

1 A bill to be entitled
 2 An act relating to public records; creating s. 893.0551,
 3 F.S.; exempting from public records requirements
 4 information and records reported to the Department of
 5 Health under the electronic prescription drug validation
 6 program for monitoring the prescribing and dispensing of
 7 certain controlled substances; authorizing certain persons
 8 and entities access to patient-identifying information;
 9 providing guidelines for the use of such information and
 10 penalties for violations; providing for future legislative
 11 review and repeal; providing a finding of public
 12 necessity; providing a contingent effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 893.0551, Florida Statutes, is created
 17 to read:

18 893.0551 Electronic prescription drug validation program;
 19 public records exemption.--

20 (1) Identifying information, including, but not limited
 21 to, the name, address, telephone number, insurance plan number,
 22 social security number or government-issued identification
 23 number, provider number, Drug Enforcement Administration number,
 24 or any other unique identifying number, of a patient or
 25 patient's agent, a health care practitioner, an employee of the
 26 practitioner who is acting on behalf of and at the direction of
 27 the practitioner, a pharmacist or pharmacist's agent, or a
 28 pharmacy which is contained in records held by the department or

HB 1017

2009

29 any other agency, as defined in s. 119.011(2), under s. 893.055,
30 the electronic prescription drug validation program for
31 monitoring the prescribing and dispensing of certain controlled
32 substances, is confidential and exempt from s. 119.07(1) and s.
33 24(a), Art. I of the State Constitution.

34 (2) The department shall disclose such confidential and
35 exempt information to:

36 (a) The Attorney General and his or her employees working
37 on Medicaid fraud cases involving prescription drugs or when he
38 or she has initiated a review of specific identifiers of
39 Medicaid fraud regarding prescription drugs.

40 (b) Appropriate state and federal law enforcement agencies
41 during active investigations as defined in s. 119.011 of
42 potential criminal activity, fraud, or theft involving
43 prescription drugs.

44 (c) The relevant health regulatory board responsible for
45 the licensure, regulation, or discipline of a practitioner,
46 pharmacist, or other person who is authorized to prescribe,
47 administer, or dispense controlled substances and who is
48 involved in a specific controlled substances investigation for
49 prescription drugs involving a designated person.

50 (d) A criminal justice agency, as defined in s. 119.011,
51 but excluding the Department of Corrections and any civil court,
52 that enforces the laws of this state or the United States
53 relating to controlled substances and that has initiated an
54 investigation that is active, as defined in s. 119.011,
55 involving a specific violation of law regarding prescription
56 drug abuse or diversion of prescribed controlled substances.

HB 1017

2009

57 Civil court and any other noncriminal, nonjuvenile justice
58 requests for information from the system are not permitted, even
59 if by court order.

60 (e) Law enforcement personnel not described in paragraph
61 (d) during ongoing investigations as provided in s. 893.07.

62 (f) A health care practitioner, or an employee of the
63 practitioner who is acting on behalf of and at the direction of
64 the practitioner, who requests such information and certifies
65 that the information is necessary to provide medical treatment
66 to a current patient in accordance with s. 893.05.

67 (g) A pharmacist, as defined in s. 465.003, or a pharmacy
68 intern or pharmacy technician who is acting on behalf of and at
69 the direction of the pharmacist, who requests such information
70 and certifies that the requested information will be used to
71 dispense controlled substances to a current patient in
72 accordance with s. 893.04.

73 (h) A patient who is identified in the Department of
74 Health's controlled prescription drug system upon a written
75 request for the purpose of verifying that information.
76 Independent confirmation of the patient's identity by the
77 Department of Health is authorized to prevent improper release
78 of information.

79 (i) The patient's pharmacy, prescriber, and dispenser.

80 (j) Employees of the Department of Health when requesting
81 data necessary for performance measures as provided in s.
82 893.055 (8).

83 (3) Any agency or person who obtains such confidential and
84 exempt information pursuant to this section must maintain the

HB 1017

2009

85 confidential and exempt status of that information. However, a
86 criminal justice agency as provided in paragraph (2)(d) that has
87 lawful access to such information may disclose confidential and
88 exempt information received from the department to another
89 criminal justice agency as part of an investigation that is
90 active, as defined in s. 119.011, of a specific violation of
91 prescription drug abuse or prescription drug diversion law as it
92 relates to controlled substances.

93 (4) Any person who willfully and knowingly violates this
94 section commits a felony of the third degree, punishable as
95 provided in s. 775.082, s. 775.083, or s. 775.084.

96 (5) This section is subject to the Open Government Sunset
97 Review Act in accordance with s. 119.15 and shall stand repealed
98 on October 2, 2014, unless reviewed and saved from repeal
99 through reenactment by the Legislature.

100 Section 2. The Legislature finds that it is a public
101 necessity that personal identifying information of a patient, a
102 practitioner, as defined in s. 893.02, Florida Statutes, or a
103 pharmacist, as defined in s. 465.003, Florida Statutes,
104 contained in records that are reported to the Department of
105 Health under s. 893.055, Florida Statutes, the electronic
106 validation system for the monitoring of the prescribing and
107 dispensing of controlled substances, be made confidential and
108 exempt from disclosure. Information concerning the prescriptions
109 that a patient has been prescribed is a private, personal matter
110 between the patient, the practitioner, and the pharmacist.
111 Nevertheless, reporting of prescriptions on a timely and
112 accurate basis by practitioners and dispensing physicians and

HB 1017

2009

113 pharmacists will ensure the ability of the state to review and
114 provide oversight of prescribing and dispensing practices to
115 include dispensing physicians and other dispensing health care
116 practitioners. Further, the reporting of this information will
117 facilitate investigations and prosecutions of violations of
118 state drug laws by patients, practitioners, dispensing health
119 care practitioners, and pharmacists, thereby increasing
120 compliance with those laws. However, if in the process the
121 information that would identify a patient is not made
122 confidential and exempt from disclosure, any person could
123 inspect and copy the record and be aware of the patient's
124 prescriptions. The availability of such information to the
125 public would result in the invasion of the patient's privacy. If
126 the identity of the patient could be correlated with his or her
127 prescriptions, it would be possible for the public to become
128 aware of the diseases or other medical concerns for which a
129 patient is being treated by his or her physician. This knowledge
130 could be used to embarrass or to humiliate a patient or to
131 discriminate against him or her. Requiring the reporting of
132 prescribing information while protecting a patient's personal
133 identifying information will facilitate efforts to maintain
134 compliance with the state's drug laws and facilitate the sharing
135 of information between health care practitioners and pharmacists
136 while maintaining and ensuring patient privacy. Additionally,
137 exempting from disclosure the personal identifying information
138 of practitioners will ensure that an individual will not be able
139 to identify which practitioners prescribe the highest amount of
140 a particular type of drug and to seek those practitioners out in

HB 1017

2009

141 order to increase the likelihood of obtaining a particular
142 prescribed substance. Further, protecting personal identifying
143 information of pharmacists ensures that an individual will not
144 be able to identify which pharmacists, pharmacies, or dispensing
145 health care practitioners dispense the largest amount of a
146 particular substance and target that pharmacy or dispensing
147 health care practitioner for robbery or burglary. Thus, the
148 Legislature finds that the personal identifying information of a
149 patient, a practitioner, as defined in s. 893.02, Florida
150 Statutes, or a pharmacist, as defined in s. 465.003, Florida
151 Statutes, contained in records reported under s. 893.055,
152 Florida Statutes, must be confidential and exempt from
153 disclosure.

154 Section 3. This act shall take effect July 1, 2009, if HB
155 1015 or similar legislation establishing an electronic system to
156 monitor the prescribing and dispensing of controlled substances
157 is adopted in the same legislative session or an extension
158 thereof and becomes law.