

SENATE BILL No. 1245

November 29, 2018, Introduced by Senator SHIRKEY and referred to the Committee on Michigan Competitiveness.

A bill to provide for the establishment of policies and promulgation of rules governing access to and use of certain controlled substances data from the department of state police; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "law
2 enforcement access to Michigan automated prescription system data
3 act".

4 Sec. 3. As used in this act:

5 (a) "Application program interface" means the application

1 program interface described in section 7333a of the public health
2 code, 1978 PA 368, MCL 333.7333a.

3 (b) "Data" means data submitted for purposes of the electronic
4 system for monitoring schedule 2, 3, 4, and 5 controlled substances
5 under section 7333a of the public health code, 1978 PA 368, MCL
6 333.7333a.

7 (c) "Department" means the department of state police.

8 (d) "Law enforcement official" means a federal, state, or
9 municipal law enforcement officer or a prosecuting attorney.

10 Sec. 5. (1) Upon receiving data from the department of
11 licensing and regulatory affairs through the application program
12 interface, the department shall do all of the following:

13 (a) Ensure that the data are used only by or on behalf of law
14 enforcement officials and only for the purposes described in
15 subsection (2).

16 (b) Establish policies and promulgate rules governing the
17 security of the data. The policies and rules must include, but are
18 not limited to, all of the following:

19 (i) Ensure that direct access to the application program
20 interface is made available only to individuals employed by the
21 department who are responsible for maintaining the data and
22 responsible for responding to requests for data from law
23 enforcement officials.

24 (ii) Establish a procedure to address inappropriate use of
25 data by the individuals described in subparagraph (i).

26 (c) Not use, sell, divulge, or repurpose the data for any
27 purpose other than those described in this act.

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1 (d) Provide to the department of licensing and regulatory
2 affairs notice of a security breach of the data within 24 hours
3 after discovering the breach and, within 5 days of discovering the
4 security breach, provide the department of licensing and regulatory
5 affairs with a written description of the source of the security
6 breach and how the department resolved the security breach.

7 (2) The department may provide data obtained through the
8 application program interface to all of the following:

9 (a) A law enforcement official if the data is requested for
10 drug-related criminal investigatory or evidentiary purposes to
11 assist in the enforcement of the laws of this state or the United
12 States relating to drugs.

13 (b) To a law enforcement official who is the holder of a
14 search warrant or subpoena properly issued for the data.

15 (3) The attorney general or his or her designee, a prosecuting
16 attorney, or the court, in a criminal case, may disclose to the
17 defendant or the defendant's attorney data pertaining to the
18 defendant that was obtained under this act.

19 (4) The department, all law enforcement officials, and all
20 officers of the court, in using the data obtained under this act
21 for investigative or prosecution purposes, shall consider the
22 nature of the prescriber's and dispenser's practice and the
23 condition for which the patient is being treated. <<Law enforcement
officials and officers of the court who receive data under this act shall
consult with an appropriate clinician to establish a uniform process for
considering the nature of a prescriber's or dispenser's practice and the
condition for which a patient is being treated. The consultation process
described in this subsection must be in place before pursuing an
investigation of a prescriber or dispenser.>>

24 (5) The data and any report containing any patient identifiers
25 obtained from the data obtained under this act are not public
26 records and are not subject to disclosure under the freedom of
27 information act, 1976 PA 442, MCL 15.231 to 15.246.

1 Sec. 7. (1) A person shall not do any of the following:

2 (a) Access, use, or disclose data obtained under this act for
3 personal use or gain.

4 (b) Disclose data obtained under this act in a manner that is
5 not authorized by law or rule.

6 (2) A person who intentionally violates this section is guilty
7 of a crime as follows:

8 (a) For a first offense, the person is guilty of a misdemeanor
9 punishable by imprisonment for not more than 93 days or a fine of
10 not more than \$500.00, or both.

11 (b) For a second or subsequent offense, the person is guilty
12 of a felony punishable by imprisonment for not more than 4 years or
13 a fine of not more than \$2,000.00, or both.

14 Sec. 9. The department may promulgate rules to implement this
15 act.

16 Enacting section 1. This act takes effect 90 days after the
17 date it is enacted into law.

18 Enacting section 2. This act does not take effect unless
19 Senate Bill No. 1247 of
20 the 99th Legislature is enacted into law.