

By Senator Atwater

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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 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 to
17 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 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 the Department of
28 Health or any other agency as defined in s. 119.011(2) under s.
29 893.055, the electronic-monitoring system for prescription of

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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(4),
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(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 of
49 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

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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 through
69 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 and
82 pharmacists will ensure the ability of the state to review and
83 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

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88 information that would identify a patient is not made
89 confidential and exempt from disclosure, any person could inspect
90 and copy the record and be aware of the patient's prescriptions.
91 The availability of such information to the public would result
92 in the invasion of the patient's privacy. If the identity of the
93 patient could be correlated with his or her prescriptions, it
94 would be possible for the public to become aware of the diseases
95 or other medical concerns for which a patient is being treated by
96 his or her physician. This knowledge could be used to embarrass
97 or to humiliate a patient or to discriminate against him or her.
98 Requiring the reporting of prescribing information, while
99 protecting a patient's personal identifying information, will
100 facilitate efforts to maintain compliance with the state's drug
101 laws and will facilitate the sharing of information between
102 health care practitioners and pharmacists, while maintaining and
103 ensuring patient privacy. Additionally, exempting from disclosure
104 the personal identifying information of practitioners will ensure
105 that an individual will not be able to "doctor-shop," that is to
106 determine which practitioners prescribe the highest amount of a
107 particular type of drug and to seek those practitioners out in
108 order to increase the likelihood of obtaining a particular
109 prescribed substance. Further, protecting personal identifying
110 information of pharmacists ensures that an individual will not be
111 able to identify which pharmacists dispense the largest amount of
112 a particular substance and target that pharmacy for robbery or
113 burglary. Thus, the Legislature finds that personal identifying
114 information of a patient, a practitioner as defined in s.
115 893.02(19), Florida Statutes, or a pharmacist as defined in s.
116 465.003(10), Florida Statutes, contained in records reported

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117 | under s. 893.055, Florida Statutes, must be confidential and
118 | exempt from disclosure.

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