SLS 17RS-105 REENGROSSED

2017 Regular Session

SENATE BILL NO. 96

BY SENATORS JOHNS AND THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTROL DANGER SUBSTANCE. Provides relative to the prescription monitoring program. (gov sig)

1 AN ACT

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To amend and reenact R.S. 40:1007(A), (B), the introductory paragraph of (E), the introductory paragraph of (F), (I), and (J), 1008(A), and 1009(A) and (B) and to enact R.S. 40:1003(15) and 1007(E)(5), (6), and (7), and (K), relative to the prescription monitoring program; to provide for definitions; to provide for access to prescription monitoring information; to provide for immunity; to provide for education and training; to provide for penalties; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1007(A), (B), the introductory paragraph of (E), the introductory paragraph of (F), (I), and (J), 1008(A), and 1009(A) and (B) are hereby amended and reenacted and R.S. 40:1003(15) and 1007(E)(5), (6), and (7), and (K) are hereby enacted to read as follows:

§1003. Definitions

As used in this Part, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

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(15) "Audit trail information" means information submitted or produced regarding requests for prescription monitoring program data that the board or other individual as specified by this Part uses to help monitor compliance with this Part and other applicable statutes, rules, or regulations, provided however, that audit trail information shall not include any information produced or requested by the Louisiana legislative auditor.

* * *

§1007. Access to prescription monitoring information and audit trail information

A. Except as provided in Subsections C, D, E, F, G, H, and I of this Section, prescription monitoring information submitted to the board <u>and audit trail</u> <u>information</u> shall be protected health information, not subject to public or open records law, including but not limited to R.S. 44:1 et seq., and not subject to disclosure. Prescription monitoring information <u>and audit trail information</u> shall not be available for civil subpoena from the board nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Notwithstanding this provision, law enforcement and professional licensing, certification, or regulatory agencies may utilize prescription monitoring information <u>and audit trail information</u> in the course of any investigation and subsequent criminal and administrative proceedings, but only in accordance with federal and state law and the requirements of this Part.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained, as well as audit trail information, is not disclosed to persons or entities except as in Subsections C, D, E, F, G, H, and I, and J of this Section.

* * *

E. The following persons, after successful completion of the educational courses identified in R.S. 40:1008, may access prescription monitoring information at no cost and in the same or similar manner, and for the same or similar purposes,

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SB NO. 96 1 as those persons are authorized to access similar protected health information under 2 federal and state law and regulation: 3 (5) A medical examiner or coroner, or a delegate thereof, for the purpose 4 5 of investigating an individual's death. (6) A licensed substance abuse addiction counselor providing services as 6 7 part of a state licensed substance abuse addiction treatment program. 8 (7) A probation or parole officer for the purpose of monitoring an 9 offender's compliance with participation in a drug diversion program or with 10 other conditions of probation or parole related to monitored drugs. 11 F. The board may provide a report containing prescription monitoring information upon application of local, state, out-of-state, and federal law 12 13 enforcement or prosecutorial officials, including judicially supervised specialty courts within the criminal justice system that are authorized by the Louisiana 14 15 Supreme Court, engaged in the administration, investigation, or enforcement of the 16 laws governing controlled substances or other drugs of concern in compliance with and as limited by the relevant requirements of any of the following: 17 18 19 I. The board may provide prescription monitoring information to an 20 individual who requests his personal prescription monitoring information in 21 accordance with procedures established by board regulation. the following in 22 accordance with procedures established by board regulation: 23 (1) An individual who requests his personal prescription monitoring 24 information. 25 (2) A parent, legal guardian, or legal health care agent, for the purpose of reviewing the history of dispensed monitored drugs to a child or an individual 26 27 for whom the agent makes health care decisions, to the extent consistent with

(3) An executor of a will, or a court-appointed succession representative

federal and state confidentiality laws and regulations.

2 drugs to a deceased individual. J. The board and the advisory council shall be immune from civil liability 3 arising from inaccuracy of any of the information submitted to the board pursuant 4 5 to this Part. The board may disclose audit trail information to individuals identified in Paragraph (E)(2) and Subsections F and I of this Section for use in 6 7 an active investigation of an individual who submitted requests for prescription 8 monitoring information. 9 K.(1) The board and advisory council shall not be subject to civil 10 liability, administrative action, or other legal or equitable relief for the: 11 (a) Failure to possess prescription monitoring information that was not 12 reported to the board. 13 (b) Release of prescription monitoring information or audit trail 14 information that was factually incorrect. (c) Release of prescription monitoring information or audit trail 15 16 information to the wrong person or entity. (d) Unlawful access to prescription monitoring information by an 17 individual, or unlawful disclosure or use of prescription monitoring information 18 19 by an individual who requested and received prescription monitoring 20 information pursuant to this Section. 21 (2) A dispenser or reporting agent shall not be subject to civil liability, 22 administrative action, or other legal or equitable relief for reporting prescription monitoring information to the board. 23 24 (3) A prescriber, dispenser, or other individual, agency, or entity in proper possession of prescription monitoring information or audit trail 25 information pursuant to this Part shall not be subject to civil liability, 26 27 administrative action, or other legal or equitable relief for accessing, using, or 28 disclosing prescription monitoring information or audit trail information 29 pursuant to the provisions of this Section.

of an estate, for the purpose of reviewing the history of dispensed monitored

1	§1008. Education and treatment
2	A. The board shall, in consultation with and upon the recommendation of the
3	advisory council, implement the following education courses:
4	(1) An orientation course during the implementation phase of the prescription
5	monitoring program.
6	(2) A course for persons who are authorized to access the prescription
7	monitoring information, but who did not participate in the orientation course.
8	(3) A course for persons who are authorized to access the prescription
9	monitoring information, but who have violated the laws or breached occupational
10	standards involving the prescribing, dispensing, or use of any controlled substances
11	or drugs monitored by the prescription monitoring program.
12	(4)(2) A continuing education course for health care providers or
13	professionals on prescribing practices, pharmacology, and the identification,
14	treatment, and referral of a patient addicted to or abusing controlled substances or
15	drugs monitored by the prescription monitoring program.
16	* * *
17	§1009. Unlawful acts and penalties
18	A. A dispenser who fails to submit prescription monitoring information to the
19	board as required by this Part, or who fails to correct or amend data after
20	notification by the board, shall be referred to the appropriate professional licensing,
21	certification, or regulatory agency for administrative sanctions as deemed
22	appropriate by that agency.
23	B. A person or entity authorized to possess prescription monitoring
24	information pursuant to this Part who knowingly accesses or discloses such
25	information in violation of this Part shall be referred to the appropriate professional
26	licensing, certification, or regulatory agency for administrative sanctions as deemed
27	appropriate by that agency and may, upon criminal conviction, be imprisoned, with
28	or without hard labor, for not more than five years, and in addition, may be fined not

more than five thousand dollars.

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Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument was prepared by Christine Arbo Peck. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl M. Serrett.

DIGEST

SB 96 Reengrossed

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2017 Regular Session

Johns

<u>Present law</u> provides for access to prescription monitoring information.

Proposed law establishes a definition for "audit trail information".

<u>Proposed law</u> provides for access to prescription monitoring information and audit trail information.

<u>Present law</u> provides statutory authority for certain specific individuals to have access to prescription monitoring program information including persons authorized to prescribe or dispense controlled dangerous substances, designated representatives from health professional licensing boards that regulate prescribers and dispensers, designated representatives from Louisiana Medicaid, and the designated vendor managing the prescription monitoring program for the Board of Pharmacy.

<u>Proposed law</u> adds medical examiners, coroners, licensed substance abuse addiction counselors, and probation and parole officers to those who may access prescription monitoring program information in certain circumstances.

<u>Proposed law</u> adds judicially supervised specialty courts within the criminal justice system that are authorized by the Louisiana Supreme Court to the list of law enforcement and judicial entities that may obtain limited data in report form from the prescription monitoring program.

<u>Proposed law</u> provides that the board may provide prescription monitoring program information in limited circumstances to individuals, parents, legal guardians, legal health care agents, and executors of a will or a court-appointed succession representative of an estate.

<u>Proposed law</u> provides that audit trail information may be disclosed to certain individuals in the course of an investigation.

<u>Present law</u> provides a limitation of liability to the board and advisory council arising from inaccuracy of any information submitted to the board.

<u>Proposed law</u> expands and clarifies the limitation of liability to include failure to possess prescription monitoring information that was not reported to the board, release of information that was factually incorrect and release of information to the wrong person.

<u>Present law</u> provides for an orientation course during implementation of the prescription monitoring program and a course for those who missed orientation.

<u>Proposed law</u> repeals references to orientation training but retains other trainings on prescribing practices.

<u>Present law</u> provides penalties for a dispenser who fails to submit prescription monitoring information to the board and who knowingly discloses prescription monitoring information in violation of the law.

<u>Proposed law</u> expands the penalties to also include instances where a dispenser fails to correct or amend data after notification by the board and where he knowingly accesses prescription monitoring information in violation of the law.

Effective upon signature of the governor or upon lapse of gubernatorial action.

(Amends R.S. 40:1007(A), (B), (E)(intro para), (F)(intro para), (I), and (J), 1008(A), and 1009(A) and (B); adds R.S. 40:1003(15) and 1007(E)(5), (6), and (7), and (K))

Summary of Amendments Adopted by Senate

<u>Committee Amendments Proposed by Senate Committee on Health and Welfare to</u> the original bill

- 1. Provides that audit trail information shall not include any information produced or requested by the Louisiana legislative auditor.
- 2. Provides that judicially supervised specialty courts within the criminal justice system that are authorized by the Louisiana Supreme Court are included in the list of law enforcement and judicial entities that may obtain limited data in report form from the prescription monitoring program.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

- 1. Adds a court-appointed succession representative of an estate to the list of individuals that the board may provide limited data to on the prescription monitoring program.
- 2. Makes Legislative Bureau technical amendments.