AMENDED

May 9, 2017

**S. 179**

Introduced by Senators Hutto and Hembree

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Read the first time April 18, 2017.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 53, TITLE 44 SO AS TO PROVIDE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG AND ALCOHOL‑RELATED OFFENSES COMMITTED BY A PERSON WHO SEEKS MEDICAL ASSISTANCE FOR ANOTHER PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL‑RELATED OVERDOSE OR BY A PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL‑RELATED OVERDOSE AND SEEKS MEDICAL ASSISTANCE, TO ALLOW THE COURT TO CONSIDER AS A MITIGATING FACTOR IN PROCEEDINGS RELATED TO OTHER CRIMINAL OFFENSES WHETHER THE PERSON SOUGHT MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING AN OVERDOSE, TO LIMIT THE IMMUNITY TO ALLOW PROSECUTION OF A PERSON FOR OTHER CRIMES ARISING OUT OF THE DRUG OR ALCOHOL‑RELATED OVERDOSE, TO ALLOW FOR ADMISSIBILITY OF CERTAIN EVIDENCE, TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR LAW ENFORCEMENT OFFICERS RELATING TO THE ARREST OF A PERSON LATER DETERMINED TO QUALIFY FOR LIMITED IMMUNITY, AND FOR OTHER PURPOSES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Article 19

Drug or Alcohol‑Related Overdose Medical Treatment

Section 44‑53‑1910. As used in this article:

(1) ‘Controlled substance’ has the same meaning as provided in Section 44-53-110.

(2) ‘Drug or alcohol‑related overdose’ means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, alcohol, or another substance with which a controlled substance or alcohol was combined, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

(3) ‘Seeks medical assistance’ means seeking medical assistance by contacting the 911 system, a law enforcement officer, or emergency services personnel.

Section 44‑53‑1920. (A) A person who seeks medical assistance for another person who appears to be experiencing a drug or alcohol‑related overdose may not be prosecuted for any of the offenses listed in subsection (B), if the evidence for prosecution was obtained as a result of the person seeking medical assistance for the apparent overdose on the premises or immediately after seeking medical assistance and the person:

(1) acted in good faith when seeking medical assistance, upon a reasonable belief that he was the first person to call for assistance;

(2) provided his own name to the 911 system or to a law enforcement officer upon arrival; and

(3) did not seek medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(B) A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for:

(1) dispensing or delivering a controlled substance in violation of Section 44‑53‑370(a), when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

(2) possessing a controlled substance in violation of Section 44‑53‑370(c);

(3) possessing less than one gram of methamphetamine or cocaine base in violation of Section 44‑53‑375(A);

(4) dispensing or delivering methamphetamine or cocaine base in violation of Section 44‑53‑375(B), when the methamphetamine or cocaine base is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

(5) possessing paraphernalia in violation of Section 44‑53‑391;

(6) selling or delivering paraphernalia in violation of Section 44‑53‑391, when the sale or delivery is to the person who appears to be experiencing a drug‑related overdose;

(7) purchasing, attempting to purchase, consuming, or knowingly possessing alcoholic beverages in violation of Section 63‑19‑2440;

(8) selling alcoholic beverages to a person under twenty‑one years of age in violation of Section 61‑4‑50;

(9) purchasing beer or wine to give to a person to whom beer or wine cannot legally be sold in violation of Section 61‑4‑80;

(10) transferring or giving to a person under the age of twenty‑one years for consumption beer or wine in violation of Section 61‑4‑90; or

(11) contributing to the delinquency of a minor in violation of Section 16‑17‑490.

Section 44‑53‑1930. A person who experiences a drug or alcohol‑related overdose and is in need of medical assistance may not be prosecuted for any of the offenses listed in Section 44‑53‑1920(B) if the evidence for prosecution was obtained as a result of the drug or alcohol‑related overdose and need for medical assistance.

Section 44‑53‑1940. The court may consider a person’s decision to seek medical assistance pursuant to Section 44‑53‑1920(A) or 44‑53‑1930 as a mitigating factor in a criminal prosecution or sentencing for a drug or alcohol‑related offense that is not an offense listed in Section 44‑53‑1920(B).

Section 44‑53‑1950. This article does not prohibit a person from being arrested, charged, or prosecuted, or from having his supervision status modified or revoked, based on an offense other than an offense listed in Section 44‑53‑1920(B), whether or not the offense arises from the same circumstances for which the person sought medical assistance.

Section 44‑53‑1960. Nothing in this section may be construed to:

(1) limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of Section 44‑53‑1920(A) or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to Section 44‑53‑1920(A) or Section 44-53-1930;

(2) limit any seizure of evidence or contraband otherwise permitted by law; or

(3) limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effect an arrest for any offense, except as provided in Section 44‑53‑1920(A) or Section 44-53-1930.

Section 44‑53‑1970. A law enforcement officer who arrests a person for an offense listed in Section 44‑53‑1920(B) is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the officer made the arrest based on probable cause.”

SECTION 2. A. Article 3, Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Section 44‑53‑362. (A) Except as provided in subsection (C), before issuing, for a minor, the first prescription in a single course of treatment for an opioid analgesic, regardless of whether the dosage is modified during that course of treatment, a prescriber shall:

(1) as part of the prescriber’s examination of the minor, assess whether the minor has ever suffered from or is currently suffering from a mental health or substance abuse disorder and whether the minor has taken or is currently taking prescription drugs for treatment of a mental health or substance abuse disorder;

(2) discuss with the minor and the minor’s parent, guardian, or another adult authorized to consent to the minor’s medical treatment all of the following:

(a) the risks of addiction and overdose associated with opioid analgesics;

(b) the increased risk of addiction to controlled substances of individuals suffering from both mental health and substance abuse disorders;

(c) the dangers of taking opioid analgesics with benzodiazepines, alcohol, or other central nervous system depressants;

(d) any other information in the patient counseling information section of the labeling for the opioid analgesic required pursuant to 21 C.F.R. 201.57(c)(18); and

(3) obtain written consent for the prescription from the minor’s parent, guardian, or, subject to subsection (E), another adult authorized to consent to the minor’s medical treatment.

(B) The prescriber shall record the consent required pursuant to subsection (A)(3) on a ‘Start Talking!’ consent form developed by the State Board of Medical Examiners. The form must be separate from any other document the prescriber uses to obtain informed consent for other treatment provided to the minor and must contain:

(1) the name and quantity of the opioid analgesic being prescribed and the amount of the initial dose;

(2) a statement indicating that a controlled substance is a drug or other substance that the United States Drug Enforcement Administration has identified as having a potential for abuse;

(3) a statement certifying that the prescriber discussed with the minor and the minor’s parent, guardian, or another adult authorized to consent to the minor’s medical treatment the matters described in subsection (A)(2);

(4) the number of refills, if any, authorized by the prescription; and

(5) the signature of the minor’s parent, guardian, or another adult authorized to consent to the minor’s medical treatment and the date of signing.

(C)(1) The requirements set forth in subsection (A) do not apply if the minor’s treatment with an opioid analgesic:

(a) is associated with or incident to a medical emergency;

(b) is associated with or incident to surgery, regardless of whether the surgery is performed on an inpatient or outpatient basis;

(c) is associated with pain management treatment for cancer and hematological disorders including, but not limited to, sickle cell disease;

(d) is associated with treatment of neonatal abstinence syndrome;

(e) is limited to liquid antitussive medication;

(f) in the prescriber’s professional judgment, fulfilling the requirements of subsection (A) would be a detriment to the minor’s health or safety;

(g) except as provided in subsection (D), the treatment is rendered in a hospital; emergency facility; ambulatory surgical facility; nursing home; pediatric respite, hospice, or palliative care program provided in an in-patient or out-patient setting; residential care facility; freestanding rehabilitation facility; or similar institutional facility;

(h) is ordered by a practitioner issuing a prescription for a Schedule II controlled substance to treat a hospice‑certified patient;

(i) is ordered by a practitioner issuing a prescription for a Schedule II controlled substance that does not exceed a five‑day supply for a patient;

(j) is ordered by a practitioner prescribing a Schedule II controlled substance for a patient with whom the practitioner has an established relationship for the treatment of a chronic condition; however, the practitioner must review the patient’s controlled substance history maintained in the prescription monitoring program at least every three months; or

(k) is ordered by a practitioner approving the administration of a Schedule II controlled substance by a healthcare provider licensed in South Carolina.

(2) The requirements of subsection (A) do not apply to a prescription for an opioid analgesic that a prescriber issues to a minor at the time of discharge from a facility or other location described in subsection (C)(1)(g).

(D) The exemption provided pursuant to subsection (C)(1)(g) does not apply to treatment rendered in a prescriber’s office that is located on the premises of or adjacent to a facility or other location described in that subsection.

(E) If the individual who signs the consent form required pursuant to subsection (A)(3) is another adult authorized to consent to the minor’s medical treatment, the prescriber shall prescribe not more than a single, seventy‑two‑hour supply and indicate on the prescription the quantity that is to be dispensed pursuant to the prescription.

(F) A signed ‘Start Talking!’ consent form obtained pursuant to this section must be maintained in the minor’s medical record.

(G)(1) As used in this section:

(a) ‘Another adult authorized to consent to the minor’s medical treatment’ means an adult to whom a minor’s parent or guardian has given written authorization to consent to the minor’s medical treatment.

(b) ‘Medical emergency’ means a situation that in a prescriber’s good faith medical judgment creates an immediate threat of serious risk to the life or physical health of a minor.

(c) ‘Minor’ means an individual under eighteen years of age who is not emancipated.

(2) For purposes of this section, an individual under eighteen years of age is emancipated only if the individual has married, has entered the armed services of the United States, has become employed and self‑sustaining, or otherwise has become independent from the care and control of the individual’s parent, guardian, or custodian.”

B. This SECTION takes effect December 31, 2017.

SECTION 3. This act takes effect upon approval by the Governor.

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