

By Senator Fasano

11-692-04

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:

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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  
21 section 119.07(1), Florida Statutes, and Section 24(a),  
22 Article I of the State Constitution.

23           (b) This section 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25 Florida Statutes, and shall stand repealed on October 2, 2009,  
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 section

1 119.07(1), Florida Statutes, and Section 24(a), Article I of  
2 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 as 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 (3)(a) A person who obtains information under this  
9 section may not use the information to his or her own personal  
10 advantage or reveal any information obtained in the  
11 enforcement of law except in a prosecution or administrative  
12 hearing for a violation of state or federal law or, if  
13 applicable, to provide medical treatment in accordance with  
14 section 893.05, Florida Statutes, to a current patient or to  
15 dispense controlled substances in accordance with section  
16 893.04, Florida Statutes, to a current patient, or to the  
17 patient for verifying the accuracy of such information.

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

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

24 (5) A practitioner, pharmacist, or other person or  
25 agency that obtains information reported under section  
26 893.055, Florida Statutes, must maintain the confidentiality  
27 of such information pursuant to sections 456.057 and 465.017,  
28 Florida Statutes, or as otherwise required by law.

29 Section 2. The Legislature finds that it is a public  
30 necessity that patient-identifying information reported to the  
31 Department of Health under section 893.055, Florida Statutes,

1 be held confidential and exempt from disclosure because doing  
2 so will facilitate efforts to maintain compliance with the  
3 state's drug laws not only by patients through accurate and  
4 timely reporting by health care practitioners and pharmacists  
5 of potential drug diversion without compromising a patient's  
6 privacy, with certain exceptions, but also by persons  
7 authorized to prescribe or dispense controlled substances  
8 through oversight review and investigation of improper  
9 prescribing and dispensing practices. The exemption from  
10 disclosing a patient's identity in the information or records  
11 reported under section 893.055, Florida Statutes, facilitates  
12 the sharing of information between health care practitioners  
13 and pharmacists so that the practitioners and pharmacists may  
14 appropriately identify and evaluate a patient's risk for drug  
15 diversion and the resulting abuse of controlled substances  
16 without compromising a patient's privacy. The Legislature  
17 further finds that the exemption for records identifying a  
18 patient or practitioner within information or records reported  
19 to the Department of Health is a public necessity to protect  
20 health-related information of a sensitive and personal nature.  
21 Matters of personal health are traditionally private and  
22 confidential concerns between a patient and a health care  
23 provider. The private and confidential nature of personal  
24 health matters pervades both the public and private health  
25 care sectors. For these reasons, an individual's expectation  
26 of a right to privacy in all matters regarding his or her  
27 personal health necessitates such exemption. Information  
28 relating to practitioners prescribing or dispensing controlled  
29 substances needs to be kept confidential for criminal justice  
30 agencies and regulatory agencies and departments to properly  
31 investigate potential improper prescribing or dispensing

