

HOUSE BILL 954

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 53,
Chapter 10, Part 3, relative to controlled
substance database.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 53-10-302, is amended by adding a new appropriately designated subdivision thereto:

() "Law enforcement personnel" means agents of the Tennessee bureau of investigation, agents of a judicial district drug task force, and certified law enforcement officers certified pursuant to § 38-8-107;

SECTION 2. Tennessee Code Annotated, Section 53-10-304, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c) The purpose of the database is to assist in research, statistical analysis, criminal investigations, enforcement of state or federal laws involving controlled substances, and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse, by collecting and maintaining data as described in this part regarding all controlled substances in Schedules II, III and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse.

SECTION 3. Tennessee Code Annotated, Section 53-10-306, is amended by deleting the section in its entirety and substituting instead the following:

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for

in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part:

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or department of health personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

(3) A licensed health care practitioner having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current patient of the practitioner, to whom the practitioner has prescribed or dispensed or is prescribing or dispensing or considering prescribing or dispensing any controlled substance;

(4) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist has dispensed, is dispensing or considering dispensing any controlled substance;

(5) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:

(A) The office of inspector general;

(B) The medicaid fraud control unit, and

(C) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy; or

(6) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances; provided further, that any law enforcement personnel receiving information from the database under this part shall comply with the following requirements:

(A) The person requesting access to the database shall pre-register with the board of pharmacy, by directing an application to the board in writing for database access;

(B) The board, as part of its duties to maintain the database pursuant to § 53-10-305(c), shall be responsible for approving all applications;

(C) Applications directed to the board by agents with a judicial district drug task force or by certified law enforcement officers shall be pre-approved by the applicant's supervisor, who shall be either the chief of police, county sheriff or the judicial district drug task force director, and the district attorney general of the judicial district in which the applicant has jurisdiction;

(D) Applications directed to the board by an agent of the TBI shall be pre-approved by the agent's immediate supervisor and division head; and

(E) An application submitted by law enforcement personnel shall include, but not be limited to the:

(i) Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number; and

(ii) Signatures of the applicant, the applicants approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or TBI division head.

(b) When obtaining information from the database, the board shall require law enforcement personnel to enter a case number as part of the access procedures to the database. The case number entered shall correspond with an official investigation involving controlled substances and the person searched should directly relate to the investigation.

(c) Law enforcement agencies with personnel who have access to the database shall be required to remit an administrative fee in an amount consistent with the administrative fee remitted by pharmacies and medical prescribers.

(d) Law enforcement personnel with access to the database shall have their identifying application information that was submitted pursuant to subdivision (a)(6)(E)(i) verified by the board on an annual basis. It shall be the responsibility of each agency or department to immediately notify the board of any changes in the information submitted in such application.

(e) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information and may be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.

(f) To ensure the privacy and confidentiality of patient records, information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the

information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.

(g) Any information disseminated pursuant to subdivisions (a)(1)-(6) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.

(h) Any licensed practitioner or pharmacist receiving patient-specific information pursuant to subdivision (a)(1), (a)(2), (a)(3) or (a)(4) shall not disclose the information to any person other than:

(1) The patient to whom the information relates and then only for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment;

(2) Other dispensers identified by the information and then only for the purposes of verifying the accuracy of the information; and

(3) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances or for the purpose of assuring compliance by license practitioners of the reporting requirements pursuant to § 53-10-309.

(i)

(1) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(2) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

(3) Intentional unauthorized use or disclosure of database information by law enforcement personnel shall be punishable as a Class D felony.

(4) Any law enforcement personnel charged with a violation of this subsection (i) shall have such person's access to the database suspended pending final disposition of any criminal prosecution. Any law enforcement personnel found guilty of a violation of this subsection (i) shall have such person's access to the database permanently suspended.

SECTION 4. This act shall take effect July 1, 2011, the public welfare requiring it.