H.723

Introduced by Representatives Sullivan of Dorset, Batchelor of Derby, Brennan of Colchester, Buckholz of Hartford, Canfield of Fair Haven, Cupoli of Rutland City, Dunn of Essex, Fagan of Rutland City, Gannon of Wilmington, Higley of Lowell, Joseph of North Hero, Juskiewicz of Cambridge, LaClair of Barre Town, Lawrence of Lyndon, Lewis of Berlin, Martel of Waterford, McCoy of Poultney, McFaun of Barre Town, Morrissey of Bennington, Nolan of Morristown, Noyes of Wolcott, Savage of Swanton, Shaw of Pittsford, Smith of New Haven, and Strong of Albany

Referred to Committee on

Date:

Subject: Health; opioids; Vermont Prescription Monitoring System; health care professionals

Statement of purpose of bill as introduced: This bill proposes to specify statutory limits on the prescription of opioids and create a private right of action for injuries caused by prescriptions made in violation of those limits.

An act relating to limits on the prescription of opioids and creating a private right of action for prescriptions in excess of those limits

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 84, subchapter 4 is added to read:

Subchapter 4. Prescription of Opioids; Right of Action

§ 4271. DEFINITIONS

As used in this subchapter:

(1) "Acute pain" means pain lasting fewer than 90 days that is a normal and predicted physiological response to a traumatic injury, surgical procedure, or specific disease.

(2) "Affiliate or employer of a prescriber" means any hospital, physician practice group, or other health care facility or entity with which the prescriber has an employment, ownership, or contractual relationship and that has, with respect to any individual patient for whom the prescriber has prescribed a controlled substance to treat acute or chronic pain, any professional or medical responsibility.

(3) "Chronic pain" means pain caused by one or more diseases or abnormal conditions and that continues for 90 days or longer.

(4) "Controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

(5) "Initial prescription for acute pain" means a prescriber's first order of a controlled substance as a palliative treatment for a patient who is

experiencing pain based on the occurrence of a traumatic injury or surgical procedure or upon the recent onset of pain naturally caused by a specific disease.

(6) "Morphine milligram equivalent" or "MME" means a value assigned to opioids to enable comparison of relative potency using morphine as the standard.

(7) "Prescriber" means a licensed health care professional with the authority to prescribe controlled substances.

(8) "Subsequent or additional prescription for acute pain" means a prescriber's second and subsequent orders of a controlled substance as a palliative treatment for a patient suffering acute pain for an event or condition that caused any prescriber to write an initial prescription for acute pain.

§ 4272. PRESCRIPTION OF OPIOIDS FOR PAIN

(a) A prescriber shall not:

(1) except in an inpatient hospital or a skilled or intermediate care nursing facility setting, make an initial prescription of an opioid controlled substance for acute pain having an average daily MME of 50 for a period exceeding seven days for a patient 18 years of age or older or an average daily MME of 24 for a period exceeding three days for a patient under 18 years of age;

(2) in an inpatient hospital or a skilled or intermediate care nursing facility setting, make an initial prescription of an opioid controlled substance for acute pain for a period exceeding 10 days for a patient 18 years of age or older or for a period exceeding five days for a patient under 18 years of age;

(3) except in an inpatient hospital or a skilled or intermediate care nursing facility setting, for pain associated with significant or severe trauma, complex surgical interventions, or postoperative complications, make a subsequent or additional prescription of an opioid controlled substance for acute pain or in an amount or duration that exceeds the prescription durations and average daily MME opioid limits for adults and children set forth in rules adopted by the Commissioner of Health in accordance with subsection 4289(e) of this title;

(4) write a prescription for an opioid controlled substance as a palliative treatment for chronic pain except pursuant to and in compliance with a written plan that:

(A) identifies the diagnosis or diagnoses supporting the use of opioids for chronic pain;

(B) requires periodic follow-up visits and evaluations at least once every 90 days regarding the continued need for opioid use;

(C) in the case of a prescription for an opioid controlled substance with an average daily MME equal to or exceeding 90, requires a co-

prescription for naloxone as well as the preparation of an initial written analysis and subsequent 90-day written reanalyses of all relevant considerations of opioid abuse and addiction risks, including evidence of any aberrant behaviors, early refills of opioid controlled substance prescriptions, and other known risks associated with misuse, abuse, diversion, addiction, and overdose; or

(5) write a prescription for an opioid controlled substance as a palliative treatment for chronic or acute pain, or write a prescription for an extended-release hydrocodone or oxycodone in a non-abuse-deterrent formulation, without first querying the Vermont Prescription Monitoring System.

(b) A prescriber shall comply with any additional requirements of rules adopted by the Commissioner of Health in accordance with section 4287 and subsection 4289(e) of this title, which shall be consistent with the provisions of this section.

§ 4273. PRIVATE CAUSE OF ACTION

(a) A person who is injured as a result of the development of an opioid dependency or addiction caused by the failure of a prescriber to comply with the requirements of subsection 4272(a) of this title may bring an action in Superior Court against the prescriber for damages, reasonable costs, and attorney's fees.

(b) In an action brought under subsection (a) of this section:

(1) The court may issue an award for the person's actual damages or $500.00 for a first violation or $1,000.00 for each subsequent violation, whichever is greater.

(2) Any affiliate or employer of the prescriber shall be jointly and severally liable for all damages, costs, and fees awarded to the complainant pursuant to this section.

(3) If the prescriber commits two or more violations of subsection 4272(e) of this title with respect to the complainant within any 12-month period, the prescriber shall be subject to a rebuttable presumption that the prescriber caused the opioid dependency and any injury suffered by the complainant.

(4) If the prescriber commits three or more violations of subsection 4272(e) of this title with respect to the care and treatment of the complainant in any 12-month period, the prescriber shall be subject to an award of punitive damages.

(5) If the prescriber commits four or more violations of subsection 4272(e) of this title with respect to the care and treatment of the complainant in any 12-month period, any manufacturer and distributor of an opioid controlled substance prescribed to the complainant consistently throughout that period as a palliative treatment for acute or chronic pain shall be strictly liable, jointly

and severally, for all damages, costs, and fees awarded to the complainant pursuant to this section.

(c) This section shall not limit any other claims the person may have under applicable law.

(d) An action brought under this section shall be commenced not later than three years after the date of the last occurring violation of subsection 4272(a) of this title.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.