



138908

LEGISLATIVE ACTION

Senate

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House

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04/28/2009 02:32 PM

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Senator Fasano moved the following:

Senate Amendment (with title amendment)

Delete lines 24 - 163

and insert:

(1) For purposes of this section, the term:

(a) "Active investigation" has the same meaning as provided in s. 893.055.

(b) "Dispenser" has the same meaning as provided in s. 893.055.

(c) "Health care practitioner" or "practitioner" has the same meaning as provided in s. 893.055.

(d) "Health care regulatory board" has the same meaning as



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13 provided in s. 893.055.

14 (e) "Law enforcement agency" has the same meaning as
15 provided in s. 893.055.

16 (f) "Pharmacist" means any person licensed under chapter
17 465 to practice the profession of pharmacy.

18 (g) "Pharmacy" has the same meaning as provided in s.
19 893.055.

20 (h) "Prescriber" has the same meaning as provided in s.
21 893.055.

22 (2) The following information of a patient or patient's
23 agent, a health care practitioner, a dispenser, an employee of
24 the practitioner who is acting on behalf of and at the direction
25 of the practitioner, a pharmacist, or a pharmacy that is
26 contained in records held by the department under s. 893.055 is
27 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
28 of the State Constitution:

29 (a) Name.

30 (b) Address.

31 (c) Telephone number.

32 (d) Insurance plan number.

33 (e) Government-issued identification number.

34 (f) Provider number.

35 (g) Drug Enforcement Administration number.

36 (h) Any other unique identifying information or number.

37 (3) The department shall disclose such confidential and
38 exempt information to the following entities after using a
39 verification process to ensure the legitimacy of that person's
40 or entity's request for the information:

41 (a) The Attorney General and his or her designee when



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42 working on Medicaid fraud cases involving prescription drugs or
43 when the Attorney General has initiated a review of specific
44 identifiers of Medicaid fraud regarding prescription drugs. The
45 Attorney General or his or her designee may disclose the
46 confidential and exempt information received from the department
47 to a criminal justice agency as defined in s. 119.011 as part of
48 an active investigation that is specific to a violation of
49 prescription drug abuse or prescription drug diversion law as it
50 relates to controlled substances. The Attorney General's
51 Medicaid fraud investigators may not have direct access to the
52 department's database.

53 (b) The department's relevant health care regulatory boards
54 responsible for the licensure, regulation, or discipline of a
55 practitioner, pharmacist, or other person who is authorized to
56 prescribe, administer, or dispense controlled substances and who
57 is involved in a specific controlled substances investigation
58 for prescription drugs involving a designated person. The health
59 care regulatory boards may request information from the
60 department but may not have direct access to its database. The
61 health care regulatory boards may provide such information to a
62 law enforcement agency pursuant to ss. 456.066 and 456.073.

63 (c) A law enforcement agency that has initiated an active
64 investigation involving a specific violation of law regarding
65 prescription drug abuse or diversion of prescribed controlled
66 substances. The law enforcement agency may disclose the
67 confidential and exempt information received from the department
68 to a criminal justice agency as defined in s. 119.011 as part of
69 an active investigation that is specific to a violation of
70 prescription drug abuse or prescription drug diversion law as it



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71 relates to controlled substances. A law enforcement agency may
72 request information from the department but may not have direct
73 access to its database.

74 (d) A health care practitioner who certifies that the
75 information is necessary to provide medical treatment to a
76 current patient in accordance with ss. 893.05 and 893.055.

77 (e) A pharmacist who certifies that the requested
78 information will be used to dispense controlled substances to a
79 current patient in accordance with ss. 893.04 and 893.055.

80 (f) A patient or the legal guardian or designated health
81 care surrogate for an incapacitated patient, if applicable,
82 making a request as provided in s. 893.055(7)(c)4.

83 (g) The patient's pharmacy, prescriber, or dispenser who
84 certifies that the information is necessary to provide medical
85 treatment to his or her current patient in accordance with s.
86 893.055.

87 (4) Any agency or person who obtains such confidential and
88 exempt information pursuant to this section must maintain the
89 confidential and exempt status of that information.

90 (5) Any person who willfully and knowingly violates this
91 section commits a felony of the third degree, punishable as
92 provided in s. 775.082, s. 775.083, or s. 775.084.

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

97 Section 2. The Legislature finds that it is a public necessity
98 that certain identification and location information of a
99 patient or patient's agent; a health care practitioner as



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100 defined in s. 893.055, Florida Statutes; a dispenser as defined
101 in s. 893.055, Florida Statutes; an employee of the practitioner
102 who is acting on behalf of and at the direction of the
103 practitioner; a pharmacist; or a pharmacy as defined in s.
104 893.055, Florida Statutes, that is contained in records that are
105 held by the Department of Health under s. 893.055, Florida
106 Statutes, the electronic prescription drug monitoring system for
107 the monitoring of the prescribing and dispensing of controlled
108 substances, be made confidential and exempt from public records
109 requirements. Specifically, the Legislature finds that it is a
110 public necessity to make confidential and exempt the name,
111 address, telephone number, insurance plan number, government-
112 issued identification number, provider number, Drug Enforcement
113 Administration number, and any other unique identifying
114 information or number. Information concerning the prescriptions
115 that have been prescribed or dispensed to a patient is a
116 private, personal matter between the patient, the practitioner,
117 and the pharmacist. Nevertheless, the reporting of prescriptions
118 on a timely and accurate basis by dispensing practitioners and
119 pharmacists will ensure the ability of the state to review and
120 provide oversight of prescribing and dispensing practices.
121 Further, the reporting of this information will facilitate
122 investigations and prosecutions of violations of state drug laws
123 by patients, practitioners, and pharmacists, thereby increasing
124 compliance with those laws. However, if in the process the
125 information that would identify a patient is not made
126 confidential and exempt from disclosure, any person could
127 inspect and copy the record and be aware of the patient's
128 prescriptions. The availability of such information to the



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129 public would result in the invasion of the patient's privacy. If
130 the identity of the patient could be correlated with his or her
131 prescriptions and his or her prescription dispensing history, it
132 would be possible for the public to become aware of the diseases
133 or other medical concerns for which a patient is being treated
134 by his or her physician. This knowledge could be used to
135 embarrass or to humiliate a patient or to discriminate against
136 him or her. Requiring the reporting of prescribing and
137 dispensing information while protecting a patient's personal
138 identifying information will facilitate efforts to maintain
139 compliance with the state's drug laws and will facilitate the
140 sharing of information between health care practitioners and
141 pharmacists while maintaining and ensuring patient privacy.
142 Additionally, exempting from disclosure the personal identifying
143 information of practitioners will ensure that an individual will
144 not be able to identify which practitioners prescribe the
145 largest amount of a particular type of drug and to seek out
146 those practitioners in order to increase the likelihood of
147 obtaining a particular prescribed substance. Further, protecting
148 personal identifying information of pharmacists and dispensers
149 ensures that an individual will not be able to identify which
150 pharmacists, pharmacies, or dispensing health care practitioners
151 dispense the largest amount of a particular controlled substance
152 and identify that pharmacy or dispensing health care
153 practitioner as a potential target for a robbery or burglary.
154 Thus, the Legislature finds that it is a public necessity to
155 make confidential and exempt from public records requirements
156 certain identification and location information of a patient or
157 patient's agent, a health care practitioner, a dispenser, an



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158 employee of the practitioner who is acting on behalf of and at
159 the direction of the practitioner, a pharmacist, or a pharmacy.

160 Section 3. This act shall take effect July 1, 2009, if CS
161 for CS for CS for CS for SB 462, or similar legislation
162 establishing an

164 ===== T I T L E A M E N D M E N T =====

165 And the title is amended as follows:

166 Delete lines 2 - 16

167 and insert:

168 An act relating to public records; creating s. 893.0551, F.S.;

169 providing definitions; exempting from public records

170 requirements information and records reported to the Department

171 of Health under the electronic prescription drug monitoring

172 program for monitoring the prescribing and dispensing of

173 controlled substances listed in Schedules II-IV; authorizing

174 certain persons and entities access to patient-identifying,

175 practitioner-identifying, or pharmacist-identifying information;

176 providing guidelines for the use of such information and

177 penalties for violations; providing for future legislative

178 review and repeal; providing a finding of public necessity;

179 providing a contingent effective date.