

Amendment No. 591

Senate Amendment to Senate Bill No. 59 First Reprint	(BDR 40-386)
Proposed by: Senator Ford	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date			
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/RBL



Date: 4/24/2017

S.B. No. 59—Revises provisions relating to the program to monitor prescriptions for certain controlled substances. (BDR 40-386)



SENATE BILL NO. 59—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the program to monitor prescriptions for certain controlled substances. (BDR 40-386)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; requiring the uploading of certain information to the database of the program developed by the State Board of Pharmacy and the Investigation Division of the Department of Public Safety to monitor prescriptions for certain controlled substances; authorizing a coroner, medical examiner or deputy thereof who meets certain requirements to access the database of the program; expanding the scope of the program to include certain additional controlled substances; requiring a practitioner to obtain a patient utilization report before prescribing certain controlled substances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Pharmacy and the Investigation Division of the Department of Public Safety to develop a computerized program to track each prescription for a controlled substance listed in schedule II, III or IV filled by a pharmacy or dispensed by a practitioner registered with the Board. The program is required to be designed to provide information regarding: (1) the inappropriate use by a patient of certain controlled substances to pharmacies, practitioners and appropriate state and local governmental agencies to prevent the improper or illegal use of such controlled substances; and (2) statistical data relating to the use of those controlled substances. (NRS 453.162) **Sections 2-3** of this bill expand the scope of the program to also track each prescription for a controlled substance listed in schedule V.

Existing law requires the Board to allow certain law enforcement officers to have Internet access to the database of the program only for the purpose of investigating a crime related to prescription drugs. (NRS 453.165)

Section 1.3 of this bill requires a law enforcement officer who encounters certain situations involving prescribed controlled substances or who receives a report of a stolen prescription for a controlled substance while acting in his or her official capacity and in the regular course of an investigation to report certain information to his or her employer. **Section 1.3** requires a coroner, medical examiner or deputy thereof who determines, as the result of an

18 investigation of the death of a person, that the person died as the result of using a prescribed
19 controlled substance, to upload certain information to the database of the program or, if the
20 coroner, medical examiner or deputy thereof does not have such access, report such
21 information to a coroner, medical examiner or deputy thereof who has access to the database.
22 **Section 1.3** also requires the employer of the law enforcement officer or a coroner, medical
23 examiner or deputy thereof to upload such reported information to the database of the program
24 as soon as practicable after receiving the information except where the employer of a law
25 enforcement officer determines that uploading the information will interfere with an active
26 criminal investigation. In that case, the employer may postpone uploading the information
27 until after the conclusion of the investigation. **Section 1.3** further provides that each law
28 enforcement officer, employer of a law enforcement officer, coroner, medical examiner or
29 deputy of a coroner or medical examiner who makes a good faith effort to comply with
30 **section 1.3**, or a regulation adopted pursuant thereto, is immune from civil and criminal
31 liability for any act or omission relating to the transmission of information pursuant to **section**
32 **1.3**. **Section 1.6** of this bill authorizes a coroner, medical examiner or deputy thereof who
33 meets certain requirements to access the database of the computerized program to: (1) upload
34 information concerning the death of a person due to using a prescribed controlled substance;
35 or (2) investigate the death of a person.

36 Existing law requires a practitioner to obtain a patient utilization report from the
37 computerized program before initiating a prescription for a controlled substance listed in
38 schedule II, III or IV. **Section 5.5** of this bill additionally requires a practitioner to obtain such
39 a report before initiating a prescription for an opioid that is a controlled substance listed in
40 schedule V.

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

1 **Section 1.** Chapter 453 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 1.3 and 1.6 of this act.

3 **Sec. 1.3.** 1. *If a law enforcement officer, while acting in his or her official*
4 *capacity and in the regular course of an investigation:*

5 (a) *Encounters a situation in which the law enforcement officer has*
6 *~~reasonable suspicion~~ probable cause to believe that a violation of this chapter*
7 *involving a prescription for a controlled substance is occurring or has occurred;*

8 (b) *Encounters a deceased person who the law enforcement officer believes*
9 *died as a result of using a prescribed controlled substance; or*

10 (c) *Receives a report of a stolen prescription for a controlled substance,*
11 *↪ the law enforcement officer shall report to his or her employer the information*
12 *required by subsection 3.*

13 2. *A coroner, medical examiner or deputy thereof who, as the result of an*
14 *investigation into the cause of a death determines that a person died as the result*
15 *of using a prescribed controlled substance, shall:*

16 (a) *If the coroner, medical examiner or deputy thereof has access to the*
17 *database of the computerized program developed pursuant to NRS 453.162,*
18 *upload the information required by subsection 3 as soon as practicable; or*

19 (b) *If the coroner, medical examiner or deputy thereof does not have access*
20 *to the database of the computerized program developed pursuant to NRS 453.162,*
21 *report the information to a coroner, medical examiner or deputy thereof who has*
22 *such access.*

23 3. *A law enforcement officer or a coroner, medical examiner or deputy*
24 *thereof who is required to report or upload, as applicable, information pursuant*
25 *to subsection 1 or 2 shall report or upload, as applicable, the following*
26 *information, to the extent such information is available and applicable:*

27 (a) *The name of the person who:*

1 (1) ~~Is suspected of violating~~ believed to have violated this chapter;
2 (2) Is believed to have experienced an overdose as a result of using a
3 prescribed controlled substance;
4 (3) Is believed to have died as a result of using a prescribed controlled
5 substance; or

6 (4) Filed the report of a stolen prescription for a controlled substance.

7 (b) The name of the person to whom the controlled substance involved in an
8 event described in subsection 1 or 2 is or was prescribed.

9 (c) If a prescription container for the controlled substance is found in the
10 vicinity of the location of an event described in paragraph (a) or (b) of subsection
11 1 or subsection 2 or if a prescription for a controlled substance is reported stolen:

12 (1) The name of the prescribing practitioner;

13 (2) The prescription number; and

14 (3) The name of the controlled substance as it appears on the
15 prescription container or prescription order.

16 4. Except as otherwise provided in subsection 5, an employer of a law
17 enforcement officer or a coroner, medical examiner or deputy thereof who
18 receives a report pursuant to subsection 1 or 2 shall, as soon as practicable after
19 receiving that report, upload to the database of the program established pursuant
20 to NRS 453.162 notice of the occurrence of an event described in subsection 1 or
21 2, as applicable, and the information received pursuant to subsection 3. The
22 employer of a law enforcement officer or a coroner, medical examiner or deputy
23 thereof shall ensure that only a person who is authorized to access the database
24 of the program pursuant to NRS 453.165 or section 1.6 of this act uploads such
25 information.

26 5. If an employer of a law enforcement officer determines that uploading
27 any information to the database of the program pursuant to subsection 4 will
28 interfere with an active criminal investigation, the employer may postpone
29 uploading such information until after the conclusion of the investigation.

30 6. Each law enforcement officer or employer of a law enforcement officer
31 and each coroner, medical examiner and deputy thereof who makes a good faith
32 effort to comply with this section, or a regulation adopted pursuant thereto, is
33 immune from civil and criminal liability for any act or omission relating to the
34 transmission of information pursuant to this section.

35 7. As used in this section, "law enforcement officer" has the meaning
36 ascribed to it in NRS 453.165.

37 **Sec. 1.6.** 1. Except as otherwise provided in this section, the Board shall
38 allow:

39 (a) A coroner or medical examiner to have Internet access to the database of
40 the computerized program developed pursuant to NRS 453.162 if the coroner or
41 medical examiner has completed the course of training developed pursuant to
42 subsection 4 of NRS 453.164.

43 (b) A deputy of a coroner or medical examiner to have Internet access to the
44 database of the computerized program developed pursuant to NRS 453.162 if:

45 (1) The deputy has completed the course of training developed pursuant
46 to subsection 4 of NRS 453.164; and

47 (2) The coroner or medical examiner who employs the deputy has
48 submitted the certification required pursuant to subsection 2 to the Board.

49 2. Before the deputy of a coroner or medical examiner may be given access
50 to the database pursuant to subsection 1, the coroner or medical examiner who
51 employs the deputy must certify to the Board that the deputy has been approved to
52 have such access and meets the requirements of subsection 1. Such certification
53 must be made on a form provided by the Board and renewed annually.

1 3. *When a coroner, medical examiner or deputy thereof accesses the*
2 *database of the computerized program pursuant to this section, the officer must*
3 *enter a unique user name assigned to the coroner, medical examiner or deputy*
4 *thereof and, if applicable, the case number corresponding to the investigation*
5 *being conducted by the coroner, medical examiner or deputy thereof.*

6 4. *A coroner, medical examiner or deputy thereof who has access to the*
7 *database of the computerized program pursuant to subsection 1 may access the*
8 *database only to:*

9 (a) *Investigate the death of a person; or*

10 (b) *Upload information to the database pursuant to section 1.3 of this act.*

11 5. *The Board or the Division may suspend or terminate access to the*
12 *database of the computerized program pursuant to this section if a coroner,*
13 *medical examiner or deputy thereof violates any provision of this section.*

14 **Sec. 2.** NRS 453.162 is hereby amended to read as follows:

15 453.162 1. The Board and the Division shall cooperatively develop a
16 computerized program to track each prescription for a controlled substance listed in
17 schedule II, III ~~for~~, IV *or V* that is filled by a pharmacy that is registered with the
18 Board or that is dispensed by a practitioner who is registered with the Board. The
19 program must:

20 (a) Be designed to provide information regarding:

21 (1) The inappropriate use by a patient of controlled substances listed in
22 schedules II, III ~~and~~, IV *and V* to pharmacies, practitioners and appropriate state
23 and local governmental agencies, including, without limitation, law enforcement
24 agencies and occupational licensing boards, to prevent the improper or illegal use
25 of those controlled substances; and

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

28 (b) Be administered by the Board, the Investigation Division, the Division of
29 Public and Behavioral Health of the Department and various practitioners,
30 representatives of professional associations for practitioners, representatives of
31 occupational licensing boards and prosecuting attorneys selected by the Board and
32 the Investigation Division.

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

35 (d) Include the contact information of each person who is required to access
36 the database of the program pursuant to NRS 453.164, including, without
37 limitation:

38 (1) The name of the person;

39 (2) The physical address of the person;

40 (3) The telephone number of the person; and

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

43 (e) To the extent that money is available, include:

44 (1) A means by which a practitioner may designate in the database of the
45 program that he or she suspects that a patient is seeking a prescription for a
46 controlled substance for an improper or illegal purpose. If the Board reviews the
47 designation and determines that such a designation is warranted, the Board shall
48 inform pharmacies, practitioners and appropriate state agencies that the patient is
49 seeking a prescription for a controlled substance for an improper or illegal purpose
50 as described in subparagraph (1) of paragraph (a).

51 (2) The ability to integrate the records of patients in the database of the
52 program with the electronic health records of practitioners.

1 2. The Board, the Division and each employee thereof are immune from civil
2 and criminal liability for any action relating to the collection, maintenance and
3 transmission of information pursuant to this section and NRS 453.163 and 453.164
4 *and sections 1.3 and 1.6 of this act* if a good faith effort is made to comply with
5 applicable laws and regulations.

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

9 **Sec. 2.5.** NRS 453.163 is hereby amended to read as follows:

10 453.163 1. Except as otherwise provided in this subsection, each person
11 registered pursuant to this chapter to dispense a controlled substance listed in
12 schedule II, III ~~III~~, IV *or V* shall, not later than the end of the next business day
13 after dispensing a controlled substance, upload to the database of the program
14 established pursuant to NRS 453.162 the information described in paragraph (d) of
15 subsection 1 of NRS 453.162. The requirements of this subsection do not apply if
16 the controlled substance is administered directly by a practitioner to a patient in a
17 health care facility, as defined in NRS 439.960, a child who is a resident in a child
18 care facility, as defined in NRS 432A.024, or a prisoner, as defined in NRS
19 208.085. The Board shall establish by regulation and impose administrative
20 penalties for the failure to upload information pursuant to this subsection.

21 2. The Board and the Division may cooperatively enter into a written
22 agreement with an agency of any other state to provide, receive or exchange
23 information obtained by the program with a program established in that state which
24 is substantially similar to the program established pursuant to NRS 453.162,
25 including, without limitation, providing such state access to the database of the
26 program or transmitting information to and receiving information from such state.
27 Any information provided, received or exchanged as part of an agreement made
28 pursuant to this section may only be used in accordance with the provisions of this
29 chapter.

30 3. A practitioner who is authorized to write prescriptions for and each person
31 who is authorized to dispense controlled substances listed in schedule II, III ~~III~~,
32 IV *or V* who makes a good faith effort to comply with applicable laws and
33 regulations when transmitting to the Board or the Division a report or information
34 required by this section or NRS 453.162 or 453.164, or a regulation adopted
35 pursuant thereto, is immune from civil and criminal liability relating to such action.

36 **Sec. 3.** NRS 453.164 is hereby amended to read as follows:

37 453.164 1. The Board shall provide Internet access to the database of the
38 program established pursuant to NRS 453.162 to an occupational licensing board
39 that licenses any practitioner who is authorized to write prescriptions for controlled
40 substances listed in schedule II, III ~~III~~, IV ~~III~~ *or V*.

41 2. The Board and the Division must have access to the program established
42 pursuant to NRS 453.162 to identify any suspected fraudulent or illegal activity
43 related to the dispensing of controlled substances.

44 3. The Board or the Division shall report any activity it reasonably suspects
45 may:

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

50 (b) Indicate the inappropriate use by a patient of a controlled substance to the
51 occupational licensing board of each practitioner who has prescribed the controlled
52 substance to the patient. The occupational licensing board may access the database
53 of the program established pursuant to NRS 453.162 to determine which

1 practitioners are prescribing the controlled substance to the patient. The
2 occupational licensing board may use this information for any purpose it deems
3 necessary, including, without limitation, alerting a practitioner that a patient may be
4 fraudulently obtaining a controlled substance or determining whether a practitioner
5 is engaged in unlawful or unprofessional conduct. This paragraph shall not be
6 construed to require an occupational licensing board to conduct an investigation or
7 take any action against a practitioner upon receiving information from the Board or
8 the Division.

9 4. The Board and the Division shall cooperatively develop a course of
10 training for persons who are required *or authorized* to receive access to the
11 database of the program pursuant to subsection 6 *or NRS 453.165 and section 1.6*
12 *of this act* and require each such person to complete the course of training before
13 the person is provided with Internet access to the database.

14 5. Each practitioner who is authorized to write prescriptions for and each
15 person who is authorized to dispense controlled substances listed in schedule II, III
16 ~~IV~~, IV *or V* shall complete the course of instruction described in subsection 4.
17 The Board shall provide Internet access to the database to each such practitioner or
18 other person who completes the course of instruction.

19 6. Each practitioner who is authorized to write prescriptions for controlled
20 substances listed in schedule II, III ~~IV~~, IV *or V* shall, to the extent the program
21 allows, access the database of the program established pursuant to NRS 453.162 at
22 least once each 6 months to:

23 (a) Review the information concerning the practitioner that is listed in the
24 database and notify the Board if any such information is not correct; and

25 (b) Verify to the Board that he or she continues to have access to and has
26 accessed the database as required by this subsection.

27 7. Information obtained from the program relating to a practitioner or a
28 patient is confidential and, except as otherwise provided by this section and NRS
29 239.0115, 453.162 and 453.163, must not be disclosed to any person. That
30 information must be disclosed:

31 (a) Upon ~~the~~ a request ~~that~~ *made on a notarized form prescribed by the*
32 *Board* by a person about whom the information requested concerns or upon ~~that~~
33 *such a* request on behalf of that person by his or her attorney; or

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

35 8. If the Board, the Division or a law enforcement agency determines that the
36 database of the program has been intentionally accessed by a person or for a
37 purpose not authorized pursuant to NRS 453.162 to 453.165, inclusive, *and*
38 *sections 1.3 and 1.6 of this act*, the Board, Division or law enforcement agency, as
39 applicable, must notify any person whose information was accessed by an
40 unauthorized person or for an unauthorized purpose.

41 **Sec. 4.** NRS 453.165 is hereby amended to read as follows:

42 453.165 1. Except as otherwise provided in this section, the Board shall
43 allow a law enforcement officer to have Internet access to the database of the
44 computerized program developed pursuant to NRS 453.162 if:

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

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

49 (c) The law enforcement officer has completed the course of training
50 developed pursuant to subsection 4 of NRS 453.164; and

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

1 2. Before a law enforcement officer may be given access to the database
2 pursuant to subsection 1, the employer of the officer must certify to the Board that
3 the law enforcement officer has been approved to be given such access and meets
4 the requirements of subsection 1. Such certification must be made on a form
5 provided by the Board and renewed annually.

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

10 4. A law enforcement officer who is given access to the database of the
11 computerized program pursuant to subsection 1 may access the database *for no*
12 *other purpose than to investigate* :

13 (a) *Investigate* a crime related to prescription drugs ~~and for no other purpose.~~
14 ; or

15 (b) *Upload information to the database pursuant to section 1.3 of this act.*

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

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

24 7. As used in this section, "law enforcement officer" means any person upon
25 whom some or all of the powers of a peace officer are conferred pursuant to NRS
26 289.150 to 289.360, inclusive.

27 **Sec. 5.** NRS 453.552 is hereby amended to read as follows:

28 453.552 1. Any penalty imposed for violation of NRS 453.011 to 453.551,
29 inclusive, *and sections 1.3 and 1.6 of this act*, is in addition to, and not in lieu of,
30 any civil or administrative penalty or sanction otherwise authorized by law.

31 2. Any violation of the provisions of NRS 453.011 to 453.551, inclusive, *and*
32 *sections 1.3 and 1.6 of this act*, where no other penalty is specifically provided, is a
33 misdemeanor.

34 **Sec. 5.5.** NRS 639.23507 is hereby amended to read as follows:

35 639.23507 1. A practitioner shall, before initiating a prescription for a
36 controlled substance listed in schedule II, III or IV ~~H~~ *or an opioid that is a*
37 *controlled substance listed in schedule V*, obtain a patient utilization report
38 regarding the patient from the computerized program established by the Board and
39 the Investigation Division of the Department of Public Safety pursuant to NRS
40 453.162 if:

41 (a) The patient is a new patient of the practitioner; or

42 (b) The prescription is for more than 7 days and is part of a new course of
43 treatment for the patient.

44 ↪ The practitioner shall review the patient utilization report to assess whether the
45 prescription for the controlled substance is medically necessary.

46 2. If a practitioner who attempts to obtain a patient utilization report as
47 required by subsection 1 fails to do so because the computerized program is
48 unresponsive or otherwise unavailable, the practitioner:

49 (a) Shall be deemed to have complied with subsection 1 if the practitioner
50 documents the attempt and failure in the medical record of the patient.

51 (b) Is not liable for the failure.

52 3. The Board shall adopt regulations to provide alternative methods of
53 compliance with subsection 1 for a physician while he or she is providing service in

1 a hospital emergency department. The regulations must include, without limitation,
2 provisions that allow a hospital to designate members of hospital staff to act as
3 delegates for the purposes of accessing the database of the computerized program
4 and obtaining patient utilization reports from the computerized program on behalf
5 of such a physician.

6 4. A practitioner who violates subsection 1:

7 (a) Is not guilty of a misdemeanor.

8 (b) May be subject to professional discipline if the appropriate professional
9 licensing board determines that the practitioner's violation was intentional.

10 5. As used in this section, "initiating a prescription" means originating a new
11 prescription for a new patient of a practitioner or originating a new prescription to
12 begin a new course of treatment for an existing patient of a practitioner. The term
13 does not include any act concerning an ongoing prescription that is written to
14 continue a course of treatment for an existing patient of a practitioner.

15 **Sec. 6.** This act becomes effective on July 1, 2017.