

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.

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

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18           Section 1. (1)(a) A patient's personal identifying  
19 information contained in any record reported under section  
20 893.055, Florida Statutes, is confidential and exempt from the  
21 provisions of section 119.07(1), Florida Statutes, and Section  
22 24(a), Article I of the State Constitution.

23           (b) This subsection is subject to the Open Government  
24 Sunset Review Act of 1995 in accordance with section 119.15,  
25 Florida Statutes, and shall stand repealed on October 2, 2008,  
26 unless reviewed and saved from repeal through reenactment by  
27 the Legislature.

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

1 provisions of section 119.07(1), Florida Statutes, and Section  
2 24(a), Article I of the 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. The Department of  
11 Health shall adopt, by rule, the process to be used to verify  
12 requested corrections. A patient may request from the  
13 Department of Health a copy of any record contained in the  
14 electronic prescription monitoring system relating to that  
15 patient by providing a written request to the Department of  
16 Health and verifying the patient's identity, as required in  
17 rule of the Department of Health, and in accordance with any  
18 applicable state or federal law. The costs associated with the  
19 administration of this paragraph shall be recouped as provided  
20 by rule of the Department of Health.

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

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

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

7           (5) A practitioner, pharmacist, or other person or  
8 agency that obtains information reported under section  
9 893.055, Florida Statutes, must maintain the confidentiality  
10 of such information pursuant to sections 456.057 and 465.017,  
11 Florida Statutes, or as otherwise required by law.

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

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

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

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