

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 system for monitoring the  
 6           dispensing of certain controlled substances; authorizing  
 7           certain persons and entities access to information;  
 8           providing guidelines for the use of such information and  
 9           criminal penalties for violations; providing for future  
 10          legislative review and repeal; providing a finding of  
 11          public necessity; providing a contingent effective date.

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

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

17           893.0551 Electronic system for monitoring the dispensing  
 18   of certain controlled substances; public records exemption.--

19           (1) Information collected by pharmacists and health care  
 20   practitioners and submitted to the department under s. 893.055  
 21   or stored in a database under that section is confidential and  
 22   exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 23   Constitution.

24           (2) Notwithstanding subsection (1), the department shall  
 25   disclose such confidential information to:

26           (a) The Agency for Health Care Administration when it has  
 27   initiated a review for Medicaid fraud or abuse.

28        (b) A criminal justice agency, as defined in s. 119.011,  
29 that enforces the laws of this state or the United States  
30 relating to controlled substances and that has initiated an  
31 active investigation involving a specific violation of law.

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

37        (d) A pharmacist as defined in s. 465.003, or a pharmacy  
38 intern or pharmacy technician who is acting on behalf of and at  
39 the direction of the pharmacist, who requests such information  
40 and certifies that the requested information will be used to  
41 dispense controlled substances to a current patient in  
42 accordance with s. 893.04.

43        (e) A patient who, upon written request, seeks a copy of  
44 his or her biometric scan for the purpose of verifying the  
45 identity of the person to whom the biometric scan belongs.

46        (3) Any person or agency that obtains such confidential  
47 and exempt information must maintain the confidential and exempt  
48 status of that information; however, the Agency for Health Care  
49 Administration or a criminal justice agency that has lawful  
50 access to such information may disclose confidential and exempt  
51 information under this section to a criminal justice agency  
52 involved in an active investigation involving a specific  
53 violation of law.

54        (4) A health care practitioner or pharmacist who provides  
55 any information in any capacity, whether or not required by law,

56 to the department, the federal Drug Enforcement Administration,  
 57 or state or local law enforcement concerning prescription fraud  
 58 or abuse or a violation of s. 893.13 based upon information  
 59 lawfully obtained or received from the database shall not be  
 60 held liable in any civil action for providing or reporting such  
 61 information so long as the health care practitioner or  
 62 pharmacist acts without intentional fraud or malice.

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

66 (6) 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, 2014, 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 the information contained in the records provided  
 72 to the Department of Health, or any person or agency authorized  
 73 by the department, pursuant to s. 893.055, Florida Statutes, be  
 74 confidential and exempt from disclosure. Notwithstanding the  
 75 privacy issues surrounding the prescription and dispensing of  
 76 controlled substances listed in Schedule II, Schedule III, and  
 77 Schedule IV, the use of an electronic monitoring system, with  
 78 oversight by the department, will assist in the development of  
 79 improved prescription and dispensing practices and better  
 80 protect the public and its citizens. Further, the use of an  
 81 electronic monitoring system will facilitate investigations and  
 82 prosecutions of violations of state drug laws, thereby  
 83 increasing compliance with those laws. However, if information

HB 145

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2009

84 that could identify a patient is not made confidential and  
85 exempt from disclosure, any person could inspect and copy the  
86 patient's records and have knowledge of the patient's  
87 prescriptions for controlled substances listed in Schedule II,  
88 Schedule III, or Schedule IV. The availability of such  
89 information to the public would result in the invasion of a  
90 patient's privacy. Thus, the Legislature finds that personal  
91 identifying information of a patient, a practitioner as defined  
92 in s. 893.02, Florida Statutes, or a pharmacist as defined in s.  
93 465.003, Florida Statutes, contained in information reported  
94 pursuant to s. 893.055, Florida Statutes, must be confidential  
95 and exempt from disclosure under s. 119.07(1), Florida Statutes,  
96 and s. 24(a), Art. I of the State Constitution.

97       Section 3. This act shall take effect March 1, 2011, if HB  
98 143 or similar legislation establishing an electronic system for  
99 monitoring the dispensing of controlled substances listed in  
100 Schedule II, Schedule III, and Schedule IV is adopted and  
101 becomes law prior thereto.