

By the Committee on Criminal Justice; and Senator Evers

591-02004-11

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1 A bill to be entitled

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

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

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26 Section 1. Section 790.338, Florida Statutes, is created to
27 read:

28 790.338 Medical privacy concerning firearms; prohibitions;
29 penalties; exceptions.-

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30 (1) (a) A verbal or written inquiry by a public or private
31 physician, nurse, or other medical staff person regarding the
32 ownership of a firearm by a patient or the family of a patient
33 or the presence of a firearm in a private home or other domicile
34 of a patient or the family of a patient violates the privacy of
35 the patient or the patient's family members, respectively.

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

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

47 (2) (a) A person who violates any provision of this section
48 commits a noncriminal violation as defined in s. 775.08 and is
49 punishable as provided in s. 775.082 and s. 775.083.

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

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

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

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

77 (f) Notwithstanding any other provision of this section:

78 1. A psychiatrist as defined in s. 394.455, a psychologist
79 as defined in s. 490.003, a school psychologist as defined in s.
80 490.003, or a clinical social worker as defined in s. 491.003
81 may make an inquiry reasonably necessary if the person making
82 the inquiry in good faith believes that the possession or
83 control of a firearm or ammunition by the patient would pose an
84 imminent threat to himself, herself, or others; and

85 2. A public or private physician, nurse, or other medical
86 staff person may make an inquiry reasonably necessary for the
87 treatment of a patient during the course and scope of a medical

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88 emergency, which specifically includes, but is not limited to, a
89 mental health or psychotic episode where the patient's conduct
90 or symptoms reasonably indicate that the patient has the
91 capacity of causing harm to himself, herself, or others.

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93 However, a patient's response to any inquiry permissible under
94 this subsection shall be private and may not be disclosed to any
95 third party who is not participating in the treatment of the
96 patient other than a law enforcement officer conducting an
97 active investigation involving the patient or the events giving
98 rise to a medical emergency. This subsection does not apply to a
99 person's general belief that firearms or ammunition are harmful
100 to health or safety.

101 (3) Medical records created on or before the effective date
102 of this section are not a violation of this section. Such
103 records, when transferred to another health care provider, are
104 not subject to the prohibitions or penalties of this section.

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