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1 A bill to be entitled
2 An act relating to public records; creating s.
3 893.0551, F.S.; providing definitions; exempting from
4 public records requirements information and records
5 reported to the Department of Health under the
6 electronic prescription drug monitoring program for
7 monitoring the prescribing and dispensing of
8 controlled substances listed in Schedules II-IV;
9 authorizing certain persons and entities access to
10 patient-identifying, practitioner-identifying, or
11 pharmacist-identifying information; providing
12 guidelines for the use of such information and
13 penalties for violations; providing for future
14 legislative review and repeal; providing a finding of
15 public necessity; providing a contingent effective
16 date.

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

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

22 893.0551 Public-records exemption for the prescription drug
23 monitoring program.—

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

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

27 (b) "Dispenser" has the same meaning as provided in s.
28 893.055.

29 (c) "Health care practitioner" or "practitioner" has the

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30 same meaning as provided in s. 893.055.

31 (d) "Health care regulatory board" has the same meaning as
32 provided in s. 893.055.

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

35 (f) "Pharmacist" means any person licensed under chapter
36 465 to practice the profession of pharmacy.

37 (g) "Pharmacy" has the same meaning as provided in s.
38 893.055.

39 (h) "Prescriber" has the same meaning as provided in s.
40 893.055.

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

48 (a) Name.

49 (b) Address.

50 (c) Telephone number.

51 (d) Insurance plan number.

52 (e) Government-issued identification number.

53 (f) Provider number.

54 (g) Drug Enforcement Administration number.

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

56 (3) The department shall disclose such confidential and
57 exempt information to the following entities after using a
58 verification process to ensure the legitimacy of that person's

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59 or entity's request for the information:

60 (a) The Attorney General and his or her designee when
61 working on Medicaid fraud cases involving prescription drugs or
62 when the Attorney General has initiated a review of specific
63 identifiers of Medicaid fraud regarding prescription drugs. The
64 Attorney General or his or her designee may disclose the
65 confidential and exempt information received from the department
66 to a criminal justice agency as defined in s. 119.011 as part of
67 an active investigation that is specific to a violation of
68 prescription drug abuse or prescription drug diversion law as it
69 relates to controlled substances. The Attorney General's
70 Medicaid fraud investigators may not have direct access to the
71 department's database.

72 (b) The department's relevant health care regulatory boards
73 responsible for the licensure, regulation, or discipline of a
74 practitioner, pharmacist, or other person who is authorized to
75 prescribe, administer, or dispense controlled substances and who
76 is involved in a specific controlled substances investigation
77 for prescription drugs involving a designated person. The health
78 care regulatory boards may request information from the
79 department but may not have direct access to its database. The
80 health care regulatory boards may provide such information to a
81 law enforcement agency pursuant to ss. 456.066 and 456.073.

82 (c) A law enforcement agency that has initiated an active
83 investigation involving a specific violation of law regarding
84 prescription drug abuse or diversion of prescribed controlled
85 substances. The law enforcement agency may disclose the
86 confidential and exempt information received from the department
87 to a criminal justice agency as defined in s. 119.011 as part of

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88 an active investigation that is specific to a violation of
89 prescription drug abuse or prescription drug diversion law as it
90 relates to controlled substances. A law enforcement agency may
91 request information from the department but may not have direct
92 access to its database.

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

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

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

102 (g) The patient's pharmacy, prescriber, or dispenser who
103 certifies that the information is necessary to provide medical
104 treatment to his or her current patient in accordance with s.
105 893.055.

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

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

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

116 Section 2. The Legislature finds that it is a public

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117 necessity that certain identification and location information
118 of a patient or patient's agent; a health care practitioner as
119 defined in s. 893.055, Florida Statutes; a dispenser as defined
120 in s. 893.055, Florida Statutes; an employee of the practitioner
121 who is acting on behalf of and at the direction of the
122 practitioner; a pharmacist; or a pharmacy as defined in s.
123 893.055, Florida Statutes, that is contained in records that are
124 held by the Department of Health under s. 893.055, Florida
125 Statutes, the electronic prescription drug monitoring system for
126 the monitoring of the prescribing and dispensing of controlled
127 substances, be made confidential and exempt from public records
128 requirements. Specifically, the Legislature finds that it is a
129 public necessity to make confidential and exempt the name,
130 address, telephone number, insurance plan number, government-
131 issued identification number, provider number, Drug Enforcement
132 Administration number, and any other unique identifying
133 information or number. Information concerning the prescriptions
134 that have been prescribed or dispensed to a patient is a
135 private, personal matter between the patient, the practitioner,
136 and the pharmacist. Nevertheless, the reporting of prescriptions
137 on a timely and accurate basis by dispensing practitioners and
138 pharmacists will ensure the ability of the state to review and
139 provide oversight of prescribing and dispensing practices.
140 Further, the reporting of this information will facilitate
141 investigations and prosecutions of violations of state drug laws
142 by patients, practitioners, and pharmacists, thereby increasing
143 compliance with those laws. However, if in the process the
144 information that would identify a patient is not made
145 confidential and exempt from disclosure, any person could

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146 inspect and copy the record and be aware of the patient's
147 prescriptions. The availability of such information to the
148 public would result in the invasion of the patient's privacy. If
149 the identity of the patient could be correlated with his or her
150 prescriptions and his or her prescription dispensing history, it
151 would be possible for the public to become aware of the diseases
152 or other medical concerns for which a patient is being treated
153 by his or her physician. This knowledge could be used to
154 embarrass or to humiliate a patient or to discriminate against
155 him or her. Requiring the reporting of prescribing and
156 dispensing information while protecting a patient's personal
157 identifying information will facilitate efforts to maintain
158 compliance with the state's drug laws and will facilitate the
159 sharing of information between health care practitioners and
160 pharmacists while maintaining and ensuring patient privacy.
161 Additionally, exempting from disclosure the personal identifying
162 information of practitioners will ensure that an individual will
163 not be able to identify which practitioners prescribe the
164 largest amount of a particular type of drug and to seek out
165 those practitioners in order to increase the likelihood of
166 obtaining a particular prescribed substance. Further, protecting
167 personal identifying information of pharmacists and dispensers
168 ensures that an individual will not be able to identify which
169 pharmacists, pharmacies, or dispensing health care practitioners
170 dispense the largest amount of a particular controlled substance
171 and identify that pharmacy or dispensing health care
172 practitioner as a potential target for a robbery or burglary.
173 Thus, the Legislature finds that it is a public necessity to
174 make confidential and exempt from public records requirements

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175 certain identification and location information of a patient or
176 patient's agent, a health care practitioner, a dispenser, an
177 employee of the practitioner who is acting on behalf of and at
178 the direction of the practitioner, a pharmacist, or a pharmacy.

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