

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

317-2257-03

1 A bill to be entitled
 2 An act relating to public records; exempting
 3 from public records requirements information
 4 and records reported to the Department of
 5 Health under the electronic monitoring system
 6 for prescription of controlled substances
 7 listed in Schedules II-IV; authorizing certain
 8 persons and entities access to
 9 patient-identifying information; providing
 10 guidelines for the use of such information and
 11 penalties for violations; providing for future
 12 legislative review and repeal; providing a
 13 finding of public necessity; providing a
 14 contingent effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. (1) All information and records reported
 19 under section 893.055, Florida Statutes, which would identify
 20 a patient are confidential and exempt from the provisions of
 21 section 119.07(1), Florida Statutes, and Section 24(a), Art. I
 22 of the State Constitution. The confidentiality provisions of
 23 this subsection are subject to the Open Government Sunset
 24 Review Act of 1995, in accordance with section 119.15, Florida
 25 Statutes, and shall stand repealed on October 2, 2008, unless
 26 reviewed and saved from repeal through reenactment by the
 27 Legislature.

28 (2) The Department of Health may disclose a patient's
 29 identity in the information or records reported under section
 30 893.055, Florida Statutes, whose identity is otherwise
 31 confidential and exempt from the provisions of section

1 119.07(1), Florida Statutes, and Section 24(a), Art. I of the
2 State Constitution, to the following:

3 (a) A practitioner defined under chapter 893, Florida
4 Statutes, who requests information and certifies that the
5 information is necessary to provide medical treatment in
6 accordance with section 893.05, Florida Statutes, to a current
7 patient, subject to the patient's written consent. The
8 practitioner may designate one person in his or her office to
9 access the information and records reported under section
10 893.055, Florida Statutes, on the practitioner's patients and
11 provide information to the practitioner as directed, subject
12 to the patient's written consent.

13 (b) A pharmacist licensed in this state, or a pharmacy
14 intern or pharmacy technician designated by the pharmacist,
15 who requests information and certifies that the requested
16 information is to be used to dispense controlled substances in
17 accordance with section 893.04, Florida Statutes, to a current
18 patient.

19 (c) A criminal justice agency defined under section
20 119.011, Florida Statutes, which enforces the laws of this
21 state or the United States relating to drugs and which is
22 engaged in a specific investigation involving a violation of
23 law. Any member of a criminal justice agency receiving the
24 information as authorized in this section shall avoid
25 unauthorized use or dissemination thereof. Such member
26 receiving the information may disclose its contents to other
27 persons to the extent that such disclosure is appropriate to
28 the proper performance of the official duties of the member
29 making or the person receiving the disclosure.

30 (d) An employee or agent of the Department of Health
31 who is involved in a specific investigation involving a

1 violation of the chapter regulating the alleged violator, the
2 rules of the Department of Health, or the rules of a board
3 regulating the alleged violator.

4 (e) An employee of the Agency for Health Care
5 Administration who is involved in an investigation related to
6 the agency's responsibility to control fraud and abuse in the
7 Medicaid program.

8 (f) The patient, for purposes of checking the
9 information for accuracy and reporting any inaccuracies to the
10 department for correction if verified. A patient may request
11 from the Department of Health any record contained in the
12 electronic prescription monitoring system relating to that
13 patient by providing a written request to the Department of
14 Health and verifying his or her identity in accordance with
15 any applicable state or federal law. A patient shall be
16 entitled to a copy of such records within the system and the
17 Department of Health may assess fees for copies of such
18 records in accordance with chapter 119, Florida Statutes.

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

29 (b) Any person who knowingly violates this subsection
30 commits a felony of the third degree, punishable as provided
31 in section 775.082 or section 775.083, Florida Statutes.

1 (4) A practitioner or pharmacist authorized to obtain
2 information under this section is not liable for accessing or
3 failing to access such information.

4 (5) A practitioner, pharmacist, or other person or
5 agency that obtains information reported under section
6 893.055, Florida Statutes, must maintain the confidentiality
7 of such information pursuant to sections 456.057 and 465.017,
8 Florida Statutes, or as otherwise required by law.

9 Section 2. The Legislature finds that it is a public
10 necessity that all information reported to the Department of
11 Health under sections 893.055, Florida Statutes, be held
12 confidential and exempt from disclosure because doing so will
13 facilitate efforts to maintain compliance with the state's
14 drug laws not only by patients through accurate and timely
15 reporting by health care practitioners and pharmacists of
16 potential drug diversion without compromising a patient's
17 privacy, with certain exceptions, but also by persons
18 authorized to prescribe or dispense controlled substances
19 through oversight review and investigation of improper
20 prescribing and dispensing practices. The exemption for a
21 patient's identity in the information or records reported
22 under section 893.055, Florida Statutes, facilitates the
23 sharing of information between health care practitioners and
24 pharmacists so that the practitioners and pharmacists may
25 appropriately identify and evaluate a patient's risk for drug
26 diversion and the resulting abuse of controlled substances
27 without compromising a patient's privacy. The Legislature
28 further finds that the exemption for records identifying a
29 patient within information or records reported to the
30 Department of Health is a public necessity to protect
31 health-related information of a sensitive and personal nature.

1 Matters of personal health are traditionally private and
2 confidential concerns between a patient and a health care
3 provider. The private and confidential nature of personal
4 health matters pervades both the public and private health
5 care sectors. For these reasons, an individual's expectation
6 of a right to privacy in all matters regarding his or her
7 personal health necessitates such exemption. Information
8 relating to practitioners prescribing or dispensing controlled
9 substances needs to be kept confidential for criminal justice
10 agencies and regulatory agencies and departments to properly
11 investigate potentially improper prescribing or dispensing
12 practices that indicate drug diversion by such practitioners
13 or contributing to drug diversion by a patient without
14 compromising the livelihood of such practitioner with
15 unsubstantiated charges of improper dispensing or prescribing
16 practice. For these reasons, a practitioner's expectation of a
17 right to privacy in the review and investigation of
18 unsubstantiated charges affecting his or her livelihood
19 necessitates such exemption.

20 Section 3. This act shall take effect on July 1, 2004,
21 if Senate Bill 2390 or similar legislation establishing an
22 electronic system to monitor the prescribing of controlled
23 substances is adopted in the same legislative session or an
24 extension thereof and becomes law.

25
26 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
27 COMMITTEE SUBSTITUTE FOR
28 Senate Bill 1784

29 The Committee Substitute makes the Public Records Law
30 exemption for specified patient information subject to a
31 future review and repeal in accordance with the Open
Government Sunset Review Act of 1995, and imposes additional
requirements for disclosure of exempted patient information.