

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2
3 **Council/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 or the department's contract vendor under the
10 electronic monitoring system for prescription of
11 controlled substances listed in Schedules II-IV;
12 authorizing certain persons and entities access to
13 personal identifying information of a patient; providing
14 guidelines for the use of such information and penalties
15 for violations; providing for future legislative review
16 and repeal; providing a finding of public necessity;
17 providing a contingent effective date.

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

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

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23 893.056 Public records exemption for the electronic
24 monitoring system for prescription of controlled substances
25 listed in Schedules II-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 that is contained in records held by the
29 department or the department's contract vendor under s. 893.055,
30 the electronic monitoring system for prescription of controlled
31 substances, is confidential and exempt from s. 119.07(1) and s.
32 24(a), Art. I of the State Constitution.

33 (2) The department or the department's contract vendor
34 entering into a contract pursuant to s. 893.055(2) shall
35 disclose such confidential and exempt information to:

36 (a) The executive director of a regulatory board or a
37 board investigator as designated by each board of the regulatory
38 boards of the health care practitioners subject to s. 893.055
39 pursuant to the provisions of s. 456.073.

40 (b) The Agency for Health Care Administration when it has
41 initiated a review of specific identifiers of Medicaid fraud and
42 abuse.

43 (c) A criminal justice agency as defined in s. 119.011
44 that enforces the laws of this state or the United States
45 relating to controlled substances and that has secured a
46 subpoena for such confidential and exempt information pursuant
47 to an active investigation of an individual involving a specific
48 violation of law.

49 (d) A practitioner as defined in s. 893.02, or an employee
50 of the practitioner who is acting on behalf of and at the

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51 direction of the practitioner, who requests such information and
52 certifies that the information is necessary to provide medical
53 treatment to a current patient in accordance with s. 893.05,
54 subject to that patient's written consent.

55 (e) A pharmacist as defined in s. 465.003, or a pharmacy
56 intern or pharmacy technician who is acting on behalf of and at
57 the direction of the pharmacist, who requests such information
58 and certifies that the requested information will be used to
59 dispense controlled substances to a current patient in
60 accordance with s. 893.04.

61 (f) The patient who is identified in the record upon a
62 written request for the purpose of verifying that information.

63 (3) Any agency that obtains such confidential and exempt
64 information pursuant to this section must maintain the
65 confidential and exempt status of that information; however, the
66 Agency for Health Care Administration or a criminal justice
67 agency with lawful access to such information may disclose
68 confidential and exempt information received from the department
69 to a criminal justice agency as part of an active investigation
70 of a specific violation of law.

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

74 (5) This section is subject to the Open Government Sunset
75 Review Act in accordance with s. 119.15 and shall stand repealed
76 on October 2, 2009, unless reviewed and saved from repeal
77 through reenactment by the Legislature.

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78 Section 2. The Legislature finds that it is a public
79 necessity that personal identifying information of a patient, a
80 practitioner as defined in s. 893.02, Florida Statutes, or a
81 pharmacist as defined in s. 465.003, Florida Statutes, contained
82 in records that are reported to the Department of Health under
83 s. 893.055, Florida Statutes, the electronic monitoring system
84 for prescription of controlled substances, be made confidential
85 and exempt. Information concerning the prescriptions that a
86 patient has been prescribed is a private, personal matter
87 between the patient, the practitioner, and the pharmacist.
88 Nevertheless, reporting of prescriptions on a timely and
89 accurate basis by practitioners and pharmacists will ensure the
90 ability of the state to review and provide oversight of
91 prescribing and dispensing practices. Further, the reporting of
92 this information will facilitate investigations and prosecutions
93 of violations of state drug laws by patients, practitioners, or
94 pharmacists, thereby increasing compliance with those laws. If,
95 in the process, however, the information that would identify a
96 patient is not made confidential and exempt, any person could
97 inspect and copy the record and be aware of the prescriptions
98 that a patient has been prescribed. The availability of such
99 information to the public would result in the invasion of the
100 patient's privacy. If the identity of the patient could be
101 correlated with his or her prescriptions, it would be possible
102 for the public to become aware of the diseases or other medical
103 concerns that a patient is being treated for by his or her
104 physician. This knowledge could be used to embarrass or to
105 humiliate a patient or to discriminate against him or her.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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106 Requiring the reporting of prescribing information, while
107 protecting a patient's personal identifying information, will
108 facilitate efforts to maintain compliance with the state's drug
109 laws and will facilitate the sharing of information between
110 health care practitioners and pharmacists, while maintaining and
111 ensuring patient privacy. Additionally, exempting personal
112 identifying information of doctors and pharmacists will ensure
113 that an individual will not be able to "doctor-shop," that is to
114 determine which doctors prescribe the highest amount of a
115 particular type of drug and to seek those doctors out in order
116 to increase the likelihood of obtaining a particular prescribed
117 substance. Further, protecting personal identifying information
118 of pharmacists ensures that an individual will not be able to
119 identify which pharmacists dispense the largest amount of a
120 particular substance and target that pharmacy for robbery or
121 burglary. Thus, the Legislature finds that personal identifying
122 information of a patient, a practitioner as defined in s.
123 893.02, Florida Statutes, or a pharmacist as defined in s.
124 465.003, Florida Statutes, contained in records reported under
125 s. 893.055, Florida Statutes, must be confidential and exempt
126 from disclosure.

127 Section 3. This act shall take effect July 1, 2006, if
128 House Bill 913, or similar legislation establishing an
129 electronic system to monitor the prescribing of controlled
130 substances, is adopted in the same legislative session or an
131 extension thereof and becomes law.