

CS/HB 1081

2012

1                   A bill to be entitled  
2       An act relating to controlled substances; amending s.  
3       893.13, F.S.; prohibiting the knowing use in another  
4       manner of a Schedule II controlled substance intended  
5       to be administered orally; providing criminal  
6       penalties; amending ss. 893.055, 893.0551, and  
7       921.0022, F.S.; conforming cross-references; providing  
8       an effective date.

9  
10   Be It Enacted by the Legislature of the State of Florida:

11  
12       Section 1. Subsection (7) of section 893.13, Florida  
13   Statutes, is amended to read:

14       893.13 Prohibited acts; penalties.—

15       (7) (a) A person may not:

16           1. Distribute or dispense a controlled substance in  
17   violation of this chapter.

18           2. Refuse or fail to make, keep, or furnish any record,  
19   notification, order form, statement, invoice, or information  
20   required under this chapter.

21           3. Refuse entry into any premises for any inspection or  
22   refuse to allow any inspection authorized by this chapter.

23           4. Distribute a controlled substance named or described in  
24   s. 893.03(1) or (2) except pursuant to an order form as required  
25   by s. 893.06.

26           5. Keep or maintain any store, shop, warehouse, dwelling,  
27   building, vehicle, boat, aircraft, or other structure or place  
28   which is resorted to by persons using controlled substances in

29 violation of this chapter for the purpose of using these  
 30 substances, or which is used for keeping or selling them in  
 31 violation of this chapter.

32 6. Use to his or her own personal advantage, or reveal,  
 33 any information obtained in enforcement of this chapter except  
 34 in a prosecution or administrative hearing for a violation of  
 35 this chapter.

36 7. Possess a prescription form which has not been  
 37 completed and signed by the practitioner whose name appears  
 38 printed thereon, unless the person is that practitioner, is an  
 39 agent or employee of that practitioner, is a pharmacist, or is a  
 40 supplier of prescription forms who is authorized by that  
 41 practitioner to possess those forms.

42 8. Knowingly use in another manner a Schedule II  
 43 controlled substance intended by the prescriber to be  
 44 administered orally.

45 ~~9.8.~~ Withhold information from a practitioner from whom  
 46 the person seeks to obtain a controlled substance or a  
 47 prescription for a controlled substance that the person making  
 48 the request has received a controlled substance or a  
 49 prescription for a controlled substance of like therapeutic use  
 50 from another practitioner within the previous 30 days.

51 ~~10.9.~~ Acquire or obtain, or attempt to acquire or obtain,  
 52 possession of a controlled substance by misrepresentation,  
 53 fraud, forgery, deception, or subterfuge.

54 ~~11.10.~~ Affix any false or forged label to a package or  
 55 receptacle containing a controlled substance.

56 ~~12.11.~~ Furnish false or fraudulent material information

57 | in, or omit any material information from, any report or other  
58 | document required to be kept or filed under this chapter or any  
59 | record required to be kept by this chapter.

60 |     ~~13.12.~~ Store anhydrous ammonia in a container that is not  
61 | approved by the United States Department of Transportation to  
62 | hold anhydrous ammonia or is not constructed in accordance with  
63 | sound engineering, agricultural, or commercial practices.

64 |     ~~14.13.~~ With the intent to obtain a controlled substance or  
65 | combination of controlled substances that are not medically  
66 | necessary for the person or an amount of a controlled substance  
67 | or substances that is not medically necessary for the person,  
68 | obtain or attempt to obtain from a practitioner a controlled  
69 | substance or a prescription for a controlled substance by  
70 | misrepresentation, fraud, forgery, deception, subterfuge, or  
71 | concealment of a material fact. For purposes of this  
72 | subparagraph, a material fact includes whether the person has an  
73 | existing prescription for a controlled substance issued for the  
74 | same period of time by another practitioner or as described in  
75 | subparagraph 9. 8.

76 |     (b) A health care practitioner, with the intent to provide  
77 | a controlled substance or combination of controlled substances  
78 | that are not medically necessary to his or her patient or an  
79 | amount of controlled substances that is not medically necessary  
80 | for his or her patient, may not provide a controlled substance  
81 | or a prescription for a controlled substance by  
82 | misrepresentation, fraud, forgery, deception, subterfuge, or  
83 | concealment of a material fact. For purposes of this paragraph,  
84 | a material fact includes whether the patient has an existing

85 prescription for a controlled substance issued for the same  
 86 period of time by another practitioner or as described in  
 87 subparagraph (a)9. ~~(a)8.~~

88 (c) Any person who violates ~~the provisions of~~  
 89 subparagraphs (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the  
 90 first degree, punishable as provided in s. 775.082 or s.  
 91 775.083; except that, upon a second or subsequent violation, the  
 92 person commits a felony of the third degree, punishable as  
 93 provided in s. 775.082, s. 775.083, or s. 775.084.

94 (d) Any person who violates ~~the provisions of~~  
 95 subparagraphs (a)9.-13. ~~(a)8.-12.~~ commits a felony of the third  
 96 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 97 775.084.

98 (e) A person or health care practitioner who violates ~~the~~  
 99 ~~provisions of~~ subparagraph (a)14. ~~(a)13.~~ or paragraph (b)  
 100 commits a felony of the third degree, punishable as provided in  
 101 s. 775.082, s. 775.083, or s. 775.084, if any controlled  
 102 substance that is the subject of the offense is listed in  
 103 Schedule II, Schedule III, or Schedule IV.

104 Section 2. Paragraph (a) of subsection (1), paragraph (b)  
 105 of subsection (2), and paragraph (f) of subsection (7) of  
 106 section 893.055, Florida Statutes, are amended to read:

107 893.055 Prescription drug monitoring program.—

108 (1) As used in this section, the term:

109 (a) "Patient advisory report" or "advisory report" means  
 110 information provided by the department in writing, or as  
 111 determined by the department, to a prescriber, dispenser,  
 112 pharmacy, or patient concerning the dispensing of controlled

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113 substances. All advisory reports are for informational purposes  
114 only and impose no obligations of any nature or any legal duty  
115 on a prescriber, dispenser, pharmacy, or patient. The patient  
116 advisory report shall be provided in accordance with s.  
117 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The advisory reports issued by the  
118 department are not subject to discovery or introduction into  
119 evidence in any civil or administrative action against a  
120 prescriber, dispenser, pharmacy, or patient arising out of  
121 matters that are the subject of the report; and a person who  
122 participates in preparing, reviewing, issuing, or any other  
123 activity related to an advisory report may not be permitted or  
124 required to testify in any such civil action as to any findings,  
125 recommendations, evaluations, opinions, or other actions taken  
126 in connection with preparing, reviewing, or issuing such a  
127 report.

128 (2)

129 (b) The department, when the direct support organization  
130 receives at least \$20,000 in nonstate moneys or the state  
131 receives at least \$20,000 in federal grants for the prescription  
132 drug monitoring program, shall adopt rules as necessary  
133 concerning the reporting, accessing the database, evaluation,  
134 management, development, implementation, operation, security,  
135 and storage of information within the system, including rules  
136 for when patient advisory reports are provided to pharmacies and  
137 prescribers. The patient advisory report shall be provided in  
138 accordance with s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The department  
139 shall work with the professional health care licensure boards,  
140 such as the Board of Medicine, the Board of Osteopathic

141 Medicine, and the Board of Pharmacy; other appropriate  
 142 organizations, such as the Florida Pharmacy Association, the  
 143 Florida Medical Association, the Florida Retail Federation, and  
 144 the Florida Osteopathic Medical Association, including those  
 145 relating to pain management; and the Attorney General, the  
 146 Department of Law Enforcement, and the Agency for Health Care  
 147 Administration to develop rules appropriate for the prescription  
 148 drug monitoring program.

149 (7)

150 (f) The program manager, upon determining a pattern  
 151 consistent with the rules established under paragraph (2) (d) and  
 152 having cause to believe a violation of s. 893.13(7) (a) 9.  
 153 ~~893.13(7) (a) 8.~~, (8) (a), or (8) (b) has occurred, may provide  
 154 relevant information to the applicable law enforcement agency.

155 Section 3. Subsection (4) of section 893.0551, Florida  
 156 Statutes, is amended to read:

157 893.0551 Public records exemption for the prescription  
 158 drug monitoring program.—

159 (4) The department shall disclose such confidential and  
 160 exempt information to the applicable law enforcement agency in  
 161 accordance with s. 893.055(7) (f). The law enforcement agency may  
 162 disclose the confidential and exempt information received from  
 163 the department to a criminal justice agency as defined in s.  
 164 119.011 as part of an active investigation that is specific to a  
 165 violation of s. 893.13(7) (a) 9. ~~893.13(7) (a) 8.~~, s. 893.13(8) (a),  
 166 or s. 893.13(8) (b).

167 Section 4. Paragraph (c) of subsection (3) of section  
 168 921.0022, Florida Statutes, is amended to read:

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169 921.0022 Criminal Punishment Code; offense severity  
 170 ranking chart.—

171 (3) OFFENSE SEVERITY RANKING CHART

172 (c) LEVEL 3

173

Florida	Felony	
Statute	Degree	Description

174

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
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175

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
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176

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
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177

316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
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178

319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
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179

319.33(1)(a)	3rd	Alter or forge any certificate
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of title to a motor vehicle or  
mobile home.

180

319.33(1)(c) 3rd Procure or pass title on stolen  
vehicle.

181

319.33(4) 3rd With intent to defraud,  
possess, sell, etc., a blank,  
forged, or unlawfully obtained  
title or registration.

182

327.35(2)(b) 3rd Felony BUI.

183

328.05(2) 3rd Possess, sell, or counterfeit  
fictitious, stolen, or  
fraudulent titles or bills of  
sale of vessels.

184

328.07(4) 3rd Manufacture, exchange, or  
possess vessel with counterfeit  
or wrong ID number.

185

376.302(5) 3rd Fraud related to reimbursement  
for cleanup expenses under the  
Inland Protection Trust Fund.

186

379.2431 3rd Taking, disturbing, mutilating,



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	(1) (e) 5.	<p>destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.</p>
187	<p>379.2431 (1) (e) 6.</p>	<p>3rd Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.</p>
188	400.9935 (4)	<p>3rd Operating a clinic without a license or filing false license application or other required information.</p>
189	440.1051 (3)	<p>3rd False report of workers' compensation fraud or retaliation for making such a report.</p>
190	501.001 (2) (b)	<p>2nd Tampers with a consumer product or the container using materially false/misleading</p>

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information.

191

624.401 (4) (a) 3rd Transacting insurance without a  
certificate of authority.

192

624.401 (4) (b) 1. 3rd Transacting insurance without a  
certificate of authority;  
premium collected less than  
\$20,000.

193

626.902 (1) (a) & 3rd Representing an unauthorized  
(b) insurer.

194

697.08 3rd Equity skimming.

195

790.15 (3) 3rd Person directs another to  
discharge firearm from a  
vehicle.

196

796.05 (1) 3rd Live on earnings of a  
prostitute.

197

806.10 (1) 3rd Maliciously injure, destroy, or  
interfere with vehicles or  
equipment used in firefighting.

198

806.10 (2) 3rd Interferes with or assaults

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firefighter in performance of  
duty.

199

810.09(2)(c) 3rd Trespass on property other than  
structure or conveyance armed  
with firearm or dangerous  
weapon.

200

812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but  
less than \$10,000.

201

812.0145(2)(c) 3rd Theft from person 65 years of  
age or older; \$300 or more but  
less than \$10,000.

202

815.04(4)(b) 2nd Computer offense devised to  
defraud or obtain property.

203

817.034(4)(a)3. 3rd Engages in scheme to defraud  
(Florida Communications Fraud  
Act), property valued at less  
than \$20,000.

204

817.233 3rd Burning to defraud insurer.

205

817.234 3rd Unlawful solicitation of  
(8)(b)-(c) persons involved in motor

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vehicle accidents.

206

817.234(11)(a) 3rd Insurance fraud; property value less than \$20,000.

207

817.236 3rd Filing a false motor vehicle insurance application.

208

817.2361 3rd Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.

209

817.413(2) 3rd Sale of used goods as new.

210

817.505(4) 3rd Patient brokering.

211

828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

212

831.28(2)(a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

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214	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
215	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
216	843.19	3rd	Injure, disable, or kill police dog or horse.
217	860.15 (3)	3rd	Overcharging for repairs and parts.
218	870.01 (2)	3rd	Riot; inciting or encouraging.
219	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs).
	893.13 (1) (d) 2.	2nd	Sell, manufacture, or deliver s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8.,

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(2) (c) 9., (3), or (4) drugs within 1,000 feet of university.

220

893.13(1)(f)2. 2nd Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.

221

893.13(6)(a) 3rd Possession of any controlled substance other than felony possession of cannabis.

222

893.13(7)(a)9. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.  
~~893.13(7)(a)8.~~

223

893.13(7)(a)10. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.  
~~893.13(7)(a)9.~~

224

893.13(7)(a)11. 3rd Affix false or forged label to

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225	<del>893.13(7)(a)10.</del>		package of controlled substance.
226	<u>893.13(7)(a)12.</u>	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
227	<del>893.13(7)(a)11.</del>		
228	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
229	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
229	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.

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893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

230

918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.

231

944.47 3rd Introduce contraband to  
(1)(a)1.-2. correctional facility.

232

944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.

233

985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

234

235 Section 5. This act shall take effect October 1, 2012.