

By the Committee on Health, Aging and Long-Term Care; and
Senator Burt

317-1767-02

1 A bill to be entitled
2 An act relating to public-records exemptions;
3 exempting certain health care records of the
4 Department of Legal Affairs which relate to
5 health care practitioners or pharmacists, law
6 enforcement officers, or the Department of
7 Health; providing for future repeal and review;
8 providing guidelines for the use of such
9 information and penalties for violations;
10 providing a finding of public necessity;
11 providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. All information and records reported under
16 section 893.065, Florida Statutes, or the electronic system
17 for monitoring the prescribing of controlled substances
18 designed and established by the Department of Legal Affairs
19 which would identify a patient are confidential and exempt
20 from the provisions of section 119.07(1), Florida Statutes,
21 and Section 24(a) of Article I of the State Constitution. This
22 section is subject to the Open Government Sunset Review Act of
23 1995 in accordance with section 119.15, Florida Statutes, and
24 shall stand repealed October 2, 2007, unless reviewed and
25 saved from repeal through reenactment by the Legislature.

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27 Section 2. (1) The Department of Legal Affairs may
28 disclose a patient's identity in the information or records
29 reported under section 893.065, Florida Statutes, or the
30 electronic system for monitoring the prescribing of controlled
31 substances designed and established by the Department of Legal
Affairs whose identity is otherwise confidential and exempt

1 from the provisions of section 119.07(1), Florida Statutes,
2 and Section 24(a), Article I of the State Constitution, to the
3 following:

4 (a) A practitioner defined under chapter 893, Florida
5 Statutes, who requests information and certifies that the
6 information is necessary to provide medical treatment in
7 accordance with section 893.05, Florida Statutes, to a current
8 patient.

9 (b) A pharmacist licensed in this state who requests
10 information and certifies that the requested information is to
11 be used to dispense controlled substances in accordance with
12 section 893.04, Florida Statutes, to a current patient.

13 (c) A criminal justice agency defined under section
14 119.011, Florida Statutes, which enforces the laws of this
15 state or the United States relating to drugs and which is
16 engaged in a specific investigation involving a violation of
17 law.

18 (d) An employee or agent of the Department of Health
19 who is involved in a specific investigation involving a
20 violation of the chapter regulating the alleged violator, the
21 rules of the Department of Health, or the rules of a board
22 regulating the alleged violator.

23 (2)(a) A person who obtains information under this
24 section may not use the information to his or her own personal
25 advantage or reveal any information obtained in the
26 enforcement of law except in a prosecution or administrative
27 hearing for a violation of state or federal law or, if
28 applicable, to provide medical treatment in accordance with
29 section 893.05, Florida Statutes, to a current patient, or to
30 dispense controlled substances in accordance with section
31 893.04, Florida Statutes, to a current patient.

1 **(b) Any person who violates this subsection commits a**
2 **misdemeanor of the first degree, punishable as provided in**
3 **section 775.082 or section 775.083, Florida Statutes. However,**
4 **upon a second or subsequent violation, the person commits a**
5 **felony of the third degree, punishable as provided in section**
6 **775.082 or section 775.083.**

7 Section 3. **A practitioner, pharmacist, or other agency**
8 **that obtains information reported under section 893.065,**
9 **Florida Statutes, or in the electronic system for monitoring**
10 **the prescribing of controlled substances designed and**
11 **established by the Department of Legal Affairs which**
12 **information would identify a patient must maintain the**
13 **confidentiality of such information pursuant to section**
14 **456.057 and section 465.017, Florida Statutes, or as otherwise**
15 **required by law.**

16 Section 4. **The Legislature finds that it is a public**
17 **necessity that all information reported to the Department of**
18 **Legal Affairs under section 893.065, Florida Statutes, or the**
19 **electronic system for monitoring the prescribing of controlled**
20 **substances designed and established by the Department of Legal**
21 **Affairs which information would identify a patient be held**
22 **confidential and exempt from disclosure because doing so will**
23 **facilitate the department's efforts to maintain compliance**
24 **with the state's drug laws by the accurate and timely**
25 **reporting by health care practitioners of potential drug**
26 **diversion without compromising a patient's privacy, with**
27 **certain exceptions. The exemption for a patient's identity in**
28 **the information or records reported under section 893.065,**
29 **Florida Statutes, or in the electronic system for monitoring**
30 **the prescribing of controlled substances facilitates the**
31 **sharing of information between health care practitioners so**

1 that the practitioners may appropriately identify and evaluate
2 a patient's risk for drug diversion and the resulting abuse of
3 controlled substances without compromising a patient's
4 privacy. The Legislature further finds that the exemption for
5 records identifying a patient within information or records
6 reported to the Department of Legal Affairs is a public
7 necessity to protect health-related information of a sensitive
8 and personal nature. Matters of personal health are
9 traditionally private and confidential concerns between a
10 patient and a health care provider. The private and
11 confidential nature of personal health matters pervades both
12 the public and private health care sectors. For these reasons,
13 an individual's expectation of a right to privacy in all
14 matters regarding his or her personal health necessitates this
15 exemption.

16 Section 5. This act shall take effect on the effective
17 date of Committee Substitute for Senate Bill 636 or similar
18 legislation.

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20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 Senate Bill 638

23 The Committee Substitute for SB 638 makes the public records
24 exemption subject to the Open Government Sunset Review Act of
25 1995 and provides for a future repeal and review of the
26 exemption in accordance with that act.
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