraud related to reimbursement
25			for cleanup expenses under the
26			Inland Protection Trust Fund.
27	501.001(2)(b)	2nd	Tampers with a consumer product
28			or the container using materially
29			false/misleading information.
30	697.08	3rd	Equity skimming.
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1	790.15(3)	3rd	Person directs another to
2			discharge firearm from a vehicle.
3	796.05(1)	3rd	Live on earnings of a prostitute.
4	806.10(1)	3rd	Maliciously injure, destroy, or
5			interfere with vehicles or
6			equipment used in firefighting.
7	806.10(2)	3rd	Interferes with or assaults
8			firefighter in performance of
9			duty.
10	810.09(2)(c)	3rd	Trespass on property other than
11			structure or conveyance armed
12			with firearm or dangerous weapon.
13	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
14			less than \$10,000.
15	815.04(4)(b)	2nd	Computer offense devised to
16			defraud or obtain property.
17	817.034(4)(a)3.	3rd	Engages in scheme to defraud
18			(Florida Communications Fraud
19			Act), property valued at less
20			than \$20,000.
21	817.233	3rd	Burning to defraud insurer.
22	817.234(8)&(9)	3rd	Unlawful solicitation of persons
23			involved in motor vehicle
24			accidents.
25	817.234(11)(a)	3rd	Insurance fraud; property value
26			less than \$20,000.
27	817.505(4)	3rd	Patient brokering.
28	828.12(2)	3rd	Tortures any animal with intent
29			to inflict intense pain, serious
30			physical injury, or death.
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1	831.28(2)(a)	3rd	Counterfeiting a payment
2			instrument with intent to defraud
3			or possessing a counterfeit
4			payment instrument.
5	831.29	2nd	Possession of instruments for
6			counterfeiting drivers' licenses
7			or identification cards.
8	838.021(3)(b)	3rd	Threatens unlawful harm to public
9			servant.
10	843.19	3rd	Injure, disable, or kill police
11			dog or horse.
12	870.01(2)	3rd	Riot; inciting or encouraging.
13	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
14			cannabis (or other s.
15			893.03(1)(c), (2)(c)1., (2)(c)2.,
16			(2)(c)3., (2)(c)5., (2)(c)6.,
17			(2)(c)7., (2)(c)8., (2)(c)9.,
18			(3), or (4) drugs).
19	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
20			893.03(1)(c), (2)(c)1., (2)(c)2.,
21			(2)(c)3., (2)(c)5., (2)(c)6.,
22			(2)(c)7., (2)(c)8., (2)(c)9.,
23			(3), or (4) drugs within 200 feet
24			of university or public park.
25	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
26			893.03(1)(c), (2)(c)1., (2)(c)2.,
27			(2)(c)3., (2)(c)5., (2)(c)6.,
28			(2)(c)7., (2)(c)8., (2)(c)9.,
29			(3), or (4) drugs within 200 feet
30			of public housing facility.
31			

1	893.13(6)(a)	3rd	Possession of any controlled
2			substance other than felony
3			possession of cannabis.
4	<u>893.13(7)(a)8.</u>	<u>3rd</u>	<u>Withhold information from</u>
5			<u>practitioner regarding previous</u>
6			<u>receipt of or prescription for a</u>
7			<u>controlled substance.</u>
8	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
9			controlled substance by fraud,
10			forgery, misrepresentation, etc.
11	<u>893.13(7)(a)10.</u>	<u>3rd</u>	<u>Affix false or forged label to</u>
12			<u>package of controlled substance.</u>
13	893.13(7)(a)11.	3rd	Furnish false or fraudulent
14			material information on any
15			document or record required by
16			chapter 893.
17	<u>893.13(8)(a)1.</u>	<u>3rd</u>	<u>Knowingly assist a patient, other</u>
18			<u>person, or owner of an animal in</u>
19			<u>obtaining a controlled substance</u>
20			<u>through deceptive, untrue, or</u>
21			<u>fraudulent representations in or</u>
22			<u>related to the practitioner's</u>
23			<u>practice.</u>
24	<u>893.13(8)(a)2.</u>	<u>3rd</u>	<u>Employ a trick or scheme in the</u>
25			<u>practitioner's practice to assist</u>
26			<u>a patient, other person, or owner</u>
27			<u>of an animal in obtaining a</u>
28			<u>controlled substance.</u>
29	<u>893.13(8)(a)3.</u>	<u>3rd</u>	<u>Knowingly write a prescription</u>
30			<u>for a controlled substance for a</u>
31			<u>fictitious person.</u>

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 CS for Senate Bill 640

17 Replaces the provision regarding the permissible inference in
18 criminal prosecutions with modified language. The new language
19 provides that when a health care practitioner writes a
20 prescription or multiple prescriptions that are not medically
21 necessary, or are in excess of what is medically necessary,
22 then that fact may be considered with other competent evidence
23 in determining whether the health care practitioner knowingly
24 assisted the patient in obtaining a controlled substance
25 through fraudulent representations.
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