

1 A bill to be entitled
 2 An act relating to the privacy of firearms owners;
 3 creating s. 790.338, F.S.; prohibiting physicians or other
 4 medical personnel from inquiring, either verbally or in
 5 writing, about the ownership of a firearm by a patient or
 6 the family of a patient or the presence of a firearm in a
 7 patient's private home or other domicile; prohibiting
 8 conditioning the receipt of medical treatment or care on a
 9 person's willingness or refusal to disclose personal and
 10 private information unrelated to medical treatment in
 11 violation of an individual's privacy contrary to specified
 12 provisions; prohibiting entry of certain information
 13 concerning firearms into medical records or disclosure of
 14 such information by specified individuals; providing
 15 noncriminal penalties; providing for prosecution of
 16 violations; requiring informing the Attorney General of
 17 prosecution of violations; providing for collection of
 18 fines by the Attorney General in certain circumstances;
 19 providing exemptions; providing an effective date.

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

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

25 790.338 Medical privacy concerning firearms; prohibitions;
 26 penalties; exceptions.-

27 (1) (a) A verbal or written inquiry by any public or
 28 private physician, nurse, or other medical staff person

29 regarding the ownership of a firearm by a patient or the family
 30 of a patient or the presence of a firearm in a patient's home or
 31 other domicile violates the privacy of the patient or the
 32 patient's family, respectively, and is prohibited.

33 (b) Any public or private physician, nurse, or other
 34 medical staff person may not condition receipt of medical
 35 treatment or medical care on a person's willingness or refusal
 36 to disclose personal and private information unrelated to
 37 medical treatment in violation of an individual's privacy as
 38 specified in this section.

39 (c) Any public or private physician, nurse, or other
 40 medical staff person may not intentionally, accidentally, or
 41 inadvertently enter any disclosed information concerning
 42 firearms into any record, whether written or electronic, or
 43 disclose such information to any other source.

44 (2) (a) A person who violates a provision of this section
 45 commits a noncriminal violation as defined in s. 775.08,
 46 punishable as provided in s. 775.082 or s. 775.083.

47 (b) If the court determines that the violation was knowing
 48 and willful or that the person committing the prohibited act, in
 49 the exercise of ordinary care, should have known the act was a
 50 violation, the court shall assess a fine of not less than
 51 \$10,000 for the first offense, not less than \$25,000 for the
 52 second offense, and not less than \$100,000 for the third and
 53 subsequent offenses. The person found to have committed the
 54 violation shall be personally liable for the payment of all
 55 finances, costs, and fees assessed by the court for the noncriminal
 56 violation.

57 (3) The state attorney in the circuit where the violation
58 is alleged to have occurred shall investigate complaints of
59 noncriminal violations of this section and, where the state
60 attorney determines probable cause that a violation exists,
61 shall prosecute violators in the circuit court where the
62 violation is alleged to have occurred. Any state attorney who
63 fails to execute his or her duties under this section may be
64 held accountable under the appropriate Florida rules of
65 professional conduct.

66 (4) The state attorney shall notify the Attorney General
67 of any fines assessed under this section, notwithstanding s.
68 28.246(6), and if a fine for a violation of this section remains
69 unpaid after 90 days, the Attorney General shall bring a civil
70 action to enforce the fine.

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

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

78 (a) Any psychiatrist as defined in s. 394.455,
79 psychologist as defined in s. 490.003, school psychologist as
80 defined in s. 490.003, clinical social worker as defined in s.
81 491.003, or public or private physician, nurse, or other medical
82 personnel to make an inquiry prohibited by paragraph (1)(a) if
83 the person making the inquiry in good faith believes that the
84 possession or control of a firearm or ammunition by the patient

85 or another member of the patient's household would pose an
 86 imminent danger or threat to the patient or others.

87 (b) Any public or private physician, nurse, or other
 88 medical personnel to make an inquiry prohibited by paragraph
 89 (1) (a) if such inquiry is necessary to treat a patient during
 90 the course and scope of a medical emergency which specifically
 91 includes, but is not limited to, a mental health or psychotic
 92 episode where the patient's conduct or symptoms reasonably
 93 indicate that the patient has the capacity of causing harm to
 94 himself, herself, or others.

95 (c) Any public or private physician, nurse, or other
 96 medical personnel to enter any of the information disclosed
 97 pursuant to paragraphs (a) and (b) into any record, whether
 98 written or electronic.

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 100 However, a patient's response to any inquiry permissible under
 101 this subsection shall be private and may not be disclosed to any
 102 third party not participating in the treatment of the patient
 103 other than a law enforcement officer conducting an active
 104 investigation involving the patient or the events giving rise to
 105 a medical emergency. The exceptions provided by this subsection
 106 do not apply to inquiries made due to a person's general belief
 107 that firearms or ammunition are harmful to health or safety.

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

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