



HB 0997

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CHAMBER ACTION

The Committee on Health Care recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled
An act relating to public records; creating s. 893.0559,
F.S.; exempting from public records requirements
information and records reported to the Department of
Health under the electronic monitoring system for
prescription of controlled substances listed in Schedules
II-IV; authorizing certain persons and entities access to
patient and practitioner personal identifying information;
providing guidelines for the use of such information and
penalties for violations; providing a finding of public
necessity; providing for future legislative review and
repeal; providing a contingent effective date.

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

Section 1. Section 893.0559, Florida Statutes, is created
to read:



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27 893.0559 Public records exemption for electronic
28 monitoring system for prescription of controlled substances
29 listed in Schedules II-IV.--

30 (1) All information and records reported under s. 893.055
31 that would identify a patient or practitioner are confidential
32 and exempt from the provisions of s. 119.07(1) and s. 24(a),
33 Art. I of the State Constitution. The confidentiality provisions
34 of this subsection are subject to the Open Government Sunset
35 Review Act of 1995, in accordance with s. 119.15 and shall stand
36 repealed on October 2, 2009, unless reviewed and saved from
37 repeal through reenactment by the Legislature.

38 (2) The department may disclose a patient's or
39 practitioner's identity in the information or records reported
40 under s. 893.055 whose identity is otherwise confidential and
41 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
42 of the State Constitution, to the following:

43 (a) A practitioner defined under this chapter who requests
44 information and certifies that the information is necessary to
45 provide medical treatment in accordance with s. 893.05 to a
46 current patient, subject to the patient's written consent. The
47 practitioner may designate one person in his or her office to
48 access the information and records reported under s. 893.055 on
49 the practitioner's patients and provide information to the
50 practitioner as directed, subject to the patient's written
51 consent.

52 (b) A pharmacist licensed in this state, or a pharmacy
53 intern or pharmacy technician designated by the pharmacist, who
54 requests information and certifies that the requested



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55 information is to be used to dispense controlled substances in
56 accordance with s. 893.04 to a current patient.

57 (c) A criminal justice agency defined under s. 119.011
58 which enforces the laws of this state or the United States
59 relating to drugs and which is engaged in a specific
60 investigation involving a violation of law. Any member of a
61 criminal justice agency receiving the information as authorized
62 in this section shall avoid unauthorized use or dissemination
63 thereof. Such member receiving the information may disclose its
64 contents to other persons to the extent that such disclosure is
65 appropriate to the proper performance of the official duties of
66 the member making or person receiving the disclosure.

67 (d) An employee or agent of the department who is involved
68 in a specific investigation involving a violation of the chapter
69 regulating the alleged violator, the rules of the department, or
70 the rules of a board regulating the alleged violator.

71 (e) An employee of the Agency for Health Care
72 Administration who is involved in an investigation related to
73 the agency's responsibility to control fraud and abuse in the
74 Medicaid program.

75 (f) The patient, for purposes of verifying the information
76 for accuracy and reporting any inaccuracies to the department
77 for correction if verified. The department shall establish, by
78 rule, the process to be used to verify requested corrections. A
79 patient may request from the department a copy of any record
80 contained in the electronic prescription monitoring system
81 relating to that patient by providing a written request to the
82 department and verifying his or her identity, as required in



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83 rule of the department, and in accordance with any applicable
84 state or federal law. The cost associated with the
85 administration of this paragraph shall be recouped as provided
86 in rule of the department.

87 (3)(a) A person who obtains information under this section
88 may not use the information to his or her own personal advantage
89 or reveal any information obtained in the enforcement of law
90 except in a prosecution or administrative hearing for a
91 violation of state or federal law or, if applicable, to provide
92 medical treatment in accordance with s. 893.05 to a current
93 patient or to dispense controlled substances in accordance with
94 s. 893.04 to a current patient or to the patient for verifying
95 the accuracy of such information.

96 (b) Any person who knowingly violates this subsection
97 commits a felony of the third degree, punishable as provided in
98 s. 775.082 or s. 775.083.

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

102 (5) A practitioner, pharmacist, or other person or agency
103 that obtains information reported under s. 893.055 must maintain
104 the confidentiality of such information pursuant to ss. 456.057
105 and 465.017 or as otherwise required by law.

106 (6) The Legislature finds that it is a public necessity
107 that all information reported to the department under s. 893.055
108 be held confidential and exempt from disclosure because doing so
109 will facilitate efforts to maintain compliance with the state's
110 drug laws not only by patients through accurate and timely



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111 reporting by health care practitioners and pharmacists of
112 potential drug diversion without compromising a patient's
113 privacy, with certain exceptions, but also by persons authorized
114 to prescribe or dispense controlled substances through oversight
115 review and investigation of improper prescribing and dispensing
116 practices. The exemption for a patient's identity in the
117 information or records reported under s. 893.055 facilitates the
118 sharing of information between health care practitioners and
119 pharmacists so that the practitioners and pharmacists may
120 appropriately identify and evaluate a patient's risk for drug
121 diversion and the resulting abuse of controlled substances
122 without compromising a patient's privacy. The Legislature
123 further finds that the exemption for records identifying a
124 patient or practitioner within information or records reported
125 to the department is a public necessity to protect health-
126 related information of a sensitive and personal nature. Matters
127 of personal health are traditionally private and confidential
128 concerns between a patient and a health care provider. The
129 private and confidential nature of personal health matters
130 pervades both the public and private health care sectors. For
131 these reasons, an individual's expectation of a right to privacy
132 in all matters regarding his or her personal health necessitates
133 such exemption. Information relating to practitioners
134 prescribing or dispensing controlled substances needs to be kept
135 confidential for criminal justice agencies and regulatory
136 agencies and departments to properly investigate potentially
137 improper prescribing or dispensing practices that indicate drug
138 diversion by such practitioners or contributing to drug



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139 | diversion by a patient without compromising the livelihood of
140 | such practitioner with unsubstantiated charges of improper
141 | dispensing or prescribing practice. For these reasons, a
142 | practitioner's expectation of a right to privacy in the review
143 | and investigation of unsubstantiated charges affecting his or
144 | her livelihood necessitates such exemption.

145 | Section 2. This act shall take effect July 1, 2004, if
146 | House Bill 989 or similar legislation establishing an electronic
147 | system to monitor the prescribing of controlled substances is
148 | adopted in the same legislative session or an extension thereof
149 | and becomes law.