

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.
 38 119.011(4), which enforces the laws of this state or the United
 39 States relating to controlled substances and which has initiated
 40 an active investigation involving a specific violation of law.

41 (c) A practitioner as defined in s. 893.02(19), or an
 42 employee of the practitioner who is acting on behalf of and at
 43 the direction of the practitioner, who requests such information
 44 and certifies that the information is necessary to provide
 45 medical treatment to a current patient in accordance with s.
 46 893.05.

47 (d) A pharmacist as defined in s. 465.003(10), or a
 48 pharmacy intern or pharmacy technician who is acting on behalf
 49 of and at the direction of the pharmacist, who requests such
 50 information and certifies that the requested information will be
 51 used to dispense controlled substances to a current patient in
 52 accordance with s. 893.04.

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

55 (3) Any agency that obtains such confidential and exempt
 56 information pursuant to this section must maintain the

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

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

66 (5) This section is subject to the Open Government Sunset
67 Review Act in accordance with s. 119.15 and shall stand repealed
68 on October 2, 2013, unless reviewed and saved from repeal
69 through reenactment by the Legislature.

70 Section 2. The Legislature finds that it is a public
71 necessity that personal identifying information of a patient, a
72 practitioner as defined in s. 893.02(19), Florida Statutes, or a
73 pharmacist as defined in s. 465.003(10), Florida Statutes,
74 contained in records that are reported to the Department of
75 Health under s. 893.055, Florida Statutes, the electronic-
76 monitoring system for prescription of controlled substances, be
77 made confidential and exempt from disclosure. Information
78 concerning the prescriptions that a patient has been prescribed
79 is a private, personal matter between the patient, the
80 practitioner, and the pharmacist. Nevertheless, reporting of
81 prescriptions on a timely and accurate basis by practitioners
82 and pharmacists will ensure the ability of the state to review
83 and provide oversight of prescribing and dispensing practices.
84 Further, the reporting of this information will facilitate

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

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113 particular substance and target that pharmacy for robbery or
114 burglary. Thus, the Legislature finds that personal identifying
115 information of a patient, a practitioner as defined in s.
116 893.02(19), Florida Statutes, or a pharmacist as defined in s.
117 465.003(10), Florida Statutes, contained in records reported
118 under s. 893.055, Florida Statutes, must be confidential and
119 exempt from disclosure.

120 Section 3. This act shall take effect July 1, 2008, if
121 House Bill 1011, or similar legislation establishing an
122 electronic system to monitor the prescribing of controlled
123 substances, is adopted in the same legislative session or an
124 extension thereof and becomes law.