

By Senator Aronberg

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1 A bill to be entitled
2 An act relating to monitoring the dispensing of
3 controlled substances; creating s. 893.055, F.S.;
4 providing definitions; requiring the Department of
5 Health to establish a comprehensive electronic system
6 to monitor the dispensing of certain controlled
7 substances and to collect biometric identifiers of
8 recipients; requiring health care practitioners and
9 pharmacies who dispense certain controlled substances
10 to have an active and operational biometric scanning
11 device connected to a database and to submit specified
12 information to the database before dispensing such
13 substances; requiring the database to assign a unique
14 identifier to each prescription and to provide
15 specified information concerning any conflicting or
16 overlapping prescriptions to the prescribing
17 practitioner; providing exceptions to reporting
18 requirements; requiring that data be submitted in an
19 approved electronic format; providing for data
20 retention; requiring that data transmissions comply
21 with privacy and security laws; providing for
22 rulemaking concerning data to be reported and for
23 reporting formats; providing criminal penalties for
24 violations; specifying an effective date for criminal
25 penalties; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 893.055, Florida Statutes, is created to

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30 read:

31 893.055 Electronic system for monitoring the dispensing of
32 certain controlled substances.-

33 (1) As used in this section and s. 893.0551, the term:

34 (a) "Biometric identifier" means an established unique form
35 of biological identification readily compared and matched, such
36 as a fingerprint, retinal scan, or other means of similar
37 biometric identification approved by the department and
38 authorized for retention in a database.

39 (b) "Biometric scan" means an electronic scan of a
40 biometric identifier.

41 (c) "Biometric scanning device" means an electronic
42 scanning device approved by the department that is designed to
43 accurately capture a biometric identifier.

44 (d) "Database" means an electronic database, or network of
45 databases, that is maintained by or contracted for by the
46 department and that maintains and compares each biometric scan
47 and the information contained therewith in conformity with the
48 provisions of this section.

49 (e) "Health care practitioner" or "practitioner" means any
50 practitioner subject to licensure or regulation by the
51 department under chapter 458, chapter 459, chapter 461, or
52 chapter 466.

53 (f) "Pharmacy" means a pharmacy subject to licensure or
54 regulation by the department under chapter 465.

55 (2) By March 1, 2011, the department shall adopt an
56 electronic monitoring system to monitor the collection of
57 biometric identifiers and to record and store, in a secure
58 database, the following:

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59 (a) The dispensing of controlled substances listed in
60 Schedule II, Schedule III, and Schedule IV by health care
61 practitioners within the state.

62 (b) The dispensing or delivering of controlled substances
63 listed in Schedule II, Schedule III, and Schedule IV to
64 individuals in this state by any pharmacy licensed in this state
65 and by any health care practitioner registered with the
66 department as a dispensing practitioner.

67 (3) Any health care practitioner who dispenses or delivers
68 a controlled substance listed in Schedule II, Schedule III, or
69 Schedule IV must have in the practitioner's office an active and
70 operational biometric scanning device connected to the database.
71 Any such practitioner who dispenses or delivers such a
72 controlled substance to a person in this state must first obtain
73 a biometric scan of an approved biometric identifier of the
74 person through use of the biometric scanning device and submit
75 the same to the database.

76 (4) Any pharmacy that dispenses or delivers a prescription
77 for a controlled substance listed in Schedule II, Schedule III,
78 or Schedule IV must have in the pharmacy an active and
79 operational biometric scanning device connected to the database.
80 Any pharmacy that dispenses or delivers a prescription for such
81 a controlled substance to a person in this state must first
82 obtain a biometric scan of an approved biometric identifier of
83 the person through use of the biometric scanning device and
84 submit the same to the database.

85 (5) Prior to dispensing or delivering a controlled
86 substance listed in Schedule II, Schedule III, or Schedule IV to
87 a person in this state, every health care practitioner and

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88 prescribing pharmacy must submit the following information to
89 the database:

90 (a) The biometric scan of the person's biometric
91 identifier.

92 (b) The full name and address of the prescribing
93 practitioner.

94 (c) The date of each prescription.

95 (d) The name of the controlled substance prescribed and the
96 strength, quantity, and directions for use thereof.

97 (6) After receiving the information required under
98 subsection (5), the database shall assign the prescription a
99 unique identifying number and shall immediately transmit the
100 following to the prescribing practitioner:

101 (a) The unique identifying number.

102 (b) The names of controlled substances listed in Schedule
103 II, Schedule III, and Schedule IV that have been prescribed in
104 connection with the biometric scan submitted that may conflict
105 with or overlap the prescribing practitioner's prescription.

106 (c) The full name and address of the practitioner whose
107 prescription may conflict with or overlap the prescribing
108 practitioner's prescription and the full name and address of the
109 practitioner or pharmacy that dispensed or delivered the
110 conflicting or overlapping prescription.

111 (7) Prior to dispensing or delivering a prescription for a
112 controlled substance listed in Schedule II, Schedule III, or
113 Schedule IV, the pharmacist or dispensing health care
114 practitioner shall submit the biometric scan of the person's
115 biometric identifier to the database and the database shall
116 immediately transmit the following to the pharmacy or dispensing

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117 health care practitioner:

118 (a) The names of controlled substances listed in Schedule
119 II, Schedule III, and Schedule IV that have been prescribed in
120 connection with the biometric scan submitted that may conflict
121 with or overlap the prescription to be dispensed or delivered.

122 (b) The full name and address of the practitioner whose
123 prescription may conflict with or overlap the prescription to be
124 dispensed or delivered and the full name and address of the
125 practitioner or pharmacy that dispensed or delivered the
126 conflicting or overlapping prescription.

127 (8) The database shall not retain personal protected health
128 care information other than the biometric scans and the
129 prescription information provided to the database pursuant to
130 subsections (6) and (7). This section shall not preclude health
131 care practitioners and pharmacies from retaining personal
132 information on their patients that is collected and maintained
133 in their regular course of business in compliance with
134 applicable law.

135 (9) This section does not apply to controlled substances
136 listed in Schedule II, Schedule III, or Schedule IV:

137 (a) Administered by a health care practitioner directly to
138 his or her patient;

139 (b) Dispensed or delivered by a health care practitioner
140 authorized to prescribe controlled substances directly to a
141 patient and limited to an amount adequate to treat the patient
142 for a period of no more than 72 hours;

143 (c) Dispensed or delivered by a health care practitioner or
144 a pharmacist to an inpatient of a facility that holds an
145 institutional pharmacy permit;

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146 (d) Ordered from an institutional pharmacy licensed under
147 s. 465.019 in accordance with internal policy and procedure for
148 controlled substances listed in Schedule II, Schedule III, and
149 Schedule IV;

150 (e) Dispensed or delivered by a pharmacist or administered
151 by a health care practitioner to a patient or resident receiving
152 care from a hospital, nursing home, assisted living facility,
153 home health care agency, hospice, or intermediate care facility
154 for the developmentally disabled that is licensed in this state;

155 (f) Prescribed by a health care practitioner for a patient
156 younger than 16 years of age;

157 (g) Prescribed or dispensed pursuant to rule adopted by the
158 department; or

159 (h) Administered, prescribed, dispensed, or delivered under
160 circumstances in which the pharmacist or practitioner cannot, in
161 good faith, comply with the provisions of this section.

162 (10) A dispensing practitioner or pharmacist who dispenses
163 or delivers a controlled substance listed in Schedule II,
164 Schedule III, or Schedule IV shall submit the information
165 required under this section to the department, or any person or
166 agency authorized by the department, in an electronic format
167 approved by the department. The department, or the person or
168 agency authorized by the department, shall maintain the
169 information for no longer than 24 months from the date of
170 receipt and shall thereafter expunge the information unless
171 otherwise directed by a court of competent jurisdiction.

172 (11) All transmissions required by this section must comply
173 with relevant federal and state privacy and security laws.

174 (12) By March 1, 2010, the department, together with the

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175 Board of Pharmacy and the Board of Medicine, shall adopt rules
176 pursuant to ss. 120.536(1) and 120.54 governing the
177 administration of this section, including rules governing access
178 to the database by practitioners and pharmacists and
179 implementing procedures to be employed when a biometric scanning
180 device is inoperable or the database is inaccessible.

181 (13) Any person who knowingly fails to comply with any
182 provision of this section commits a misdemeanor of the first
183 degree, punishable as provided in s. 775.082 or s. 775.083.

184 Section 2. The penalties in s. 893.055(13), Florida
185 Statutes, as created by this act, shall take effect March 1,
186 2011, or upon the adoption of the rules pursuant to s.
187 893.055(12), Florida Statutes, as created by this act, whichever
188 occurs first, and shall apply to acts or omissions on or after
189 that date.

190 Section 3. This act shall take effect July 1, 2009.