

SENATE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NOS. 90 & 68

AN ACT

To amend chapter 195, RSMo, by adding thereto seven new sections relating to a program for the monitoring of certain prescribed controlled substances, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Chapter 195, RSMo, is amended by adding thereto  
2 seven new sections, to be known as sections 195.450, 195.453,  
3 195.456, 195.459, 195.462, 195.465, and 195.468, to read as  
4 follows:

5 195.450. 1. Sections 195.450 to 195.468 shall be known and  
6 may be cited as the "Narcotics Control Act".

7 2. As used in sections 195.450 to 195.468, the following  
8 terms shall mean:

9 (1) "Controlled substance", the same meaning given such  
10 term in section 195.010;

11 (2) "Department", the department of health and senior  
12 services;

13 (3) "Dispenser", a person who delivers a Schedule II, III,  
14 or IV controlled substance to a patient, but does not include:

15 (a) A hospital, as defined in section 197.020, that  
16 distributes such substances for the purpose of inpatient care or

1 dispenses prescriptions for controlled substances at the time of  
2 discharge from such facility;

3 (b) A practitioner or other authorized person who  
4 administers such a substance; or

5 (c) A wholesale distributor of a Schedule II, III, or IV  
6 controlled substance;

7 (4) "Patient", a person who is the ultimate user of a drug  
8 for whom a prescription is issued or for whom a drug is  
9 dispensed, not including a hospice patient enrolled in a  
10 Medicare-certified hospice program who has controlled substances  
11 dispensed to him or her by such hospice program;

12 (5) "Prescriber", a person who prescribes a Schedule II,  
13 III, or IV controlled substance to a patient;

**See SA 7 RE Oipiod & Benzodiazepine  
Classes Only**

14 (6) "Schedule II, III, or IV controlled substance", a  
15 controlled substance that is listed in Schedule II, III, or IV of  
16 the schedules provided under this chapter or the Controlled  
17 Substances Act, 21 U.S.C. Section 812.

18 3. Notwithstanding any other law to the contrary, the  
19 provisions of this section shall not apply to persons licensed  
20 under chapter 340.

21 195.453. 1. The department shall establish and maintain a  
22 program for the monitoring of prescribing and dispensing of all  
23 Schedule II, III, and IV controlled substances by all  
24 professionals licensed to prescribe or dispense such substances  
25 in this state. The funding of the narcotics control program  
26 shall be subject to appropriations. In addition to  
27 appropriations from the general assembly, the department may  
28 apply for available grants and shall be able to accept other

1 gifts, grants, and donations to develop and maintain the program.

2 2. Each dispenser shall submit to the department by  
3 electronic means information regarding each dispensation of a  
4 drug included in subsection 1 of this section. The information  
5 submitted for each dispensation shall include, but not be limited  
6 to:

7 (1) The dispenser's Drug Enforcement Administration (DEA)  
8 number;

9 (2) The date of the dispensation;

10 (3) The following, if there is a prescription:

11 (a) The prescription number or other unique identifier;

12 (b) Whether the prescription is new or a refill; and

13 (c) The prescriber's DEA or National Provider Identifier  
14 (NPI) number;

15 (4) The National Drug Code (NDC) for the drug dispensed;

16 (5) The quantity and dosage of the drug dispensed;

17 (6) The patient's identification number including, but not  
18 limited to, any one of the following:

19 (a) The patient's driver's license number;

20 (b) The patient's government-issued identification number;

21 or

22 (c) The patient's insurance cardholder identification  
23 number; and

24 (7) The patient's name, address, and date of birth.

25 3. Each dispenser shall submit the information in  
26 accordance with transmission standards established by the  
27 American Society for Automation in Pharmacy or any successor  
28 organization and shall report data within twenty-four hours of

1 dispensation. Beginning January 1, 2019, the department shall  
2 begin phasing in a requirement that dispensers report data in  
3 real time with all report data to be submitted in real time by  
4 January 1, 2020.

5 4. (1) The department may issue a waiver to a dispenser  
6 who is unable to submit dispensation information by electronic  
7 means. Such waiver may permit the dispenser to submit  
8 dispensation information by paper form or other means, provided  
9 all information required in subsection 2 of this section is  
10 submitted in such alternative format.

11 (2) The department may grant an extension to dispensers who  
12 are temporarily unable to electronically submit the dispensation  
13 information required in subsection 2 of this section in  
14 accordance with the time frame established in subsection 3 of  
15 this section due to unforeseen circumstances. In cases in which  
16 an extension is granted, dispensers shall be responsible for  
17 reporting the required data in a subsequent submission.

18 5. A prescriber shall utilize the program prior to  
19 prescribing any Schedule II, III, or IV controlled substance.  
20 The provisions of this subsection shall not apply in the  
21 following circumstances:

22 (1) During a medical emergency which, in the professional  
23 opinion of the prescriber, is likely to result in harm to the  
24 patient;

25 (2) When it is not reasonably possible to utilize the  
26 program due to circumstances beyond the control of the  
27 prescriber;

28 (3) When the patient has a terminal illness, or resides in

1 a facility licensed under chapter 198; or

2 ~~(4) For the treatment of pain resulting from a surgical or~~  
3 ~~invasive procedure in which the prescription does not exceed a~~  
4 ~~five-day supply.~~ **See SA 2 (Schatz) & SA1 to SA2 (Schaaf) Hospital & ASC Mandated Use**

5 195.456. 1. Dispensation information submitted to the  
6 department shall be confidential and not subject to public  
7 disclosure under chapter 610 except as provided in subsections 3  
8 to 5 of this section.

9 2. The department shall maintain procedures to ensure that  
10 the privacy and confidentiality of patients and personal  
11 information collected, recorded, transmitted, and maintained are  
12 not disclosed to persons except as provided in subsections 3 to 5  
13 of this section.

14 3. The department shall review the dispensation information  
15 and, if there is reasonable cause to believe a violation of law  
16 or breach of professional standards may have occurred, the  
17 department shall notify the appropriate law enforcement or  
18 professional licensing, certification, or regulatory agency or  
19 entity, and provide any dispensation information required for an  
20 investigation.

21 4. The department may provide data in the narcotics control  
22 program to the following persons:

23 (1) Persons both in-state and out-of-state authorized to  
24 prescribe or dispense controlled substances for the purpose of  
25 providing medical or pharmaceutical care for their patients;

26 (2) An individual who requests his or her own dispensation  
27 information in accordance with state law;

28 (3) The state board of pharmacy;

1       (4) Any state board charged with regulating a professional  
2 who has the authority to prescribe or dispense controlled  
3 substances that requests data related to a specific professional  
4 under the authority of such board if such board has a current and  
5 open investigation into such professional and the data provided  
6 is limited to such professional;

7       (5) Local, state, and federal law enforcement or  
8 prosecutorial officials, both in-state and out-of-state, engaged  
9 in the administration, investigation, or enforcement of the laws  
10 governing prescription drugs based on a specific case and under a  
11 subpoena issued by a court of competent jurisdiction or court  
12 order;

13       (6) The MO HealthNet division within the department of  
14 social services regarding MO HealthNet program recipients; and

15       (7) A judge or other judicial authority under a subpoena  
16 issued by a court of competent jurisdiction or court order.

17       5. The department may provide data to public or private  
18 entities for statistical, research, or educational purposes after  
19 removing information that could be used to identify individual  
20 patients, prescribers, dispensers, or persons who received  
21 dispensations from dispensers.

22       6. Nothing in sections 195.450 to 195.468 shall be  
23 construed to require a dispenser or prescriber, except as  
24 otherwise provided in subsection 5 of section 195.453, to obtain  
25 information about a patient from the database.

26       7. No dispensation information submitted to the department  
27 shall be used by any local, state, or federal authority to  
28 prevent an individual from owning or obtaining a firearm.

1       8. No dispensation information submitted to the department  
2 under sections 195.450 to 195.468 shall be the sole basis for  
3 probable cause to obtain an arrest or search warrant as part of a  
4 criminal investigation. **See SA6 (Hoskins) RE Training on Database**

5       195.459. The department is authorized to contract with any  
6 other agency of this state, any state government that currently  
7 runs a narcotics control program, or any private vendor. Any  
8 contractor shall comply with the provisions regarding  
9 confidentiality of prescription and dispensation information in  
10 section 195.456.

11       195.462. 1. The department shall promulgate rules setting  
12 forth the procedures and methods of implementing sections 195.450  
13 to 195.468. Any rule or portion of a rule, as that term is  
14 defined in section 536.010, that is created under the authority  
15 delegated in this section shall become effective only if it  
16 complies with and is subject to all of the provisions of chapter  
17 536 and, if applicable, section 536.028. This section and  
18 chapter 536 are nonseverable, and if any of the powers vested  
19 with the general assembly pursuant to chapter 536 to review, to  
20 delay the effective date, or to disapprove and annul a rule are  
21 subsequently held unconstitutional, then the grant of rulemaking  
22 authority and any rule proposed or adopted after August 28, 2017,  
23 shall be invalid and void.

24       2. The provisions of section 23.253 of the Missouri sunset  
25 act shall not apply to sections 195.450 to 195.468. **See SSA1 (Schatz) to SA 3 (Kraus)**  
26 **RE Sunset**

27       195.465. 1. A dispenser who knowingly fails to submit  
28 dispensation information to the department as required in  
sections 195.450 to 195.468 or knowingly submits the incorrect

1 dispensation information shall be subject to an administrative  
2 penalty in the amount of one thousand dollars for each violation.  
3 The penalty shall be assessed through an order issued by the  
4 director of the department. Any person subject to an  
5 administrative penalty may appeal to the administrative hearing  
6 commission under the provisions of chapter 621.

7 2. Any person who unlawfully and knowingly accesses or  
8 discloses, or any person authorized to have prescription or  
9 dispensation information under sections 195.450 to 195.468 who  
10 knowingly discloses such information in violation of sections  
11 195.450 to 195.468 or knowingly uses such information in a manner  
12 and for a purpose in violation of sections 195.450 to 195.468 is  
13 guilty of a class E felony.

14 ~~3. A prescriber required to utilize the program under~~  
15 ~~subsection 5 of section 195.453 who knowingly fails to comply~~  
16 ~~with the provisions of such subsection shall be subject to~~  
17 ~~disciplinary action by the prescriber's respective professional~~  
18 ~~state regulatory board.~~

**See SA 2 (Sater) - Removes this disciplinary requirement**

19 195.468. If a political subdivision of this state is  
20 operating a program for the monitoring of the prescribing and  
21 dispensing of all Schedule II, III, and IV controlled substances  
22 by professionals licensed to prescribe or dispense such  
23 substances in this state, the political subdivision shall  
24 surrender and the state shall assume all obligations of the  
25 political subdivision under any existing user or other agreement  
26 for such program, and be responsible for its continued  
27 functioning until such time as sections 195.450 to 195.468 and  
28 the rules promulgated under section 195.462 become effective. If



1 an unforeseen issue arises that prevents the state from assuming  
2 the obligations of the political subdivision's program, this  
3 subsection shall be void and control of the political  
4 subdivision's program shall revert to the political subdivision  
5 and not be prohibited.

**Effect of SA 2 (Sater) with SA 1 to SA 2 (Schaaf) - RE MANDATED USE:**

**Modifies exception to mandated use by exempting hospital and ASCs who distribute or prescribe controlled substances at the time of discharge for under five-day supply, provided that the prescriber utilizes the program or ensures that the program has been utilized since the patient's admission.**

**This amendment also exempts a controlled substance that is administered directly to the patient in an emergency room setting and any situation where there is a previously established prescriber-patient relationship and a nonopioid controlled substance, other than a benzodiazepine, is being prescribed.**

**Last provision of amendment removes language that requires regulatory board to discipline physician if program is not used.**

**Effect of SSA 1 (Schatz) to SA 3 (Kraus) RE SUNSET:**

**Automatic sunset after six years unless reauthorized by act of general assembly. If reauthorized, program automatically sunsets 12 years after reauthorization.**

**Effect of SA 5 (Kraus) RE DATA PURGE**

**Requires department of delete patient data after 180 days**

**SA 6 (Hoskins) RE TRAINING**

**Requires any person with access to database to complete department-approved training course prior to accessing database.**

**SA 7 (Koenig) RE DRUG CLASSIFICATION**

**Makes PDMP apply to Schedule II, III & IV opioids and benzodiazepine; eliminates any non-opioid drugs in Schedule II, III or IV.**