

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 information; providing guidelines for
 9 the use of such information and penalties for violations;
 10 providing for future legislative review and repeal;
 11 providing a finding of public necessity; providing a
 12 contingent effective date.

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

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

18 893.056 Public records exemption for the electronic-
 19 monitoring system for prescription of controlled substances
 20 listed in Schedule II, Schedule III, or Schedule IV.--

21 (1) Identifying information, including, but not limited
 22 to, the name, address, phone number, insurance plan number,
 23 social security number or government-issued identification
 24 number, provider number, Drug Enforcement Administration number,
 25 or any other unique identifying number of a patient, patient's
 26 agent, health care practitioner, pharmacist, pharmacist's agent,
 27 or pharmacy which is contained in records held by the Department
 28 of Health or any other agency as defined in s. 119.011(2) under

29 s. 893.055, the electronic-monitoring system for prescription of
30 controlled substances, is confidential and exempt from s.
31 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

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

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

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

52 (e) A patient who is identified in the record upon a
53 written request for the purpose of verifying that information.

54 (3) Any agency that obtains such confidential and exempt
55 information pursuant to this section must maintain the
56 confidential and exempt status of that information; however, the

57 Agency for Health Care Administration or a criminal justice
58 agency that has lawful access to such information may disclose
59 confidential and exempt information received from the Department
60 of Health to a criminal justice agency as part of an active
61 investigation of a specific violation of law.

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

65 (5) This section is subject to the Open Government Sunset
66 Review Act in accordance with s. 119.15, and shall stand
67 repealed on October 2, 2012, unless reviewed and saved from
68 repeal through reenactment by the Legislature.

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

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

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113 identifying information of a patient, a practitioner as defined
114 in s. 893.02, Florida Statutes, or a pharmacist as defined in s.
115 465.003, Florida Statutes, contained in records reported under
116 s. 893.055, Florida Statutes, must be confidential and exempt
117 from disclosure.

118 Section 3. This act shall take effect July 1, 2007, if
119 House Bill 893, or similar legislation establishing an
120 electronic system to monitor the prescribing of controlled
121 substances, is adopted in the same legislative session or an
122 extension thereof and becomes law.