



869844

LEGISLATIVE ACTION

Senate

House

.
. .
. .
. .
. .

Floor: WD/3R

05/06/2011 11:21 AM

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:



869844

14 (a) Licensee information, including, but not limited to:

15 1. Frequency and geographic location of practice within the
16 state.

17 2. Practice setting.

18 3. Percentage of time spent in direct patient care.

19 4. Anticipated change to license or practice status.

20 5. Areas of specialty or certification.

21 6. Whether the department has ever approved or denied the
22 physician's registration for access to a patient's information
23 in the prescription drug monitoring program's database.

24 7. Whether the physician uses the prescription drug
25 monitoring program with patients in his or her medical practice.

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

30 458.327 Penalty for violations.—

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

34 (f) Failing to perform a physical examination of a patient
35 by a physician or a licensed designee acting under the
36 physician's supervision on the same day that the treating
37 physician dispenses or prescribes a controlled substance to the
38 patient at a pain-management clinic occurring three or more
39 times within a 6-month period, or failing to perform a physical
40 examination on three or more different patients on the same day
41 that the treating physician dispenses or prescribes a controlled
42 substance to each patient at a pain-management clinic within a



869844

43 6-month period.

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

52 (2) Each of the following acts constitutes a misdemeanor of
53 the first degree, punishable as provided in s. 775.082 or s.
54 775.083:

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

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

71 (3) Each of the following acts constitutes a misdemeanor of



869844

72 the second degree, punishable as provided in s. 775.082 or s.
73 775.083:

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

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

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

85 458.331 Grounds for disciplinary action; action by the
86 board and department.—

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

96 Section 4. Paragraphs (f) and (g) are added to subsection
97 (1), paragraphs (e) and (f) are added to subsection (2), and
98 paragraphs (d) and (e) are added to subsection (3) of section
99 459.013, Florida Statutes, to read:

100 459.013 Penalty for violations.—



869844

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

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

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

120 (2) Each of the following acts constitutes a misdemeanor of
121 the first degree, punishable as provided in s. 775.082 or s.
122 775.083:

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



869844

130 at a pain-management clinic within a 6-month period.

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

139 (3) Each of the following constitutes a misdemeanor of the
140 second degree, punishable as provided in s. 775.082 or s.
141 775.083:

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

146 (e) A first offense of failing to document in a patient's
147 record the reason that such dosage is within the standard of
148 care for prescribing or dispensing in excess of a 72-hour dose
149 of controlled substances at a pain-management clinic for the
150 treatment of chronic nonmalignant pain. For the purpose of this
151 paragraph, the standard of care is set forth in rule 64B8-
152 9.013(3), Florida Administrative Code.

153 Section 5. (1) A licensee or other person who serves as the
154 designated physician of a pain-management clinic as defined in
155 s. 458.3265, Florida Statutes, or s. 459.0137, Florida Statutes,
156 and registers a pain-management clinic through intentional
157 misrepresentation or fraud or procures or attempts to procure
158 the registration of a pain-management clinic for any other



869844

159 person by making or causing to be made any false or fraudulent
160 representation commits a felony of the third degree, punishable
161 as provided in s. 775.082, s. 775.083, or s. 775.084, Florida
162 Statutes.

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

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

172 459.015 Grounds for disciplinary action; action by the
173 board and department.—

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

183 Section 7. Present subsections (3) and (4) of section
184 465.015, Florida Statutes, are renumbered as subsections (4) and
185 (5), respectively, and a new subsection (3) is added to that
186 section, to read:

187 465.015 Violations and penalties.—



869844

188 (3) (a) A licensed pharmacist or other person employed by or
189 at a pharmacy may not knowingly fail to timely report to the
190 local county sheriff's office the name of any person who obtains
191 or attempts to obtain a substance controlled by s. 893.03 which
192 the licensed pharmacist or other person employed by or at the
193 pharmacy knows or reasonably should have known was obtained or
194 attempted to be obtained from the pharmacy through any
195 fraudulent method or representation. A licensed pharmacist or
196 other person employed by or at a pharmacy who fails to make such
197 a report within 24 hours after learning of the fraud or
198 attempted fraud commits a misdemeanor of the first degree,
199 punishable as provided in s. 775.082 or s. 775.083.

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

205 1. The transaction, such as the name and telephone number
206 of the prescribing physician;

207 2. The name, description, and any personal identification
208 information pertaining to the person presenting the
209 prescription; and

210 3. All other material information, such as photographic or
211 video surveillance of the transaction.

212
213 A licensed pharmacist or other person employed by or at a
214 pharmacy is not subject to disciplinary action for reporting
215 under this subsection.

216 Section 8. Subsection (3) of section 810.02, Florida



869844

217 Statutes, is amended to read:

218 810.02 Burglary.—

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

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

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

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

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

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

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

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

244
245 However, if the burglary is committed within a county that is



869844

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

263 Section 9. Paragraph (c) of subsection (2) of section
264 812.014, Florida Statutes, is amended to read:

265 812.014 Theft.—

266 (2)

267 (c) It is grand theft of the third degree and a felony of
268 the third degree, punishable as provided in s. 775.082, s.
269 775.083, or s. 775.084, if the property stolen is:

- 270 1. Valued at \$300 or more, but less than \$5,000.
- 271 2. Valued at \$5,000 or more, but less than \$10,000.
- 272 3. Valued at \$10,000 or more, but less than \$20,000.
- 273 4. A will, codicil, or other testamentary instrument.
- 274 5. A firearm.



869844

- 275 6. A motor vehicle, except as provided in paragraph (a).
276 7. Any commercially farmed animal, including any animal of
277 the equine, bovine, or swine class, or other grazing animal, and
278 including aquaculture species raised at a certified aquaculture
279 facility. If the property stolen is aquaculture species raised
280 at a certified aquaculture facility, then a \$10,000 fine shall
281 be imposed.
- 282 8. Any fire extinguisher.
- 283 9. Any amount of citrus fruit consisting of 2,000 or more
284 individual pieces of fruit.
- 285 10. Taken from a designated construction site identified by
286 the posting of a sign as provided for in s. 810.09(2)(d).
- 287 11. Any stop sign.
- 288 12. Anhydrous ammonia.
- 289 13. Any amount of a substance controlled by s. 893.03.
290 Notwithstanding any contrary provisions of law, separate
291 judgments and sentences for theft of a controlled substance
292 under this subparagraph, and for any applicable offense for
293 possession of a controlled substance under s. 893.13, or an
294 offense for trafficking in a controlled substance under s.
295 893.135 may be imposed if all such offenses involve the same
296 amount or amounts of controlled substance.
297
- 298 However, if the property is stolen within a county that is
299 subject to a state of emergency declared by the Governor under
300 chapter 252, the property is stolen after the declaration of
301 emergency is made, and the perpetration of the theft is
302 facilitated by conditions arising from the emergency, the
303 offender commits a felony of the second degree, punishable as



869844

304 provided in s. 775.082, s. 775.083, or s. 775.084, if the
305 property is valued at \$5,000 or more, but less than \$10,000, as
306 provided under subparagraph 2., or if the property is valued at
307 \$10,000 or more, but less than \$20,000, as provided under
308 subparagraph 3. As used in this paragraph, the term "conditions
309 arising from the emergency" means civil unrest, power outages,
310 curfews, voluntary or mandatory evacuations, or a reduction in
311 the presence of or the response time for first responders or
312 homeland security personnel. For purposes of sentencing under
313 chapter 921, a felony offense that is reclassified under this
314 paragraph is ranked one level above the ranking under s.
315 921.0022 or s. 921.0023 of the offense committed.

316 Section 10. Subsections (1), (4), and (5) of section
317 893.07, Florida Statutes, are amended, and subsection (6) is
318 added to that section, to read:

319 893.07 Records.—

320 (1) Notwithstanding any other provision of law and in
321 consonance with the authority of *State v. Carter*, 23 So. 3d 798
322 (Fla. 1st DCA 2009) and *State v. Tamulonis*, 39 So. 3d 524 (Fla.
323 2nd DCA 2010), every person who engages in the manufacture,
324 compounding, mixing, cultivating, growing, or by any other
325 process producing or preparing, or in the dispensing,
326 importation, or, as a wholesaler, distribution, of controlled
327 substances shall:

328 (a) On January 1, 1974, or as soon thereafter as any person
329 first engages in such activity, and every second year
330 thereafter, make a complete and accurate record of all stocks of
331 controlled substances on hand. The inventory may be prepared on
332 the regular physical inventory date which is nearest to, and



869844

333 does not vary by more than 6 months from, the biennial date that
334 would otherwise apply. As additional substances are designated
335 for control under this chapter, they shall be inventoried as
336 provided for in this subsection.

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

342

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

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

348 (a) Separately from all other records of the registrant, or

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

353

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

361 (5) Each person shall maintain a record that contains ~~which~~



869844

362 ~~shall contain~~ a detailed list of controlled substances lost,
363 destroyed, or stolen, if any; the kind and quantity of such
364 controlled substances; and the date of the discovering of such
365 loss, destruction, or theft. If a person discovers the theft or
366 loss of a controlled substance, such person shall report the
367 theft or loss to a local county sheriff's office within 48 hours
368 after the discovery of such theft or loss. A person who fails to
369 report the theft or loss of a controlled substance under this
370 subsection commits a misdemeanor of the second degree,
371 punishable as provided in s. 775.082 or s. 775.083. However, a
372 person who fails to report the theft or loss of a Schedule II
373 controlled substance commits a misdemeanor of the first degree,
374 punishable as provided in s. 775.082 or s. 775.083.

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

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

389 893.055 Prescription drug monitoring program.—

390 (4) Each time a controlled substance is dispensed to an



869844

391 individual, the controlled substance shall be reported to the
392 department through the system as soon thereafter as possible,
393 but not more than 7 ~~15~~ days after the date the controlled
394 substance is dispensed unless an extension is approved by the
395 department for cause as determined by rule. A dispenser must
396 meet the reporting requirements of this section by providing the
397 required information concerning each controlled substance that
398 it dispensed in a department-approved, secure methodology and
399 format. Such approved formats may include, but are not limited
400 to, submission via the Internet, on a disc, or by use of regular
401 mail.

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

403
404 ===== T I T L E A M E N D M E N T =====

405 And the title is amended as follows:

406 Delete everything before the enacting clause
407 and insert:

408 A bill to be entitled
409 An act relating to controlled substances; amending s.
410 458.3191, F.S.; revising the information in the
411 physician survey that is submitted by persons who
412 apply for licensure renewal as a physician under ch.
413 458 or ch. 459, F.S.; amending s. 458.327, F.S.;
414 providing additional penalties; amending s. 458.331,
415 F.S.; providing additional grounds for disciplinary
416 action by the Board of Medicine; amending s. 459.013,
417 F.S.; providing additional penalties; creating a
418 felony of the third degree for a licensee or other
419 person who serves as the designated physician of a



869844

420 pain-management clinic to register a pain-management
421 clinic through misrepresentation or fraud; amending s.
422 459.015, F.S.; providing additional grounds for
423 disciplinary action by the Board of Osteopathic
424 Medicine; amending s. 465.015, F.S.; prohibiting
425 certain persons from knowingly failing to report to
426 the local county sheriff's office the commission of a
427 felony involving a person who acquires or obtains
428 possession of a controlled substance by
429 misrepresentation, fraud, forgery, deception, or
430 subterfuge under certain conditions; providing
431 penalties; providing requirements for reporting the
432 commission of a felony that involves a person who
433 acquires or obtains possession of a controlled
434 substance by misrepresentation, fraud, forgery,
435 deception, or subterfuge; providing that a licensed
436 pharmacist or other person employed by or at a
437 pharmacy is not subject to disciplinary action for
438 reporting; amending s. 810.02, F.S.; redefining the
439 offense of burglary to include the theft of a
440 controlled substance within a structure or conveyance;
441 amending s. 812.014, F.S.; redefining the offense of
442 theft to include the theft of a controlled substance;
443 amending s. 893.07, F.S.; requiring that a person
444 report to the local sheriff's office the theft or loss
445 of a controlled substance within a specified time;
446 providing penalties; providing legislative intent;
447 amending s. 893.055, F.S.; revising the number of days
448 in which a dispensed controlled substance must be



869844

449
450

reported to the department through the prescription
drug monitoring program; providing an effective date.