Senator Fasano moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 458.3191, Florida Statutes, is amended to read:

458.3191 Physician survey.—

(1) Each person who applies for licensure renewal as a physician under this chapter or chapter 459 must, in conjunction with the renewal of such license under procedures adopted by the Department of Health and in addition to any other information that may be required from the applicant, furnish the following to the Department of Health in a physician survey:
(a) Licensee information, including, but not limited to:

1. Frequency and geographic location of practice within the state.
2. Practice setting.
3. Percentage of time spent in direct patient care.
4. Anticipated change to license or practice status.
5. Areas of specialty or certification.
6. Whether the department has ever approved or denied the physician’s registration for access to a patient’s information in the prescription drug monitoring program’s database.
7. Whether the physician uses the prescription drug monitoring program with patients in his or her medical practice.

Section 2. Paragraphs (f) and (g) are added to subsection (1), paragraphs (g) and (h) are added to subsection (2), and subsection (3) is added to section 458.327, Florida Statutes, to read:

458.327 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(f) Failing to perform a physical examination of a patient by a physician or a licensed designee acting under the physician’s supervision on the same day that the treating physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic occurring three or more times within a 6-month period, or failing to perform a physical examination on three or more different patients on the same day that the treating physician dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a
(g) Prescribing or dispensing in excess of a 72-hour dose of controlled substances at a pain-management clinic for the treatment of chronic nonmalignant pain of a patient occurring three or more times within a 6-month period without documenting in the patient’s record the reason that such dosage is within the standard of care. For the purpose of this paragraph, the standard of care is set forth in rule 64B8-9.013(3), Florida Administrative Code.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(g) Failing to perform a physical examination of a patient on the same day that the treating physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic two times in a 6-month period, or failing to perform a physical examination on two different patients on the same day that the treating physician dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a 6-month period.

(h) Prescribing or dispensing in excess of a 72-hour dose of controlled substances at a pain-management clinic for the treatment of chronic nonmalignant pain of a patient occurring two times within a 6-month period without documenting in the patient’s record the reason that such dosage is within the standard of care. For the purpose of this paragraph, the standard of care is set forth in rule 64B8-9.013(3), Florida Administrative Code.

(3) Each of the following acts constitutes a misdemeanor of
the second degree, punishable as provided in s. 775.082 or s. 775.083:

(a) A first offense of failing to perform a physical examination of a patient on the same day that the treating physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic.

(b) A first offense of failing to document in a patient’s record the reason that such dosage is within the standard of care for prescribing or dispensing in excess of a 72-hour dose of controlled substances at a pain-management clinic for the treatment of chronic nonmalignant pain.

Section 3. Subsection (11) is added to section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(11) Notwithstanding subsection (2), upon finding that a physician has prescribed or dispensed, or caused to be prescribed or dispensed, a controlled substance in a pain-management clinic in a manner that violates the standard of practice as set forth in this chapter or rules adopted pursuant to this chapter, the board shall, at a minimum, suspend the physician’s license for at least 6 months and impose a fine of at least $10,000 per count. Repeated violations shall result in increased penalties.

Section 4. Paragraphs (f) and (g) are added to subsection (1), paragraphs (e) and (f) are added to subsection (2), and paragraphs (d) and (e) are added to subsection (3) of section 459.013, Florida Statutes, to read:

459.013 Penalty for violations.—
(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

   (f) Failing to perform a physical examination of a patient on the same day that the osteopathic physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic occurring three or more times within a 6-month period, or failing to perform a physical examination on three or more different patients on the same day that the osteopathic physician dispenses or prescribes a controlled substance to each patient at a pain-management clinic within a 6-month period.

   (g) Prescribing or dispensing in excess of a 72-hour dose of controlled substances at a pain-management clinic for the treatment of chronic nonmalignant pain of a patient occurring three or more times within a 6-month period without documenting in the patient’s record the reason that such dosage is within the standard of care. For the purpose of this paragraph, the standard of care is set forth in rule 64B8-9.013(3), Florida Administrative Code.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

   (e) Failing to perform a physical examination of a patient on the same day that the osteopathic physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic occurring two times within a 6-month period, or failing to perform a physical examination on two different patients on the same day that the osteopathic physician dispenses or prescribes a controlled substance to each patient
at a pain-management clinic within a 6-month period.

(f) Prescribing or dispensing in excess of a 72-hour dose of controlled substances at a pain-management clinic for the treatment of chronic nonmalignant pain of a patient occurring two times within a 6-month period without documenting in the patient’s record the reason that such dosage is within the standard of care. For the purpose of this paragraph, the standard of care is set forth in rule 64B8-9.013(3), Florida Administrative Code.

(3) Each of the following constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(d) A first offense of failing to perform a physical examination of a patient on the same day that the osteopathic physician dispenses or prescribes a controlled substance to the patient at a pain-management clinic.

(e) A first offense of failing to document in a patient’s record the reason that such dosage is within the standard of care for prescribing or dispensing in excess of a 72-hour dose of controlled substances at a pain-management clinic for the treatment of chronic nonmalignant pain. For the purpose of this paragraph, the standard of care is set forth in rule 64B8-9.013(3), Florida Administrative Code.

Section 5. (1) A licensee or other person who serves as the designated physician of a pain-management clinic as defined in s. 458.3265, Florida Statutes, or s. 459.0137, Florida Statutes, and registers a pain-management clinic through intentional misrepresentation or fraud or procures or attempts to procure the registration of a pain-management clinic for any other
person by making or causing to be made any false or fraudulent representation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

(2) Any person who registers a pain-management clinic through misrepresentation or fraud or who procures or attempts to procure the registration of a pain-management clinic for any other person by making or causing to be made any false or fraudulent representation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

Section 6. Subsection (11) is added to section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(11) Notwithstanding subsection (2), upon finding that an osteopathic physician has prescribed or dispensed, or caused to be prescribed or dispensed, a controlled substance in a pain-management clinic in a manner that violates the standard of practice as set forth in this chapter or rules adopted pursuant to this chapter, the board shall, at a minimum, suspend the osteopathic physician’s license for at least 6 months and impose a fine of at least $10,000 per count. Repeated violations shall result in increased penalties.

Section 7. Present subsections (3) and (4) of section 465.015, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

465.015 Violations and penalties.—
(3)(a) A licensed pharmacist or other person employed by or at a pharmacy may not knowingly fail to timely report to the local county sheriff’s office the name of any person who obtains or attempts to obtain a substance controlled by s. 893.03 which the licensed pharmacist or other person employed by or at the pharmacy knows or reasonably should have known was obtained or attempted to be obtained from the pharmacy through any fraudulent method or representation. A licensed pharmacist or other person employed by or at a pharmacy who fails to make such a report within 24 hours after learning of the fraud or attempted fraud commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A sufficient report of the fraudulent obtaining of or attempt to obtain a controlled substance under this subsection must contain, at a minimum, a copy of the prescription used or presented and a narrative, including all information available to the pharmacy regarding:

1. The transaction, such as the name and telephone number of the prescribing physician;
2. The name, description, and any personal identification information pertaining to the person presenting the prescription; and
3. All other material information, such as photographic or video surveillance of the transaction.

A licensed pharmacist or other person employed by or at a pharmacy is not subject to disciplinary action for reporting under this subsection.

Section 8. Subsection (3) of section 810.02, Florida
Statutes, is amended to read:

810.02 Burglary.—

(3) Burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains; or

(e) Authorized emergency vehicle, as defined in s. 316.003; or

(f) Structure or conveyance when the offense intended to be committed is theft of a substance controlled by s. 893.03.

Notwithstanding any contrary provisions of law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable offense for possession of a controlled substance under s. 893.13, or an offense for trafficking in a controlled substance under s. 893.135, may be imposed if all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed within a county that is
subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term “conditions arising from the emergency” means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 9. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.
2. Valued at $5,000 or more, but less than $10,000.
3. Valued at $10,000 or more, but less than $20,000.
4. A will, codicil, or other testamentary instrument.
5. A firearm.
6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, and including aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.


13. Any amount of a substance controlled by s. 893.03.

Notwithstanding any contrary provisions of law, separate judgments and sentences for theft of a controlled substance under this subparagraph, and for any applicable offense for possession of a controlled substance under s. 893.13, or an offense for trafficking in a controlled substance under s. 893.135 may be imposed if all such offenses involve the same amount or amounts of controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as
provided in s. 775.082, s. 775.083, or s. 775.084, if the
property is valued at $5,000 or more, but less than $10,000, as
provided under subparagraph 2., or if the property is valued at
$10,000 or more, but less than $20,000, as provided under
subparagraph 3. As used in this paragraph, the term “conditions
arising from the emergency” means civil unrest, power outages,
curfews, voluntary or mandatory evacuations, or a reduction in
the presence of or the response time for first responders or
homeland security personnel. For purposes of sentencing under
chapter 921, a felony offense that is reclassified under this
paragraph is ranked one level above the ranking under s.
921.0022 or s. 921.0023 of the offense committed.

Section 10. Subsections (1), (4), and (5) of section
893.07, Florida Statutes, are amended, and subsection (6) is
added to that section, to read:

893.07 Records.—
(1) Notwithstanding any other provision of law and in
consonance with the authority of State v. Carter, 23 So. 3d 798
(Fla. 1st DCA 2009) and State v. Tamulonis, 39 So. 3d 524 (Fla.
2nd DCA 2010), every person who engages in the manufacture,
compounding, mixing, cultivating, growing, or by any other
process producing or preparing, or in the dispensing,
importation, or, as a wholesaler, distribution, of controlled
substances shall:
(a) On January 1, 1974, or as soon thereafter as any person
first engages in such activity, and every second year
thereafter, make a complete and accurate record of all stocks of
controlled substances on hand. The inventory may be prepared on
the regular physical inventory date which is nearest to, and
does not vary by more than 6 months from, the biennial date that
would otherwise apply. As additional substances are designated
for control under this chapter, they shall be inventoried as
provided for in this subsection.

(b) On and after January 1, 1974, maintain, on a current
basis, a complete and accurate record of each substance
manufactured, received, sold, delivered, or otherwise disposed
of by him or her, except that this subsection shall not require
the maintenance of a perpetual inventory.

Compliance with the provisions of federal law pertaining to the
keeping of records of controlled substances shall be deemed a
compliance with the requirements of this subsection.

(4) Every inventory or record required by this chapter,
including prescription records, shall be maintained:

(a) Separately from all other records of the registrant, or
(b) Alternatively, in the case of Schedule III, IV, or V
controlled substances, in such form that information required by
this chapter is readily retrievable from the ordinary business
records of the registrant.

In either case, such records described in this subsection shall
be kept and made available for a period of at least 2 years for
inspection and copying by law enforcement officers whose duty it
is to enforce the laws of this state relating to controlled
substances. This subsection does not require a law enforcement
officer to obtain a subpoena, court order, or search warrant in
order to obtain access to or copies of such records.

(5) Each person shall maintain a record that contains which
shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft. If a person discovers the theft or loss of a controlled substance, such person shall report the theft or loss to a local county sheriff’s office within 48 hours after the discovery of such theft or loss. A person who fails to report the theft or loss of a controlled substance under this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, a person who fails to report the theft or loss of a Schedule II controlled substance commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The Legislature finds that the opinions rendered in State v. Carter, 23 So. 3d 798 (Fla. 1st DCA 2009), and State v. Tamulonis, 39 So. 3d 524 (Fla. 2nd DCA 2010), correctly construe this Legislature’s intent that the inspection powers previously conferred upon law enforcement officers which allow such officers to access and review pharmacy records concerning controlled substances are to be exercised properly by such law enforcement officers without the requirement of a subpoena or search warrant being sought or issued to examine and copy such records, and without the requirement that those persons to whom particular pharmacy records refer be given notice of the records’ examination and copying under this section.

Section 11. Subsection (4) of section 893.055, Florida Statutes, is amended to read:

893.055 Prescription drug monitoring program.—

(4) Each time a controlled substance is dispensed to an
individual, the controlled substance shall be reported to the
department through the system as soon thereafter as possible,
but not more than 7 days after the date the controlled
substance is dispensed unless an extension is approved by the
department for cause as determined by rule. A dispenser must
meet the reporting requirements of this section by providing the
required information concerning each controlled substance that
it dispensed in a department-approved, secure methodology and
format. Such approved formats may include, but are not limited
to, submission via the Internet, on a disc, or by use of regular
mail.

Section 12. This act shall take effect October 1, 2011.

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to controlled substances; amending s.
458.3191, F.S.; revising the information in the
physician survey that is submitted by persons who
apply for licensure renewal as a physician under ch.
458 or ch. 459, F.S.; amending s. 458.327, F.S.;
providing additional penalties; amending s. 458.331,
F.S.; providing additional grounds for disciplinary
action by the Board of Medicine; amending s. 459.013,
F.S.; providing additional penalties; creating a
felony of the third degree for a licensee or other
person who serves as the designated physician of a
pain-management clinic to register a pain-management clinic through misrepresentation or fraud; amending s. 459.015, F.S.; providing additional grounds for disciplinary action by the Board of Osteopathic Medicine; amending s. 465.015, F.S.; prohibiting certain persons from knowingly failing to report to the local county sheriff’s office the commission of a felony involving a person who acquires or obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge under certain conditions; providing penalties; providing requirements for reporting the commission of a felony that involves a person who acquires or obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; providing that a licensed pharmacist or other person employed by or at a pharmacy is not subject to disciplinary action for reporting; amending s. 810.02, F.S.; redefining the offense of burglary to include the theft of a controlled substance within a structure or conveyance; amending s. 812.014, F.S.; redefining the offense of theft to include the theft of a controlled substance; amending s. 893.07, F.S.; requiring that a person report to the local sheriff’s office the theft or loss of a controlled substance within a specified time; providing penalties; providing legislative intent; amending s. 893.055, F.S.; revising the number of days in which a dispensed controlled substance must be
reported to the department through the prescription drug monitoring program; providing an effective date.