

SENATE BILL NO. 114—SENATOR HARDY

PREFILED FEBRUARY 1, 2015

Referred to Committee on Health and Human Services

SUMMARY—Makes changes relating to prescriptions for certain controlled substances. (BDR 40-239)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to controlled substances; authorizing certain law enforcement officers and occupational licensing boards to access the database of the computerized program to track prescriptions of controlled substances developed by the State Board of Pharmacy and the Investigation Division of the Department of Public Safety; requiring the Board or the Division, as applicable, to report the suspected misuse of a controlled substance by a patient to the licensing board of each practitioner who has prescribed the controlled substance to the patient; providing immunity from liability to the Board, the Division and their employees for certain actions relating to the collection, maintenance and transmission of information; requiring the Board, the Division or a law enforcement agency to provide notice to a person whose information is accessed by an unauthorized person or for an improper purpose; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires the State Board of Pharmacy and the Investigation
- 2 Division of the Department of Public Safety to develop a computerized program to
- 3 track prescriptions of certain controlled substances that are filled by a pharmacy or
- 4 dispensed by a practitioner registered with the Board. This program must be
- 5 designed to provide information concerning the inappropriate use of controlled
- 6 substances by a particular patient and statistical data relating to the use of
- 7 controlled substances that is not specific to a particular patient. The Board and
- 8 Division use the program to identify any suspected fraudulent or illegal activity



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related to the use or dispensing of controlled substances and are required to report such activity to the appropriate law enforcement agency or occupational licensing board for further investigation. (NRS 453.1545) **Section 1** of this bill requires the Board to allow a law enforcement officer to have Internet access to the database of the program if the employer of the officer approves such access and certifies to the Board that the officer meets certain requirements. The officer is limited to accessing the database to investigate a crime related to prescription drugs. The employer of the officer is required to monitor the officer's use of the database and establish appropriate disciplinary action for any unlawful use of the database. Where no other penalty is provided, existing law makes it a misdemeanor to violate certain provisions relating to controlled substances. (NRS 453.552) **Section 3** of this bill makes that penalty applicable to a violation of **section 1**.

Section 2 of this bill requires that the Board also provide Internet access to the database described above to an occupational licensing board that licenses any practitioner who is authorized to write prescriptions for certain controlled substances. If the Board or the Division obtains information indicating the inappropriate use of a controlled substance by a patient, **section 2** also requires the Board or Division to report the information to the occupational licensing board of each practitioner who has prescribed the controlled substance for the patient. **Section 2** provides immunity from liability for the Board, the Division and their employees for any action relating to the collection, maintenance and transmission of information pursuant to that section. Finally, if the Board, the Division or a law enforcement agency determines that the database has been accessed intentionally by an unauthorized person or for an unauthorized purpose, **section 2** requires the Board, the Division or the law enforcement agency, as applicable, to notify the person whose information was accessed.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the Board shall allow a law enforcement officer to have Internet access to the database of the computerized program developed pursuant to NRS 453.1545 if:

(a) The primary responsibility of the law enforcement officer is to conduct investigations of crimes relating to prescription drugs;

(b) The law enforcement officer has been approved by his or her employer to have such access;

(c) The law enforcement officer has completed the course of training developed pursuant to subsection 7 of NRS 453.1545; and

(d) The employer of the law enforcement officer has submitted the certification required pursuant to subsection 2 to the Board.

2. Before a law enforcement officer may be given access to the database pursuant to subsection 1, the employer of the officer must certify to the Board that the law enforcement officer has been approved to be given such access and meets the requirements



1 of subsection 1. Such certification must be made on a form
2 provided by the Board and renewed annually.

3 3. When a law enforcement officer accesses the database of
4 the computerized program pursuant to this section, the officer
5 must enter a unique user name assigned to the officer and the case
6 number corresponding to the investigation being conducted by the
7 officer.

8 4. A law enforcement officer who is given access to the
9 database of the computerized program pursuant to subsection 1
10 may access the database to investigate a crime related to
11 prescription drugs and for no other purpose.

12 5. The employer of a law enforcement officer who is provided
13 access to the database of the computerized program pursuant to
14 this section shall monitor the use of the database by the law
15 enforcement officer and establish appropriate disciplinary action
16 to take against an officer who violates the provisions of this
17 section.

18 6. The Board or the Division may suspend or terminate
19 access to the database of the computerized program pursuant to
20 this section if a law enforcement officer or his or her employer
21 violates any provision of this section.

22 7. As used in this section, "law enforcement officer" means
23 any person upon whom some or all of the powers of a peace
24 officer are conferred pursuant to NRS 289.150 to 289.360,
25 inclusive.

26 **Sec. 2.** NRS 453.1545 is hereby amended to read as follows:

27 453.1545 1. The Board and the Division shall cooperatively
28 develop a computerized program to track each prescription for a
29 controlled substance listed in schedule II, III or IV that is filled by a
30 pharmacy that is registered with the Board or that is dispensed by
31 a practitioner who is registered with the Board. The program must:

32 (a) Be designed to provide information regarding:

33 (1) The inappropriate use by a patient of controlled
34 substances listed in schedules II, III and IV to pharmacies,
35 practitioners and appropriate state *and local governmental* agencies
36 , *including, without limitation, law enforcement agencies and*
37 *occupational licensing boards*, to prevent the improper or illegal
38 use of those controlled substances; and

39 (2) Statistical data relating to the use of those controlled
40 substances that is not specific to a particular patient.

41 (b) Be administered by the Board, the Investigation Division,
42 the Division of Public and Behavioral Health of the Department and
43 various practitioners, representatives of professional associations for
44 practitioners, representatives of occupational licensing boards and



prosecuting attorneys selected by the Board and the Investigation Division.

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

(d) Include the contact information of each person who elects to access the database of the program pursuant to subsection 2, including, without limitation:

(1) The name of the person;

(2) The physical address of the person;

(3) The telephone number of the person; and

(4) If the person maintains an electronic mail address, the electronic mail address of the person.

2. The Board shall provide Internet access to the database of the program established pursuant to subsection 1 to ~~each~~:

(a) *Each* practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III or IV who:

~~(a)~~ (1) Elects to access the database of the program; and

~~(b)~~ (2) Completes the course of instruction described in subsection 7.

(b) An occupational licensing board that license any practitioner who is authorized to write prescriptions for controlled substances listed in schedule II, III or IV.

3. The Board and the Division must have access to the program established pursuant to subsection 1 to identify any suspected fraudulent or illegal activity related to the dispensing of controlled substances.

4. The Board or the Division shall report any activity it reasonably suspects may ~~be~~:

(a) *Be* fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide the law enforcement agency or occupational licensing board with the relevant information obtained from the program for further investigation.

(b) Indicate the inappropriate use by a patient of a controlled substance to the occupational licensing board of each practitioner who has prescribed the controlled substance to the patient. The occupational licensing board may access the database of the program established pursuant to subsection 1 to determine which practitioners are prescribing the controlled substance to the patient. The occupational licensing board may use this information for any purpose it deems necessary, including, without limitation, alerting a practitioner that a patient may be fraudulently obtaining a controlled substance or determining whether a practitioner is engaged in unlawful or unprofessional



conduct. This paragraph shall not be construed to require an occupational licensing board to conduct an investigation or take any action against a practitioner upon receiving information from the Board or the Division.

5. The Board and the Division may cooperatively enter into a written agreement with an agency of any other state to provide, receive or exchange information obtained by the program with a program established in that state which is substantially similar to the program established pursuant to subsection 1, including, without limitation, providing such state access to the database of the program or transmitting information to and receiving information from such state. Any information provided, received or exchanged as part of an agreement made pursuant to this section may only be used in accordance with the provisions of this chapter.

6. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section and NRS 239.0115, must not be disclosed to any person. That information must be disclosed:

(a) Upon the request of a person about whom the information requested concerns or upon the request on behalf of that person by his or her attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

7. The Board and the Division shall cooperatively develop a course of training for persons who elect to access the database of the program pursuant to subsection 2 and require each such person to complete the course of training before the person is provided with Internet access to the database pursuant to subsection 2.

8. A practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III or IV who ~~acts with reasonable care~~ *makes a good faith effort to comply with applicable laws and regulations* when transmitting to the Board or the Division a report or information required by this section or a regulation adopted pursuant thereto is immune from civil and criminal liability relating to such action.

9. *The Board, the Division and each employee thereof are immune from civil and criminal liability for any action relating to the collection, maintenance and transmission of information pursuant to this section if a good faith effort is made to comply with applicable laws and regulations.*

10. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

11. *If the Board, the Division or a law enforcement agency determines that the database of the program has been*



1 *intentionally accessed by a person or for a purpose not authorized*
2 *pursuant to this section or section 1 of this act, the Board, Division*
3 *or law enforcement agency, as applicable, must notify any person*
4 *whose information was accessed by an unauthorized person or for*
5 *an unauthorized purpose.*

6 **Sec. 3.** NRS 453.552 is hereby amended to read as follows:

7 453.552 1. Any penalty imposed for violation of NRS
8 453.011 to 453.551, inclusive, *and section 1 of this act* is in
9 addition to, and not in lieu of, any civil or administrative penalty or
10 sanction otherwise authorized by law.

11 2. Any violation of the provisions of NRS 453.011 to 453.551,
12 inclusive, *and section 1 of this act* where no other penalty is
13 specifically provided, is a misdemeanor.

