



238870

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2011	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 790.338, Florida Statutes, is created to read:

790.338 Medical privacy concerning firearms; prohibitions; penalties; exceptions.-

(1) (a) A verbal or written inquiry by a public or private physician, nurse, or other medical staff person regarding the ownership of a firearm by a patient or the family of a patient or the presence of a firearm in a private home or other domicile



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13 of a patient or the family of a patient violates the privacy of
14 the patient or the patient's family members, respectively.

15 (b) A public or private physician, nurse, or other medical
16 staff person may not condition receipt of medical treatment or
17 medical care on a person's willingness or refusal to disclose
18 personal and private information unrelated to medical treatment
19 in violation of an individual's privacy as specified in this
20 section.

21 (c) A public or private physician, nurse, or other medical
22 staff person may not intentionally, accidentally, nor
23 inadvertently enter any disclosed information concerning
24 firearms into any record, whether written or electronic, or
25 disclose such information to any other source.

26 (2) (a) A person who violates a provision of this section
27 commits a noncriminal violation as defined in s. 775.08 and
28 punishable as provided in s. 775.082 and s. 775.083.

29 (b) If the court determines that the violation was knowing
30 and willful or in the exercise of ordinary care the person
31 should have known the act was a violation, the court shall
32 access a fine of not less than \$10,000 for the first offense;
33 not less than \$25,000 for the second offense; and not less than
34 \$100,000 for the third and subsequent offenses. The person found
35 to have committed the violation shall be personally liable for
36 the payment of all fines, costs, and fees assessed by the court
37 for the noncriminal violation.

38 (c) The state attorney in the jurisdiction shall
39 investigate complaints of noncriminal violations of this section
40 and, where the state attorney determines probable cause that a
41 violation exists, shall prosecute violators in the circuit court



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42 where the complaint arose. Any state attorney who fails to
43 execute his or her duties under this section may be held
44 accountable under the appropriate Florida rules of professional
45 conduct.

46 (d) The state attorney shall notify the Attorney General of
47 any fines assessed under this section and notwithstanding s.
48 28.246(6), and if a fine for a violation of this section remains
49 unpaid after 90 days, the Attorney General shall bring a civil
50 action to enforce the fine.

51 (e) Except as required by s. 16, Art. I of the State
52 Constitution or the Sixth Amendment to the United States
53 Constitution, public funds may not be used to defend the
54 unlawful conduct of any person charged with a knowing and
55 willful violation of this section.

56 (f) Notwithstanding any other provision of this section:

57 1. a psychiatrist as defined in s. 394.455, psychologist as
58 defined in s. 490.003, school psychologist as defined in s.
59 490.003, or clinical social worker as defined in s. 491.003, may
60 make an inquiry reasonably necessary when the person making the
61 inquiry in good faith believes that the possession or control of
62 a firearm or ammunition by the patient would pose an imminent
63 threat to himself, herself, or others; and

64 2. a public or private physician, nurse, or other medical
65 personnel may make an inquiry reasonably necessary for the
66 treatment of a patient during the course and scope of a medical
67 emergency which shall specifically include, but not be limited
68 to, a mental health or psychotic episode where the patient's
69 conduct or symptoms reasonably indicate that the patient has the
70 capacity of causing harm to himself, herself, or others;



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72 However, a patient's response to any inquiry permissible under
73 this subsection shall be private and shall not be disclosed to
74 any third party not participating in the treatment of the
75 patient other than a law enforcement officer conducting an
76 active investigation involving the patient or the events giving
77 rise to a medical emergency. This subsection shall not apply to
78 a person's general belief that firearms or ammunition are
79 harmful to health or safety.

80 (3) Medical records created on or before the effective date
81 of this Act are not a violation of the Act. Such records, when
82 tranferred to another health care provider, are not subject to
83 the prohibitions or penalties of this Act.

84 Section 2. This act shall take effect upon becoming a law.

85
86 ===== T I T L E A M E N D M E N T =====

87 And the title is amended as follows:

88 Delete everything before the enacting clause
89 and insert:

90 A bill to be entitled
91 An act relating to the privacy of firearms owners;
92 creating s. 790.338, F.S.; providing that inquiries by
93 physicians or other medical personnel concerning the
94 ownership of a firearm by a patient or the family of a
95 patient or the presence of a firearm in a private home
96 or other domicile of a patient or the family of a
97 patient violates the privacy of the patient or the
98 patient's family members, respectively; prohibits
99 conditioning the receipt of medical treatment or care



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100 on a person's willingness or refusal to disclose
101 personal and private information unrelated to medical
102 treatment in violation of an individual's privacy
103 contrary to specified provisions; prohibiting entry of
104 certain information concerning firearms into medical
105 records or disclosure of such information by specified
106 individuals; providing noncriminal penalties;
107 providing for prosecution of violations; requiring
108 informing the Attorney General of prosecution of
109 violations; providing for collection of fines by the
110 Attorney General in certain circumstances; providing
111 exemptions; providing an effective date.