

By Senator Hays

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 893.13, F.S.; prohibiting the knowing use of a
4 Schedule II controlled substance in a form or manner
5 other than that in which the manufacturer or
6 prescriber intended it to be used; providing criminal
7 penalties; amending ss. 893.055, 893.0551, and
8 921.0022, F.S.; conforming cross-references; providing
9 an effective date.

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

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

15 893.13 Prohibited acts; penalties.—

16 (7) (a) A person may not:

- 17 1. Distribute or dispense a controlled substance in
18 violation of this chapter.
- 19 2. Refuse or fail to make, keep, or furnish any record,
20 notification, order form, statement, invoice, or information
21 required under this chapter.
- 22 3. Refuse entry into any premises for any inspection or
23 refuse to allow any inspection authorized by this chapter.
- 24 4. Distribute a controlled substance named or described in
25 s. 893.03(1) or (2) except pursuant to an order form as required
26 by s. 893.06.
- 27 5. Keep or maintain any store, shop, warehouse, dwelling,
28 building, vehicle, boat, aircraft, or other structure or place
29 which is resorted to by persons using controlled substances in

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

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

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

43 8. Knowingly use a Schedule II controlled substance in a
44 form or manner other than that in which the manufacturer or
45 prescriber intended it to be used.

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

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

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

57 ~~12.11.~~ Furnish false or fraudulent material information in,
58 or omit any material information from, any report or other

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59 document required to be kept or filed under this chapter or any
60 record required to be kept by this chapter.

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

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

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

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88 subparagraph (a)9. ~~(a)8.~~

89 (c) Any person who violates ~~the provisions of~~ subparagraphs
90 (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the first degree,
91 punishable as provided in s. 775.082 or s. 775.083; except that,
92 upon a second or subsequent violation, the person commits a
93 felony of the third degree, punishable as provided in s.
94 775.082, s. 775.083, or s. 775.084.

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

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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

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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 drug
158 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:

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

171 (3) OFFENSE SEVERITY RANKING CHART

172 (c) LEVEL 3

173

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	Florida Statute	Felony Degree	Description
174	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
175	316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
176	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
177	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
178	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
179	319.33 (1) (a)	3rd	Alter or forge any certificate 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.

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328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, 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.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation

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fraud or retaliation for making such a report.

190

501.001 (2) (b) 2nd Tampers with a consumer product or the container using materially false/misleading 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 insurer.
(b)

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 firefighter

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in performance of duty.

199

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

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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 persons involved in motor vehicle accidents.
(8)(b)-(c)

206

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

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817.236 3rd Filing a false motor vehicle insurance

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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.

213

831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.

214

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

215

843.19 3rd Injure, disable, or kill police dog or horse.

216

860.15(3) 3rd Overcharging for repairs and parts.

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870.01(2) 3rd Riot; inciting or encouraging.

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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).

219

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

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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 ~~893.13(7)(a)8.~~ prescription for a controlled substance.

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

893.13(7)(a)11. 3rd Affix false or forged label to package
~~893.13(7)(a)10.~~ of controlled substance.

893.13(7)(a)12. 3rd Furnish false or fraudulent material
~~893.13(7)(a)11.~~ information on any document or record
required by chapter 893.

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.

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.

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.

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

231

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

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).

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