



969274

LEGISLATIVE ACTION

Senate

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House

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The Committee on Health Regulation (Norman) 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 any 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 patient's home or other



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13 domicile violates the privacy of the patient or the patient's  
14 family, respectively, and is prohibited.

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

21 (c) Any public or private physician, nurse, or other  
22 medical staff person may not intentionally, accidentally, or  
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,  
28 punishable as provided in s. 775.082 or s. 775.083.

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

39 (3) The state attorney in the circuit where the violation  
40 is alleged to have occurred shall investigate complaints of  
41 noncriminal violations of this section and, where the state



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42 attorney determines probable cause that a violation exists,  
43 shall prosecute violators in the circuit court where the  
44 violation is alleged to have occurred. Any state attorney who  
45 fails to execute his or her duties under this section may be  
46 held accountable under the appropriate Florida rules of  
47 professional conduct.

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

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

58 (6) Notwithstanding any other provision of this section, it  
59 is not a violation for:

60 (a) Any psychiatrist as defined in s. 394.455, psychologist  
61 as defined in s. 490.003, school psychologist as defined in s.  
62 490.003, clinical social worker as defined in s. 491.003, or  
63 public or private physician, nurse, or other medical personnel  
64 to make an inquiry prohibited by paragraph (1)(a) if the person  
65 making the inquiry in good faith believes that the possession or  
66 control of a firearm or ammunition by the patient or another  
67 member of the patient's household would pose an imminent danger  
68 or threat to the patient or others.

69 (b) Any public or private physician, nurse, or other  
70 medical personnel to make an inquiry prohibited by paragraph



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71 (1) (a) if such inquiry is necessary to treat a patient during  
72 the course and scope of a medical emergency which specifically  
73 includes, but is not limited to, a mental health or psychotic  
74 episode where the patient's conduct or symptoms reasonably  
75 indicate that the patient has the capacity of causing harm to  
76 himself, herself, or others.

77 (c) Any public or private physician, nurse, or other  
78 medical personnel to enter any of the information disclosed  
79 pursuant to paragraphs (a) and (b) into any record, whether  
80 written or electronic.

81  
82 However, a patient's response to any inquiry permissible under  
83 this subsection shall be private and may not be disclosed to any  
84 third party not participating in the treatment of the patient  
85 other than a law enforcement officer conducting an active  
86 investigation involving the patient or the events giving rise to  
87 a medical emergency. The exceptions provided by this subsection  
88 do not apply to inquiries made due to a person's general belief  
89 that firearms or ammunition are harmful to health or safety.

90 (7) Medical records created on or before the effective date  
91 of this act do not violate this section, nor is it a violation  
92 of this section to transfer such records to another health care  
93 provider.

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

96 ===== T I T L E A M E N D M E N T =====

97 And the title is amended as follows:

98 Delete everything before the enacting clause  
99 and insert:



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100                   A bill to be entitled  
101           An act relating to the privacy of firearms owners;  
102           creating s. 790.338, F.S.; prohibiting physicians or  
103           other medical personnel from inquiring, either  
104           verbally or in writing, about the ownership of a  
105           firearm by a patient or the family of a patient or the  
106           presence of a firearm in a patient's private home or  
107           other domicile; prohibiting conditioning the receipt  
108           of medical treatment or care on a person's willingness  
109           or refusal to disclose personal and private  
110           information unrelated to medical treatment in  
111           violation of an individual's privacy contrary to  
112           specified provisions; prohibiting entry of certain  
113           information concerning firearms into medical records  
114           or disclosure of such information by specified  
115           individuals; providing noncriminal penalties;  
116           providing for prosecution of violations; requiring  
117           informing the Attorney General of prosecution of  
118           violations; providing for collection of fines by the  
119           Attorney General in certain circumstances; providing  
120           exemptions; providing an effective date.