

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1892

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE REHDER.

4506H.01P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 195.015 as enacted by senate bill nos. 215 & 58, eighty-fifth general assembly, first regular session, and to enact in lieu thereof nine new sections relating to the narcotics control act, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 195.015 as enacted by senate bill nos. 215 & 58, eighty-fifth general  
2 assembly, first regular session, is repealed and nine new sections enacted in lieu thereof, to be  
3 known as sections 195.015, 195.450, 195.453, 195.456, 195.459, 195.462, 195.465, 195.468,  
4 and 195.471, to read as follows:

195.015. 1. The department of health and senior services shall administer sections  
2 195.005 to [195.425] **195.471** and may add substances to the schedules after public notice and  
3 hearing. In making a determination regarding a substance, the department of health and senior  
4 services shall consider the following:

- 5 (1) The actual or relative potential for abuse;
- 6 (2) The scientific evidence of its pharmacological effect, if known;
- 7 (3) The state of current scientific knowledge regarding the substance;
- 8 (4) The history and current pattern of abuse;
- 9 (5) The scope, duration, and significance of abuse;
- 10 (6) The risk to the public health;
- 11 (7) The potential of the substance to produce psychic or physiological dependence  
12 liability; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (8) Whether the substance is an immediate precursor of a substance already controlled  
14 under sections 195.005 to [195.425] **195.471**.

15 2. After considering the factors enumerated in subsection 1 of this section the department  
16 of health and senior services shall make findings with respect thereto and issue a rule controlling  
17 the substance if it finds the substance has a potential for abuse.

18 3. If the department of health and senior services designates a substance as an immediate  
19 precursor, substances which are precursors of the controlled precursor shall not be subject to  
20 control solely because they are precursors of the controlled precursor.

21 4. If any substance is designated, rescheduled, or deleted as a controlled substance under  
22 federal law and notice thereof is given to the department of health and senior services, the  
23 department of health and senior services shall similarly control the substance under sections  
24 195.005 to [195.425] **195.471** after the expiration of thirty days from publication in the federal  
25 register of a final order designating a substance as a controlled substance or rescheduling or  
26 deleting a substance, unless within that thirty-day period, the department of health and senior  
27 services objects to inclusion, rescheduling, or deletion. In that case, the department of health and  
28 senior services shall publish the reasons for objection and afford all interested parties an  
29 opportunity to be heard. At the conclusion of the hearing, the department of health and senior  
30 services shall publish its decision, which shall be final unless altered by statute. Upon  
31 publication of objection to inclusion, rescheduling or deletion under sections 195.005 to  
32 [195.425] **195.471** by the department of health and senior services, control under sections  
33 195.005 to [195.425] **195.471** is stayed as to the substance in question until the department of  
34 health and senior services publishes its decision.

35 5. The department of health and senior services shall exclude any nonnarcotic substance  
36 from a schedule if such substance may, under the federal Food, Drug, and Cosmetic Act and the  
37 law of this state, be lawfully sold over the counter without a prescription.

38 6. The department of health and senior services shall prepare a list of all drugs falling  
39 within the purview of controlled substances. Upon preparation, a copy of the list shall be filed  
40 in the office of the secretary of state.

**195.450. 1. Sections 195.450 to 195.471 shall be known and may be cited as the**  
2 **"Narcotics Control Act".**

3 **2. As used in sections 195.450 to 195.471, the following terms shall mean:**

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

5 **(2) "Department", the department of health and senior services;**

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

8           (a) A hospital, as defined in section 197.020, that distributes such substances for the  
9 purpose of inpatient care or dispenses prescriptions for controlled substances at the time  
10 of discharge from such facility;

11           (b) A practitioner or other authorized person who administers such a substance;  
12 or

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

14           (4) "Patient", a person, sixteen years of age or older, who is the ultimate user of a  
15 drug for whom a prescription is issued or for whom a drug is dispensed, not including a  
16 hospice patient enrolled in a Medicare-certified hospice program who has controlled  
17 substances dispensed to him or her by such hospice program;

18           (5) "Schedule II, III, or IV controlled substance", a controlled substance that is  
19 listed in Schedule II, III, or IV of the schedules provided under this chapter or the  
20 Controlled Substances Act, 21 U.S.C. Section 812.

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

          195.453. 1. The department of health and senior services shall establish and  
2 maintain a program for the monitoring of prescribing and dispensing of all Schedule II,  
3 III, and IV controlled substances by all professionals licensed to prescribe or dispense such  
4 substances in this state. The funding of the narcotics control program shall be subject to  
5 appropriations. In addition to appropriations from the general assembly, the department  
6 may apply for available grants and shall be able to accept other gifts, grants, and donations  
7 to develop and maintain the program.

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

- 11           (1) The pharmacy's Drug Enforcement Administration (DEA) number;
- 12           (2) The date of the dispensation;
- 13           (3) The following, if there is a prescription:
- 14           (a) The prescription number;
- 15           (b) Whether the prescription is new or a refill;
- 16           (c) The prescriber's DEA or National Provider Identifier (NPI) number;
- 17           (d) The date the prescription is issued by the prescriber; and
- 18           (e) The source of payment for the prescription;
- 19           (4) The National Drug Code (NDC) for the drug dispensed;
- 20           (5) The number of days' supply of the drug;
- 21           (6) The quantity dispensed;

22           **(7) The patient's identification number including, but not limited to, any one of the**  
23 **following:**

24           **(a) The patient's driver's license number;**

25           **(b) The patient's government-issued identification number; or**

26           **(c) The patient's insurance cardholder identification number; and**

27           **(8) The patient's name, address, and date of birth.**

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

31           **4. (1) The department may issue a waiver to a dispenser that is unable to submit**  
32 **dispensation information by electronic means. Such waiver may permit the dispenser to**  
33 **submit dispensation information by paper form or other means, provided all information**  
34 **required in subsection 2 of this section is submitted in such alternative format.**

35           **(2) The department may grant an extension to dispensers who are temporarily**  
36 **unable to electronically submit the dispensation information required in subsection 2 of**  
37 **this section in accordance with the time frame established in subsection 3 of this section**  
38 **due to unforeseen circumstances. In cases in which an extension is granted, dispensers**  
39 **shall be responsible for reporting the required data in a subsequent submission.**

40           **5. The department shall reimburse each dispenser for the fees and other direct costs**  
41 **of transmitting the information required by this section.**

42           **6. Dispensation information submitted to the department shall be retained by the**  
43 **department for no longer than five years from the date of submission.**

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

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

8           **3. The department shall review the dispensation information and, if there is**  
9 **reasonable cause to believe a violation of law or breach of professional standards may have**  
10 **occurred, the department shall notify the appropriate law enforcement or professional**  
11 **licensing, certification, or regulatory agency or entity, and provide any dispensation**  
12 **information required for an investigation.**

13           **4. The department may provide data in the narcotics control program to the**  
14 **following persons:**

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

18           **(2) An individual who requests his or her own dispensation information in**  
19 **accordance with state law;**

20           **(3) The state board of pharmacy;**

21           **(4) Any state board charged with regulating a professional who has the authority**  
22 **to prescribe or dispense controlled substances that requests data related to a specific**  
23 **professional under the authority of such board if such board has a current and open**  
24 **investigation into such professional and the data provided is limited to such professional;**

25           **(5) Local, state, and federal law enforcement or prosecutorial officials, both in-state**  
26 **and out-of-state, engaged in the administration, investigation, or enforcement of the laws**  
27 **governing prescription drugs based on a specific case and under a subpoena issued by a**  
28 **court of competent jurisdiction or court order;**

29           **(6) The MO HealthNet division within the department of social services regarding**  
30 **MO HealthNet program recipients;**

31           **(7) A judge or other judicial authority under a subpoena issued by a court of**  
32 **competent jurisdiction or court order; and**

33           **(8) Personnel of the department of health and senior services for the administration**  
34 **and enforcement of sections 195.450 to 195.471.**

35           **5. The department may provide data to public or private entities for statistical,**  
36 **research, or educational purposes after removing information that could be used to identify**  
37 **individual patients, prescribers, dispensers, or persons who received dispensations from**  
38 **dispensers.**

39           **6. No dispensation information submitted to the department shall be used by any**  
40 **local, state, or federal authority to prevent an individual from owning or obtaining a**  
41 **firearm.**

42           **7. Nothing in sections 195.450 to 195.471 shall be construed to require a pharmacist**  
43 **or prescriber to obtain information about a patient from the database. No pharmacist or**  
44 **prescriber shall be held liable for damages to any person in any civil action for injury,**  
45 **death, or loss to person or property on the basis that the pharmacist or prescriber did or**  
46 **did not seek or obtain information from the database.**

47           **8. Any person harmed or damaged by any violation of this section may bring a civil**  
48 **action for damages, as well as injunctive relief, in the circuit court where that person**  
49 **resided at the time of the violation or in the circuit court of Cole County to recover such**  
50 **damages from the department of health and senior services or any persons participating**

51 in such violation. Sovereign immunity shall not be available as a defense for the  
52 department of health and senior services in such an action. In the event the plaintiff  
53 prevails on any count of his or her claim, the plaintiff shall be entitled to recover  
54 reasonable attorney fees from the defendants.

195.459. The department is authorized to contract with any other agency of this  
2 state or any other state with a private vendor, or any state government that currently runs  
3 a narcotics control program. Any contractor shall comply with the provisions regarding  
4 confidentiality of prescription information in section 195.456.

195.462. The department shall promulgate rules setting forth the procedures and  
2 methods of implementing sections 195.450 to 195.471. Any rule or portion of a rule, as that  
3 term is defined in section 536.010, that is created under the authority delegated in this  
4 section shall become effective only if it complies with and is subject to all of the provisions  
5 of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are  
6 nonseverable, and if any of the powers vested with the general assembly pursuant to  
7 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
8 subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
9 proposed or adopted after August 28, 2016, shall be invalid and void.

195.465. 1. A dispenser who knowingly fails to submit dispensation information  
2 to the department as required in sections 195.450 to 195.471 or knowingly submits the  
3 incorrect dispensation information shall be subject to an administrative penalty in the  
4 amount of one thousand dollars for each violation. The penalty shall be assessed through  
5 an order issued by the director of the department. Any person subject to an administrative  
6 penalty may appeal to the administrative hearing commission under the provisions of  
7 chapter 621.

8 2. Any person who unlawfully and knowingly accesses or discloses, or any person  
9 authorized to have prescription or dispensation information under sections 195.450 to  
10 195.471 who knowingly discloses such information in violation of sections 195.450 to  
11 195.471 or knowingly uses such information in a manner and for a purpose in violation of  
12 sections 195.450 to 195.471 is guilty of a class D felony until December 31, 2016, and a class  
13 E felony beginning January 1, 2017.

195.468. 1. The department shall create and implement the following education  
2 courses:

3 (1) An orientation course during the implementation phase of the narcotics control  
4 program established under section 195.453;

5 (2) A course for persons who are authorized to access the dispensation information  
6 but who did not participate in the orientation course; and

7           **(3) A course for persons who are authorized to access the dispensation information**  
8 **but who have violated laws or breached occupational standards involving dispensing,**  
9 **prescribing, and using substances monitored by the narcotics control program established**  
10 **under section 195.453.**

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12 **If appropriate, the department shall develop the content of the education courses described**  
13 **in this subsection.**

14           **2. The department shall, if appropriate:**

15           **(1) Work with associations for impaired professionals to ensure intervention,**  
16 **treatment, and ongoing monitoring and followup; and**

17           **(2) Encourage individual patients who are identified and who have become**  
18 **addicted to substances monitored by the narcotics control program established under**  
19 **section 195.453 to receive addiction treatment.**

**195.471. Under section 23.253 of the Missouri sunset act:**

2           **(1) The provisions of the new program authorized under sections 195.450 to**  
3 **195.471 shall automatically sunset six years after the effective date of sections 195.450 to**  
4 **195.471 unless reauthorized by an act of the general assembly;**

5           **(2) If such program is reauthorized, the program authorized under sections 195.450**  
6 **to 195.471 shall automatically sunset twelve years after the effective date of the**  
7 **reauthorization of sections 195.450 to 195.471; and**

8           **(3) Sections 195.450 to 195.471 shall terminate on September first of the calendar**  
9 **year immediately following the calendar year in which the program authorized under**  
10 **sections 195.450 to 195.471 is sunset.**

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