

By Senator Bennett

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1 A bill to be entitled
2 An act relating to public records; creating s.
3 893.0551, F.S.; exempting from public-records
4 requirements information and records reported to the
5 Department of Health under the electronic system for
6 monitoring the dispensing of certain controlled
7 substances; authorizing certain persons and entities
8 access to information; providing restrictions on the
9 use of such information and criminal penalties for
10 violations; authorizing agreements with other states
11 to exchange prescription drug monitoring information;
12 providing factors for considering such agreements;
13 requiring a report concerning any such agreements;
14 limiting the purposes for which information may be
15 shared under such agreements; providing for future
16 legislative review and repeal; providing a finding of
17 public necessity; providing a contingent effective
18 date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 893.0551, Florida Statutes, is created
23 to read:

24 893.0551 Electronic system for monitoring the dispensing of
25 certain controlled substances; public-records exemption.-

26 (1) Information collected by the department under s.
27 893.055 is confidential and exempt from s. 119.07(1) and s.
28 24(a), Art. I of the State Constitution. However, the department
29 may disclose such information:

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30 (a) To a patient to whom the prescription is written.

31 (b) To a person with the express written consent of the
32 patient to whom the prescription is written or the patient's
33 legally authorized representative.

34 (c) To a person charged with protecting the health or life
35 of the patient in a medical emergency.

36 (d) By court order upon a showing of good cause.

37 (e) To a practitioner or pharmacist who requests the
38 information and certifies that the requested information is for
39 the purpose of providing medical or pharmaceutical treatment to
40 a bona fide current patient.

41 (f) To a law enforcement officer of this state, another
42 state, or the United States whose duty it is to enforce the laws
43 of this state, another state, or the United States relating to
44 controlled substances and who is engaged in a bona fide specific
45 investigation involving a designated person.

46 (g) To the Medicaid Fraud Control Unit in the Department of
47 Legal Affairs for the purpose of a bona fide specific
48 investigation under s. 409.920 involving a designated person.

49 (h) To a designated representative of a state professional
50 licensing, certification, or regulatory agency charged with
51 oversight of those persons authorized to prescribe or dispense
52 controlled substances for the purpose of a bona fide specific
53 investigation involving a designated person.

54 (i) To a person or agency authorized to receive the
55 information under s. 119.0712(1)(d), provided that any
56 information disclosed must have had all information that would
57 permit the identification of persons removed prior to
58 disclosure.

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59 (2) Recipients of information lawfully disclosed under
60 subsection (1) may retain the information for up to 24 months
61 before purging the information from their records. However, the
62 information may be retained longer than 24 months if the
63 information is pertinent to an ongoing prosecution or
64 disciplinary proceeding.

65 (3) The department may retain information collected under
66 s. 893.055 for up to 24 months before purging the information
67 from its records.

68 (4) A person authorized to receive information under
69 subsection (1) who:

70 (a) Knowingly discloses such information in violation of
71 this section; or

72 (b) Uses such information in a manner or for a purpose in
73 violation of this section

74
75 commits a misdemeanor of the first degree, punishable as
76 provided in s. 775.082 or s. 775.083.

77 (5) (a) The State Surgeon General may enter into reciprocal
78 agreements for the sharing of prescription drug monitoring
79 information with any other state or states that have compatible
80 prescription drug monitoring programs. If the State Surgeon
81 General elects to evaluate the prescription drug monitoring
82 program of another state as authorized by this subsection,
83 priority shall be given to a state that is contiguous with the
84 borders of this state.

85 (b) In determining compatibility, the State Surgeon General
86 shall consider:

87 1. The essential purposes of the program and the success of

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88 the program in fulfilling those purposes.

89 2. The safeguards for privacy of patient records and the
90 success of the program in protecting patient privacy.

91 3. The persons authorized to view the data collected by the
92 program.

93 4. The schedules of the controlled substances monitored.

94 5. The data required to be submitted on each prescription.

95 6. Any implementation criteria deemed essential for a
96 thorough comparison.

97 7. The costs and benefits to the state in sharing
98 particular information available in the state's database with
99 the program under consideration.

100 (c) The State Surgeon General shall review any agreement on
101 an annual basis to determine its continued compatibility with
102 the prescription drug monitoring program in this state.

103 (d) The State Surgeon General shall submit an annual report
104 to the Governor, the President of the Senate, and the Speaker of
105 the House of Representatives that summarizes any agreement
106 entered into under this subsection and that analyzes the
107 effectiveness of that agreement in monitoring the dispensing of
108 controlled substances in this state.

109 (e) Any agreement between the State Surgeon General and
110 another state shall prohibit the sharing of information about a
111 resident of this state or a practitioner, pharmacist, or other
112 prescriber for any purpose not otherwise authorized by this
113 section or s. 893.055.

114 (6) This section is subject to the Open Government Sunset
115 Review Act in accordance with s. 119.15 and shall stand repealed
116 on October 2, 2014, unless reviewed and saved from repeal

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117 through reenactment by the Legislature.

118 Section 2. The Legislature finds that it is a public
119 necessity that the information contained in the records provided
120 to the Department of Health, or any person or agency authorized
121 by the department, pursuant to s. 893.055, Florida Statutes, be
122 confidential and exempt from disclosure. Notwithstanding the
123 privacy issues surrounding the prescription and dispensing of
124 controlled substances listed in Schedule II, Schedule III, and
125 Schedule IV of s. 893.03, Florida Statutes, the use of an
126 electronic monitoring system, with oversight by the department,
127 will assist in the development of improved prescription and
128 dispensing practices and better protect the public and its
129 citizens. Further, the use of an electronic monitoring system
130 will facilitate investigations and prosecutions of violations of
131 state drug laws, thereby increasing compliance with those laws.
132 However, if such information is not made confidential and exempt
133 from disclosure, any person could inspect and copy a patient's
134 records and have knowledge of that patient's prescriptions for
135 controlled substances listed in Schedule II, Schedule III, or
136 Schedule IV. The availability of such information to the public
137 would result in the invasion of a patient's privacy. Thus, the
138 Legislature finds that information reported pursuant to s.
139 893.055, Florida Statutes, must be confidential and exempt from
140 disclosure under s. 119.07(1), Florida Statutes, and s. 24(a),
141 Art. I of the State Constitution.

142 Section 3. This act shall take effect July 1, 2009, if SB
143 ___ or similar legislation establishing an electronic system for
144 monitoring the dispensing of controlled substances listed in
145 Schedule II, Schedule III, and Schedule IV is adopted in the

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146 same legislative session or an extension thereof and becomes
147 law.