

By Senator Fasano

11-00425-09

2009440\_\_

1                   A bill to be entitled  
2           An act relating to public records; creating s.  
3           893.056, F.S.; exempting from public-records  
4           requirements information and records reported to the  
5           Agency for Health Care Administration under the  
6           electronic-monitoring system for the tracking of  
7           prescriptions of controlled substances listed in  
8           Schedules II-IV; authorizing certain persons and  
9           entities access to patient-identifying information;  
10          providing guidelines for the use of such information  
11          and penalties for violations; providing for future  
12          legislative review and repeal of the exemption under  
13          the Open Government Sunset Review Act; providing a  
14          finding of public necessity; providing a contingent  
15          effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Section 893.056, Florida Statutes, is created to  
20 read:

21           893.056 Public-records exemption for the electronic-  
22 monitoring system for the tracking of prescriptions of  
23 controlled substances listed in Schedule II, Schedule III, or  
24 Schedule IV in s. 893.03.-

25           (1) Identifying information, including, but not limited to,  
26 the name, address, telephone number, insurance plan number,  
27 social security number or government-issued identification  
28 number, provider number, Drug Enforcement Administration number,  
29 or any other unique identifying number of a patient, patient's

11-00425-09

2009440\_\_

30 agent, health care practitioner, pharmacist, pharmacist's agent,  
31 or pharmacy which is contained in records held by the Agency for  
32 Health Care Administration or any other agency as defined in s.  
33 119.011(2) under s. 893.055, the electronic-monitoring system  
34 for the tracking of prescriptions of controlled substances, is  
35 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
36 of the State Constitution.

37 (2) The Agency for Health Care Administration shall  
38 disclose such confidential and exempt information to:

39 (a) The Department of Health or the relevant health  
40 regulatory board responsible for the licensure, regulation, or  
41 discipline of practitioners, pharmacists, or other persons who  
42 are authorized to prescribe, administer, or dispense controlled  
43 substances and who are involved in a specific investigation  
44 involving a designated person.

45 (b) A criminal justice agency, as defined in s. 119.011,  
46 which enforces the laws of this state or the United States  
47 relating to controlled substances and which has initiated an  
48 active investigation involving a specific violation of law.

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

54 (d) A pharmacist as defined in s. 465.003, or a pharmacy  
55 intern or pharmacy technician who is acting on behalf of and at  
56 the direction of the pharmacist, who requests such information  
57 and certifies that the requested information will be used to  
58 dispense controlled substances to a current patient in

11-00425-09

2009440\_\_

59 accordance with s. 893.04.

60 (e) A patient who is identified in the record upon a  
61 written request for the purpose of verifying that information.

62 (f) A judge or a probation or parole officer administering  
63 a drug or the probation program of a criminal defendant arising  
64 out of a violation of chapter 893 or of a criminal defendant who  
65 is documented by the court as a substance abuser and who is  
66 eligible to participate in a court-ordered drug diversion,  
67 treatment, or probation program.

68 (g) A duly appointed medical examiner, or an investigator  
69 of the medical examiner who is acting on behalf of or at the  
70 direction of the medical examiner, who requests such information  
71 and certifies that the information is necessary in an active  
72 death investigation as provided in s. 406.11 which involves a  
73 suspected drug-related death.

74 (3) Any agency that obtains such confidential and exempt  
75 information pursuant to this section must maintain the  
76 confidential and exempt status of that information; however, the  
77 Agency for Health Care Administration or a criminal justice  
78 agency that has lawful access to such information may disclose  
79 confidential and exempt information received from the Agency for  
80 Health Care Administration to a criminal justice agency as part  
81 of an active investigation of a specific violation of law.

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

85 (5) This section is subject to the Open Government Sunset  
86 Review Act in accordance with s. 119.15, and shall stand  
87 repealed on October 2, 2014, unless reviewed and saved from

11-00425-09

2009440\_\_

88 repeal through reenactment by the Legislature.

89 Section 2. The Legislature finds that it is a public  
90 necessity that personal identifying information of a patient, a  
91 practitioner as defined in s. 893.02, Florida Statutes, or a  
92 pharmacist as defined in s. 465.003, Florida Statutes, contained  
93 in records that are reported to the Agency for Health Care  
94 Administration under s. 893.055, Florida Statutes, the  
95 electronic-monitoring system for the tracking of prescriptions  
96 of controlled substances, be made confidential and exempt from  
97 disclosure. Information concerning the prescriptions that a  
98 patient has been prescribed is a private, personal matter  
99 between the patient, the practitioner, and the pharmacist.  
100 Nevertheless, reporting of prescriptions on a timely and  
101 accurate basis by practitioners and pharmacists will ensure the  
102 ability of the state to review and provide oversight of  
103 prescribing and dispensing practices. Further, the reporting of  
104 this information will facilitate investigations and prosecutions  
105 of violations of state drug laws by patients, practitioners, or  
106 pharmacists, thereby increasing compliance with those laws.  
107 However, if in the process the information that would identify a  
108 patient is not made confidential and exempt from disclosure, any  
109 person could inspect and copy the record and be aware of the  
110 patient's prescriptions. The availability of such information to  
111 the public would result in the invasion of the patient's  
112 privacy. If the identity of the patient could be correlated with  
113 his or her prescriptions, it would be possible for the public to  
114 become aware of the diseases or other medical concerns for which  
115 a patient is being treated by his or her physician. This  
116 knowledge could be used to embarrass or to humiliate a patient

11-00425-09

2009440\_\_

117 or to discriminate against him or her. Requiring the reporting  
118 of prescribing information, while protecting a patient's  
119 personal identifying information, will facilitate efforts to  
120 maintain compliance with the state's drug laws and will  
121 facilitate the sharing of information between health care  
122 practitioners and pharmacists, while maintaining and ensuring  
123 patient privacy. Additionally, exempting from disclosure the  
124 personal identifying information of practitioners will ensure  
125 that an individual will not be able to identify which  
126 practitioners prescribe the highest amount of a particular type  
127 of drug and to seek those practitioners out in order to increase  
128 the likelihood of obtaining a particular prescribed substance.  
129 Further, protecting personal identifying information of  
130 pharmacists ensures that an individual will not be able to  
131 identify which pharmacists or pharmacies dispense the largest  
132 amount of a particular substance and identify that pharmacy for  
133 robbery or burglary. Thus, the Legislature finds that the  
134 personal identifying information of a patient, a practitioner as  
135 defined in s. 893.02, Florida Statutes, or a pharmacist as  
136 defined in s. 465.003, Florida Statutes, contained in records  
137 reported under s. 893.055, Florida Statutes, must be  
138 confidential and exempt from disclosure.

139 Section 3. This act shall take effect July 1, 2009, if  
140 Senate Bill \_\_\_\_, or similar legislation establishing an  
141 electronic system to monitor the prescribing of controlled  
142 substances, is adopted in the same legislative session or an  
143 extension thereof and becomes law.