



418676

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2009	.	
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The Committee on Governmental Oversight and Accountability  
(Jones) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

893.0551 Public-records exemption for the prescription drug  
monitoring program.—

(1) Identifying information, including, but not limited to,  
the name, address, telephone number, insurance plan number,  
government-issued identification number, provider number, Drug



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12 Enforcement Administration number, or any other unique  
13 identifying number of a patient, patient's agent, health care  
14 practitioner or practitioner as defined in s. 893.055, or an  
15 employee of the practitioner who is acting on behalf of and at  
16 the direction of the practitioner, a pharmacist, or a pharmacy,  
17 which is contained in records held by the Department of Health  
18 under s. 893.055, is confidential and exempt from s. 119.07(1)  
19 and s. 24(a), Art. I of the State Constitution.

20 (2) The Department of Health shall disclose such  
21 confidential and exempt information to the following entities  
22 after verifying that entity's request for the information is  
23 legitimate:

24 (a) The Attorney General or his or her designee when  
25 working on Medicaid fraud cases involving prescription drugs or  
26 when the Attorney General has initiated a review of specific  
27 identifiers of Medicaid fraud regarding prescription drugs. The  
28 Attorney General or his or her designee may request information  
29 from the Department of Health but may not have direct access to  
30 its database.

31 (b) Any relevant health care regulatory board within the  
32 Department of Health, as defined in s. 893.055, which is  
33 responsible for the licensure, regulation, or discipline of a  
34 practitioner, pharmacist, or other person who is authorized to  
35 prescribe, administer, or dispense controlled substances and is  
36 involved in a specific controlled substances investigation for  
37 prescription drugs involving a designated person. Such health  
38 care regulatory boards may request information from the  
39 department but may not have direct access to its database.

40 (c) A law enforcement agency as described in s.



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41 119.011(4)(a), specifically limited to the Department of Law  
42 Enforcement, sheriffs in this state, police departments in this  
43 state, and federal law enforcement agencies that enforce the  
44 laws of this state or the United States relating to controlled  
45 substances and that have initiated an ongoing and active  
46 investigation, as defined in ss. 119.011 and 893.07, involving a  
47 specific violation of law regarding prescription drug abuse or  
48 diversion of prescribed controlled substances. Such agencies may  
49 request information from the department but may not have direct  
50 access to its database. Confidential and exempt information may  
51 not be disclosed to a civil court or in response to any other  
52 noncriminal justice-related or nonjuvenile justice-related  
53 request, even if by court order.

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

57 (e) A pharmacist, as defined in s. 465.003, who certifies  
58 that the requested information will be used to dispense  
59 controlled substances to a current patient in accordance with  
60 ss. 893.04 and 893.055.

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

64 (g) The patient's pharmacy, prescriber, or dispenser, as  
65 defined in s. 893.055, who certifies that the information is  
66 necessary to provide medical treatment to his or her current  
67 patient in accordance with s. 893.055.

68 (h) The program manager of the electronic prescription drug  
69 monitoring program, the program and support staff, and



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70 individuals designated by the program manager as necessary to  
71 process validated requests for information or to perform  
72 database administrative tasks necessary to support the  
73 monitoring program.

74 (3) Any agency or person who obtains such confidential and  
75 exempt information pursuant to this section must maintain the  
76 confidential and exempt status of that information. However, a  
77 law enforcement agency as provided in paragraph (2)(c) which has  
78 lawful access to such information may disclose confidential and  
79 exempt information received from the department to a criminal  
80 justice agency, as defined in s. 119.011, as part of an  
81 investigation that is active, as defined in ss. 119.011 and  
82 893.07, of a specific violation of a prescription drug abuse or  
83 prescription drug diversion law as it relates to controlled  
84 substances. Such confidential and exempt information may not be  
85 disclosed to a civil court or pursuant to a noncriminal justice-  
86 related or nonjuvenile justice-related request, even if by court  
87 order.

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

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

95 Section 2. The Legislature finds that it is a public  
96 necessity that personal identifying information of a patient, a  
97 practitioner as defined in ss. 893.02 and 893.055, Florida  
98 Statutes, or a pharmacist as defined in s. 465.003, Florida



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99 Statutes, contained in records that are reported to the  
100 Department of Health under s. 893.055, Florida Statutes, the  
101 prescription drug monitoring program for monitoring the  
102 prescribing and dispensing of controlled substances, be made  
103 confidential and exempt from disclosure. Information concerning  
104 the prescriptions that a patient has been prescribed is a  
105 private, personal matter between the patient, the practitioner,  
106 and the pharmacist. Nevertheless, reporting of prescriptions on  
107 a timely and accurate basis by dispensing practitioners and  
108 pharmacists will ensure the ability of the state to review and  
109 provide oversight of prescribing and dispensing practices.  
110 Further, the reporting of this information will facilitate  
111 investigations and prosecutions of violations of state drug laws  
112 by patients, practitioners, or pharmacists, thereby increasing  
113 compliance with those laws. However, if in the process the  
114 information that would identify a patient is not made  
115 confidential and exempt from disclosure, any person could  
116 inspect and copy the record and be aware of the patient's  
117 prescriptions. The availability of such information to the  
118 public would result in the invasion of the patient's privacy. If  
119 the identity of the patient could be correlated with his or her  
120 prescriptions, it would be possible for the public to become  
121 aware of the diseases or other medical concerns for which a  
122 patient is being treated by his or her physician. This knowledge  
123 could be used to embarrass or to humiliate a patient or to  
124 discriminate against him or her. Requiring the reporting of  
125 prescribing information, while protecting a patient's personal  
126 identifying information, will facilitate efforts to maintain  
127 compliance with the state's drug laws and will facilitate the



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128 sharing of information between health care practitioners and  
129 pharmacists, while maintaining and ensuring patient privacy.  
130 Additionally, exempting from disclosure the personal identifying  
131 information of practitioners will ensure that an individual will  
132 not be able to identify which practitioners prescribe the  
133 highest amount of a particular type of drug and to seek those  
134 practitioners out in order to increase the likelihood of  
135 obtaining a particular prescribed substance. Further, protecting  
136 personal identifying information of pharmacists ensures that an  
137 individual will not be able to identify which pharmacists,  
138 pharmacies, or dispensing health care practitioners dispense the  
139 largest amount of a particular substance and identify that  
140 pharmacy or dispensing health care practitioner for robbery or  
141 burglary. Thus, the Legislature finds that the personal  
142 identifying information of a patient, a practitioner as defined  
143 in ss. 893.02 and 893.055, Florida Statutes, or a pharmacist as  
144 defined in s. 465.003, Florida Statutes, which is contained in  
145 records reported under s. 893.055, Florida Statutes, must be  
146 confidential and exempt from disclosure.

147 Section 3. This act shall take effect July 1, 2009, if CS  
148 for CS for SB 462, or similar legislation establishing an  
149 electronic system to monitor the prescribing and dispensing of  
150 controlled substances, is adopted in the same legislative  
151 session or an extension thereof and becomes law.

152  
153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete everything before the enacting clause  
156 and insert:



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157                   A bill to be entitled  
158           An act relating to public records; creating s.  
159           893.0551, F.S.; exempting from public-records  
160           requirements for information and records reported to  
161           the Department of Health under the electronic  
162           prescription drug monitoring program for the  
163           monitoring and dispensing of prescriptions of  
164           controlled substances listed in Schedules II-IV;  
165           authorizing certain persons and entities access to  
166           information identifying patients, practitioners, or  
167           pharmacists; providing guidelines for the use of such  
168           information and penalties for violations; providing  
169           for future legislative review and repeal of the  
170           exemption under the Open Government Sunset Review Act;  
171           providing a finding of public necessity; providing a  
172           contingent effective date.