

By the Committee on Health Regulation; and Senators Saunders and Atwater

588-06449A-08

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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 any agency that has
5 access to or operates the privacy-protected website
6 containing patients' medication histories; authorizing
7 certain persons and entities access to patient-identifying
8 information; providing guidelines for the use of such
9 information and penalties for violations; providing for
10 future legislative review and repeal; providing a finding
11 of public necessity; providing a contingent effective
12 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 to
17 read:

18 893.056 Public-records exemption for information and
19 records of a privacy-protected website containing patients'
20 medication histories.--

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

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30 s. 893.055 is confidential and exempt from s. 119.07(1) and s.
31 24(a), Art. I of the State Constitution.

32 (2) Any agency, as defined in s. 119.011, which has access
33 to or operates the privacy-protected website for patients'
34 medication histories pursuant to s. 893.055 shall disclose such
35 confidential and exempt information to:

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

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

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

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

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

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

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

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

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

71 Section 2. The Legislature finds that it is a public
72 necessity that personal identifying information concerning a
73 patient, the medication history of a patient, a practitioner as
74 defined in s. 893.02, Florida Statutes, or a pharmacist as
75 defined in s. 465.003, Florida Statutes, which is contained in
76 records that are reported to an agency, as defined in s.
77 119.011(2), Florida Statutes, which has access to or operates the
78 privacy-protected website for patients' medication histories
79 pursuant to s. 893.055, Florida Statutes, be made confidential
80 and exempt from disclosure. Information concerning the
81 prescriptions that a patient has been prescribed is a private,
82 personal matter between the patient, the practitioner, and the
83 pharmacist. Nevertheless, reporting of prescriptions on a timely
84 and accurate basis by practitioners and pharmacists will ensure
85 the ability of the state to review and provide oversight of
86 prescribing and dispensing practices. Further, the reporting of
87 this information will facilitate investigations and prosecutions

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

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117 | that personal identifying information concerning a patient, a
118 | practitioner as defined in s. 893.02, Florida Statutes, or a
119 | pharmacist as defined in s. 465.003, Florida Statutes, contained
120 | in records that are maintained as provided in s. 893.055, Florida
121 | Statutes, must be confidential and exempt from disclosure.

122 | Section 3. This act shall take effect July 1, 2008, if CS
123 | for SB's 1550 & 2724, or similar legislation establishing a
124 | privacy-protected website containing patients' medication
125 | histories, is adopted in the same legislative session or an
126 | extension thereof and becomes law.