

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 definitions; requiring the Board of Pharmacy to create
10 a list of opioid analgesic drugs that incorporate a
11 tamper-resistance technology and have been approved by
12 a specified agency; prohibiting substitution for such
13 an opioid analgesic drug with another opioid analgesic
14 drug without meeting specified requirements; providing
15 an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (7) of section 893.13, Florida
20 Statutes, is amended to read:

21 893.13 Prohibited acts; penalties.—

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

- 23 1. Distribute or dispense a controlled substance in
24 violation of this chapter.
- 25 2. Refuse or fail to make, keep, or furnish any record,
26 notification, order form, statement, invoice, or information
27 required under this chapter.
- 28 3. Refuse entry into any premises for any inspection or
29 refuse to allow any inspection authorized by this chapter.

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

33 5. Keep or maintain any store, shop, warehouse, dwelling,
34 building, vehicle, boat, aircraft, or other structure or place
35 which is resorted to by persons using controlled substances in
36 violation of this chapter for the purpose of using these
37 substances, or which is used for keeping or selling them in
38 violation of this chapter.

39 6. Use to his or her own personal advantage, or reveal, any
40 information obtained in enforcement of this chapter except in a
41 prosecution or administrative hearing for a violation of this
42 chapter.

43 7. Possess a prescription form which has not been completed
44 and signed by the practitioner whose name appears printed
45 thereon, unless the person is that practitioner, is an agent or
46 employee of that practitioner, is a pharmacist, or is a supplier
47 of prescription forms who is authorized by that practitioner to
48 possess those forms.

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

52 ~~9.8.~~ Withhold information from a practitioner from whom the
53 person seeks to obtain a controlled substance or a prescription
54 for a controlled substance that the person making the request
55 has received a controlled substance or a prescription for a
56 controlled substance of like therapeutic use from another
57 practitioner within the previous 30 days.

58 ~~10.9.~~ Acquire or obtain, or attempt to acquire or obtain,

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59 possession of a controlled substance by misrepresentation,
60 fraud, forgery, deception, or subterfuge.

61 ~~11.10.~~ Affix any false or forged label to a package or
62 receptacle containing a controlled substance.

63 ~~12.11.~~ Furnish false or fraudulent material information in,
64 or omit any material information from, any report or other
65 document required to be kept or filed under this chapter or any
66 record required to be kept by this chapter.

67 ~~13.12.~~ Store anhydrous ammonia in a container that is not
68 approved by the United States Department of Transportation to
69 hold anhydrous ammonia or is not constructed in accordance with
70 sound engineering, agricultural, or commercial practices.

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

83 (b) A health care practitioner, with the intent to provide
84 a controlled substance or combination of controlled substances
85 that are not medically necessary to his or her patient or an
86 amount of controlled substances that is not medically necessary
87 for his or her patient, may not provide a controlled substance

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88 or a prescription for a controlled substance by
89 misrepresentation, fraud, forgery, deception, subterfuge, or
90 concealment of a material fact. For purposes of this paragraph,
91 a material fact includes whether the patient has an existing
92 prescription for a controlled substance issued for the same
93 period of time by another practitioner or as described in
94 subparagraph (a)9. ~~(a)8.~~

95 (c) Any person who violates ~~the provisions of~~ subparagraphs
96 (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the first degree,
97 punishable as provided in s. 775.082 or s. 775.083; except that,
98 upon a second or subsequent violation, the person commits a
99 felony of the third degree, punishable as provided in s.
100 775.082, s. 775.083, or s. 775.084.

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

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

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

113 893.055 Prescription drug monitoring program.—

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

115 (a) "Patient advisory report" or "advisory report" means
116 information provided by the department in writing, or as

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

134 (2)

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

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

155 (7)

156 (f) The program manager, upon determining a pattern
 157 consistent with the rules established under paragraph (2) (d) and
 158 having cause to believe a violation of s. 893.13(7)(a)9.
 159 ~~893.13(7)(a)8.~~, (8) (a), or (8) (b) has occurred, may provide
 160 relevant information to the applicable law enforcement agency.

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

163 893.0551 Public records exemption for the prescription drug
 164 monitoring program.—

165 (4) The department shall disclose such confidential and
 166 exempt information to the applicable law enforcement agency in
 167 accordance with s. 893.055(7) (f). The law enforcement agency may
 168 disclose the confidential and exempt information received from
 169 the department to a criminal justice agency as defined in s.
 170 119.011 as part of an active investigation that is specific to a
 171 violation of s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~, s. 893.13(8) (a),
 172 or s. 893.13(8) (b).

173 Section 4. Paragraph (c) of subsection (3) of section
 174 921.0022, Florida Statutes, is amended to read:

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175 921.0022 Criminal Punishment Code; offense severity ranking
 176 chart.-

177 (3) OFFENSE SEVERITY RANKING CHART

178 (c) LEVEL 3

179

Florida	Felony	
Statute	Degree	Description

180

119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
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316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
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316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
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316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
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319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
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319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
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319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
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319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
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.

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195	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
196	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
197	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
198	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
199	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
200	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
201	697.08	3rd	Equity skimming.
202	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
203	796.05(1)	3rd	Live on earnings of a prostitute.

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806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.

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- 817.234(11) (a) 3rd Insurance fraud; property value less than \$20,000.
- 817.236 3rd Filing a false motor vehicle insurance application.
- 817.2361 3rd Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
- 817.413(2) 3rd Sale of used goods as new.
- 817.505(4) 3rd Patient brokering.
- 828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
- 831.28(2) (a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
- 831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.
- 838.021(3) (b) 3rd Threatens unlawful harm to public servant.

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

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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).

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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.

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

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cannabis.

228

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.~~

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893.13(7)(a)10.

3rd

Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

~~893.13(7)(a)9.~~

230

893.13(7)(a)11.

3rd

Affix false or forged label to package of controlled substance.

~~893.13(7)(a)10.~~

231

893.13(7)(a)12.

3rd

Furnish false or fraudulent material information on any document or record required by chapter 893.

~~893.13(7)(a)11.~~

232

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.

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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.

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- 893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.
- 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.
- 918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.
- 944.47 (1)(a)1.-2. 3rd Introduce contraband to correctional facility.
- 944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.
- 985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 5. Substitution of opioid analgesic for opioid analgesic incorporating tamper-resistance technology prohibited; exceptions.-

- (1) As used in this section, the term:
- (a) "Interchange or substitution of an opioid analgesic

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246 drug” means the substitution of any opioid analgesic drug, brand
247 or generic, for the opioid analgesic drug incorporating a
248 tamper-resistance technology originally prescribed, irrespective
249 of whether the substituted drug is rated as pharmaceutically and
250 therapeutically equivalent by the United States Food and Drug
251 Administration or the Board of Pharmacy or whether the opioid
252 analgesic drug with tamper-resistance technology bears a
253 labeling claim with respect to reduction of tampering, abuse, or
254 abuse potential.

255 (b) “Opioid analgesic drug” means a drug in the opioid
256 analgesic drug class prescribed to treat moderate to severe pain
257 or other conditions, whether in immediate-release or extended-
258 release form and whether or not combined with other drug
259 substances to form a single tablet or other dosage form.

260 (c) “Opioid analgesic drug incorporating a tamper-
261 resistance technology” means an opioid analgesic drug listed as
262 such by the Board of Pharmacy based upon a submission of
263 evidence by the drug manufacturer or distributor that the drug
264 incorporates a tamper-resistance technology and has been
265 approved by the United States Food and Drug Administration
266 pursuant to an application that includes at least one human
267 tampering or abuse potential study or a laboratory study
268 comparing the tamper- or abuse-resistance properties of the drug
269 to one or more opioid analgesic drugs that have been approved by
270 the United States Food and Drug Administration and serve as a
271 positive control.

272 (2) The Board of Pharmacy shall create a list of opioid
273 analgesic drugs for which information has been submitted as
274 described in paragraph (1) (c). Inclusion of a drug on the list

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275 does not require that the drug bear a labeling claim with
276 respect to reduction of tampering, abuse, or abuse potential at
277 the time of listing. The list must also include a determination
278 by the Board of Pharmacy as to which listed opioid analgesic
279 drugs incorporating tamper-resistance technologies provide
280 substantially similar tamper-resistance properties, based solely
281 upon studies submitted by the drug manufacturer consistent with
282 paragraph (1) (c).

283 (3) Notwithstanding s. 465.025, Florida Statutes, a
284 pharmacist may not interchange or substitute an opioid analgesic
285 drug, whether brand or generic, for an opioid analgesic drug
286 incorporating a tamper-resistance technology that is listed
287 pursuant to subsection (2) without:

288 (a) Verifying that the opioid analgesic drug has been
289 listed by the Board of Pharmacy under subsection (2) as
290 providing tamper-resistance properties substantially similar to
291 the prescribed opioid analgesic drug incorporating a tamper-
292 resistance technology; or

293 (b) Obtaining written, signed consent from the prescribing
294 physician for the interchange or substitution.

295 Section 6. This act shall take effect October 1, 2012.