

By the Committee on Governmental Oversight and Productivity;
and Senators Fasano and Aronberg

302-2073-04

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

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

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19 Section 1. Section 893.056, Florida Statutes, is
20 created to read:

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

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

31

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

3 (a) The Agency for Health Care Administration when it
4 has initiated a review of specific identifiers of Medicaid
5 fraud and abuse.

6 (b) A criminal justice agency as defined in s.
7 119.011, which enforces the laws of this state or the United
8 States relating to controlled substances and which has
9 initiated an active investigation involving a specific
10 violation of law.

11 (c) A practitioner as defined in s. 893.02, or an
12 employee of the practitioner who is acting on behalf of and at
13 the direction of the practitioner, who requests such
14 information and certifies that the information is necessary to
15 provide medical treatment to a current patient in accordance
16 with s. 893.05, subject to that patient's written consent.

17 (d) A pharmacist as defined in s. 465.003, or a
18 pharmacy intern or pharmacy technician who is acting on behalf
19 of and at the direction of the pharmacist, who requests such
20 information and certifies that the requested information is to
21 be used to dispense controlled substances to a current patient
22 in accordance with s. 893.04.

23 (e) To the patient who is identified in the record
24 upon a written request for the purpose of verifying that
25 information.

26 (3) Any agency that obtains such confidential and
27 exempt information pursuant to this section must maintain the
28 confidential and exempt status of that information; however,
29 the Agency for Health Care Administration or a criminal
30 justice agency with lawful access to such information may
31 disclose confidential and exempt information received from the

1 Department of Health to a criminal justice agency as part of
2 an active investigation of a specific violation of law.

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

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

10 Section 2. The Legislature finds that it is a public
11 necessity that personal identifying information of a patient,
12 a practitioner as defined in section 893.02, Florida Statutes,
13 or a pharmacist as defined in section 465.003, Florida
14 Statutes, contained in records that are reported to the
15 Department of Health under section 893.055, Florida Statutes,
16 the electronic monitoring system for prescription of
17 controlled substances, be made confidential and exempt.
18 Information about the prescriptions a patient has been
19 prescribed is a private, personal matter between the patient,
20 the practitioner, and the pharmacist. Nevertheless, reporting
21 of prescriptions on a timely and accurate basis by
22 practitioners and pharmacists will ensure the ability of the
23 state to review and provide oversight of prescribing and
24 dispensing practices. Further, the reporting of this
25 information will facilitate investigations and prosecutions of
26 violations of state drug laws by patients, practitioners, or
27 pharmacists, thereby increasing compliance with those laws.
28 If, in the process, however, the information that would
29 identify a patient is not made confidential and exempt, any
30 person could inspect and copy the record and be aware of the
31 prescriptions that a patient has been prescribed. The

1 availability of such information to the public would result in
2 the invasion of the patient's privacy. If the identity of the
3 patient could be correlated with his or her prescriptions, it
4 would be possible for the public to become aware of the
5 diseases or other medical concerns that a patient is being
6 treated for by his or her physician. This knowledge could be
7 used to embarrass or to humiliate a patient or to discriminate
8 against him or her. Requiring the reporting of prescribing
9 information, while protecting a patient's personal identifying
10 information, will facilitate efforts to maintain compliance
11 with the state's drug laws and will facilitate the sharing of
12 information between health care practitioners and pharmacists,
13 while maintaining and ensuring patient privacy. Additionally,
14 exempting personal identifying information of doctors and
15 pharmacists will ensure that an individual will not be able to
16 "doctor-shop," that is to determine which doctors prescribe
17 the highest amount of a particular type of drug and to seek
18 those doctors out in order to increase the likelihood of
19 obtaining a particular prescribed substance. Further,
20 protecting personal identifying information of pharmacists
21 ensures that an individual will not be able to identify which
22 pharmacists dispense the largest amount of a particular
23 substance and target that pharmacy for robbery or burglary.
24 Thus, the Legislature finds that personal identifying
25 information of a patient, a practitioner as defined in section
26 893.02, Florida Statutes, or a pharmacist as defined in
27 section 465.003, Florida Statutes, contained in records
28 reported under section 893.055, Florida Statutes, must be
29 confidential and exempt.

30 Section 3. This act shall take effect July 1, 2005, if
31 Senate Bill 580, or similar legislation establishing an

1 | electronic system to monitor the prescribing of controlled
2 | substances, is adopted in the same legislative session or an
3 | extension thereof and becomes law.

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5 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 | COMMITTEE SUBSTITUTE FOR
7 | SB 578

- 8 | Expands the exemption to include personal identifying
9 | information for practitioners as defined in s. 289.02, F.S.,
10 | and pharmacists as defined in s. 465.003, F.S.
- 11 | Permits access by a patient for the purposes of verifying
12 | information about the patient in the system.
- 13 | Tightens bases for which the Agency for Health Care
14 | Administration and a criminal justice agency may access the
15 | system.
- 16 | Requires employees of practitioners and pharmacists who are
17 | permitted access to the system to be acting on behalf of and
18 | at the direction of the practitioner or pharmacist.
- 19 | Removes from the bill provisions that do not create an
20 | exemption or relate to enforcement of the exemption.
- 21 | Modifies the statement of public necessity to conform with the
22 | addition of practitioners as defined in s. 289.02, F.S., and
23 | pharmacists as defined in s. 465.003, F.S.
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