

CHAMBER ACTION

1 The Committee on Health Care recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to public records; creating s. 893.056,
7 F.S.; exempting from public records requirements
8 information and records reported to the Department of
9 Health under the electronic monitoring system for
10 prescription of controlled substances listed in Schedules
11 II-IV; authorizing certain persons and entities access to
12 patient-identifying and practitioner-identifying
13 information; providing guidelines for the use of such
14 information and penalties for violations; providing for
15 future legislative review and repeal; providing a finding
16 of public necessity; providing a contingent effective
17 date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 893.056, Florida Statutes, is created
22 to read:

23 893.056 Public records exemption for the electronic
 24 monitoring system for prescription of controlled substances
 25 listed in Schedules II, III, and IV.--

26 (1) Personal identifying information of a patient, a
 27 practitioner as defined in s. 893.02, or a pharmacist as defined
 28 in s. 465.003, contained in records held by the Department of
 29 Health under s. 893.055, the electronic monitoring system for
 30 prescription of controlled substances, is confidential and
 31 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 32 Constitution.

33 (2) The Department of Health shall disclose such
 34 confidential and exempt information to:

35 (a) The Agency for Health Care Administration when it has
 36 initiated a review of specific identifiers of Medicaid fraud and
 37 abuse.

38 (b) A criminal justice agency as defined in s. 119.011,
 39 which enforces the laws of this state or the United States
 40 relating to controlled substances and which has initiated an
 41 active investigation involving a specific violation of law.

42 (c) A practitioner as defined in s. 893.02, and an
 43 employee of the practitioner who is acting on behalf of and at
 44 the direction of the practitioner, who requests such information
 45 and certifies that the information is necessary to provide
 46 medical treatment to a current patient in accordance with s.
 47 893.05, subject to that patient's written consent.

48 (d) A pharmacist as defined in s. 465.003, or a pharmacy
 49 intern or pharmacy technician who is acting on behalf of and at
 50 the direction of the pharmacist, who requests such information

51 and certifies that the requested information is to be used to
 52 dispense controlled substances to a current patient in
 53 accordance with s. 893.04.

54 (e) The patient who is identified in the record, upon a
 55 written request, for the purpose of verifying that information.

56 (3) Any agency that obtains such confidential and exempt
 57 information pursuant to this section must maintain the
 58 confidential and exempt status of that information; however, the
 59 Agency for Health Care Administration or a criminal justice
 60 agency with lawful access to such information may disclose
 61 confidential and exempt information received from the Department
 62 of Health to a criminal justice agency as part of an active
 63 investigation of a specific violation of law.

64 (4) Any person who willfully and knowingly violates this
 65 section commits a felony of the third degree, punishable as
 66 provided in s. 775.082 or s. 775.083.

67 (5) This section is subject to the Open Government Sunset
 68 Review Act of 1995 in accordance with s. 119.15, and shall stand
 69 repealed on October 2, 2010, unless reviewed and saved from
 70 repeal through reenactment by the Legislature.

71 Section 2. The Legislature finds that it is a public
 72 necessity that personal identifying information of a patient, a
 73 practitioner as defined in s. 893.02, Florida Statutes, or a
 74 pharmacist as defined in s. 465.003, Florida Statutes, contained
 75 in records that are reported to the Department of Health under
 76 s. 893.055, Florida Statutes, the electronic monitoring system
 77 for prescription of controlled substances, be made confidential
 78 and exempt. Information about the prescriptions a patient has

79 | been prescribed is a private, personal matter between the
80 | patient, the practitioner, and the pharmacist. Nevertheless,
81 | reporting of prescriptions on a timely and accurate basis by
82 | practitioners and pharmacists will ensure the ability of the
83 | state to review and provide oversight of prescribing and
84 | dispensing practices. Further, reporting of this information
85 | will facilitate investigations and prosecutions of violations of
86 | state drug laws by patients, practitioners, or pharmacists,
87 | thereby increasing compliance with those laws. If in the
88 | process, however, the information that would identify a patient
89 | is not made confidential and exempt, any person could inspect
90 | and copy the record and be aware of the prescriptions that a
91 | patient has been prescribed. The availability of such
92 | information to the public would result in the invasion of the
93 | patient's privacy. If the identity of the patient could be
94 | correlated with his or her prescriptions, it would be possible
95 | for the public to become aware of the diseases or other medical
96 | concerns that a patient is being treated for by his or her
97 | physician. This knowledge could be used to embarrass or
98 | humiliate a patient or to discriminate against him or her.
99 | Requiring the reporting of prescribing information, while
100 | protecting a patient's personal identifying information, will
101 | facilitate efforts to maintain compliance with the state's drug
102 | laws and will facilitate the sharing of information between
103 | health care practitioners and pharmacists, while maintaining and
104 | ensuring patient privacy. Additionally, exempting personal
105 | identifying information of doctors and pharmacists will ensure
106 | that an individual will not be able to "doctor-shop," that is to

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107 determine which doctors prescribe the highest amount of a
108 particular type of drug and to seek those doctors out in order
109 to increase the likelihood of obtaining a particular prescribed
110 substance. Further, protecting personal identifying information
111 of pharmacists ensures that an individual will not be able to
112 identify which pharmacists dispense the largest amount of a
113 particular substance and target that pharmacy for robbery or
114 burglary. Thus, the Legislature finds that personal identifying
115 information of a patient, a practitioner as defined in s.
116 893.02, Florida Statutes, or a pharmacist as defined in s.
117 465.003, Florida Statutes, contained in records reported under
118 s. 893.055, Florida Statutes, must be confidential and exempt.

119 Section 3. This act shall take effect July 1, 2005, if
120 House Bill 397 or similar legislation establishing an electronic
121 system to monitor the prescribing of controlled substances is
122 adopted in the same legislative session or an extension thereof
123 and becomes law.