

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

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

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 17           Section 1.   Section 893.056, Florida Statutes, is created  
 18   to read:

19           893.056 Public records exemption for the electronic  
 20   monitoring system for prescription of controlled substances  
 21   listed in Schedules II, III, and IV.--

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

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

31           (a) The Agency for Health Care Administration when it has  
 32 initiated a review of specific identifiers of Medicaid fraud and  
 33 abuse.

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

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

44           (d) A pharmacist as defined in s. 465.003, or a pharmacy  
 45 intern or pharmacy technician who is acting on behalf of and at  
 46 the direction of the pharmacist, who requests such information  
 47 and certifies that the requested information is to be used to  
 48 dispense controlled substances to a current patient in  
 49 accordance with s. 893.04.

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

52           (3) Any agency that obtains such confidential and exempt  
 53 information pursuant to this section must maintain the  
 54 confidential and exempt status of that information; however, the  
 55 Agency for Health Care Administration or a criminal justice  
 56 agency with lawful access to such information may disclose

57 confidential and exempt information received from the Department  
58 of Health to a criminal justice agency as part of an active  
59 investigation of a specific violation of law.

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

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

67 Section 2. The Legislature finds that it is a public  
68 necessity that personal identifying information of a patient, a  
69 practitioner as defined in s. 893.02, Florida Statutes, or a  
70 pharmacist as defined in s. 465.003, Florida Statutes, contained  
71 in records that are reported to the Department of Health under  
72 s. 893.055, Florida Statutes, the electronic monitoring system  
73 for prescription of controlled substances, be made confidential  
74 and exempt. Information about the prescriptions a patient has  
75 been prescribed is a private, personal matter between the  
76 patient, the practitioner, and the pharmacist. Nevertheless,  
77 reporting of prescriptions on a timely and accurate basis by  
78 practitioners and pharmacists will ensure the ability of the  
79 state to review and provide oversight of prescribing and  
80 dispensing practices. Further, reporting of this information  
81 will facilitate investigations and prosecutions of violations of  
82 state drug laws by patients, practitioners, or pharmacists,  
83 thereby increasing compliance with those laws. If in the  
84 process, however, the information that would identify a patient

85 is not made confidential and exempt, any person could inspect  
86 and copy the record and be aware of the prescriptions that a  
87 patient has been prescribed. The availability of such  
88 information to the public would result in the invasion of the  
89 patient's privacy. If the identity of the patient could be  
90 correlated with his or her prescriptions, it would be possible  
91 for the public to become aware of the diseases or other medical  
92 concerns that a patient is being treated for by his or her  
93 physician. This knowledge could be used to embarrass or  
94 humiliate a patient or to discriminate against him or her.  
95 Requiring the reporting of prescribing information, while  
96 protecting a patient's personal identifying information, will  
97 facilitate efforts to maintain compliance with the state's drug  
98 laws and will facilitate the sharing of information between  
99 health care practitioners and pharmacists, while maintaining and  
100 ensuring patient privacy. Additionally, exempting personal  
101 identifying information of doctors and pharmacists will ensure  
102 that an individual will not be able to "doctor-shop," that is to  
103 determine which doctors prescribe the highest amount of a  
104 particular type of drug and to seek those doctors out in order  
105 to increase the likelihood of obtaining a particular prescribed  
106 substance. Further, protecting personal identifying information  
107 of pharmacists ensures that an individual will not be able to  
108 identify which pharmacists dispense the largest amount of a  
109 particular substance and target that pharmacy for robbery or  
110 burglary. Thus, the Legislature finds that personal identifying  
111 information of a patient, a practitioner as defined in s.  
112 893.02, Florida Statutes, or a pharmacist as defined in s.

113 | 465.003, Florida Statutes, contained in records reported under  
114 | s. 893.055, Florida Statutes, must be confidential and exempt.

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