

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 restrictions on the use of such information and
 9 criminal penalties for violations; authorizing agreements
 10 with other states to exchange prescription drug monitoring
 11 information; providing factors for considering such
 12 agreements; requiring a report concerning any such
 13 agreements; limiting the purposes for which information
 14 may be shared under such agreements; providing for future
 15 legislative review and repeal; providing a finding of
 16 public necessity; providing a contingent effective 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 Electronic system for monitoring the dispensing
 23 of certain controlled substances; public records exemption.--

24 (1) Information collected by the department under s.
 25 893.055 is confidential and exempt from s. 119.07(1) and s.
 26 24(a), Art. I of the State Constitution. However, the department
 27 may disclose such information:

28 (a) To a patient to whom the prescription is written.

29 (b) To a person with the express written consent of the
30 patient to whom the prescription is written or the patient's
31 legally authorized representative.

32 (c) To a person charged with protecting the health or life
33 of the patient in a medical emergency.

34 (d) By court order upon a showing of good cause.

35 (e) To a practitioner or pharmacist who requests the
36 information and certifies that the requested information is for
37 the purpose of providing medical or pharmaceutical treatment to
38 a bona fide current patient.

39 (f) To a law enforcement officer of this state, another
40 state, or the United States whose duty it is to enforce the laws
41 of this state, another state, or the United States relating to
42 controlled substances and who is engaged in a bona fide specific
43 investigation involving a designated person.

44 (g) To the Medicaid Fraud Control Unit in the Department
45 of Legal Affairs for the purpose of a bona fide specific
46 investigation under s. 409.920 involving a designated person.

47 (h) To a designated representative of a state professional
48 licensing, certification, or regulatory agency charged with
49 oversight of those persons authorized to prescribe or dispense
50 controlled substances for the purpose of a bona fide specific
51 investigation involving a designated person.

52 (i) To a person or agency authorized to receive the
53 information under s. 119.0712(1)(d), provided that any
54 information disclosed must have had all information that would
55 permit the identification of persons removed prior to
56 disclosure.

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57 (2) Recipients of information lawfully disclosed under
58 subsection (1) may retain the information for up to 24 months
59 before purging the information from their records. However, the
60 information may be retained longer than 24 months if the
61 information is pertinent to an ongoing prosecution or
62 disciplinary proceeding.

63 (3) The department may retain information collected under
64 s. 893.055 for up to 24 months before purging the information
65 from its records.

66 (4) A person authorized to receive information under
67 subsection (1) who:

68 (a) Knowingly discloses such information in violation of
69 this section; or

70 (b) Uses such information in a manner or for a purpose in
71 violation of this section

72
73 commits a misdemeanor of the first degree, punishable as
74 provided in s. 775.082 or s. 775.083.

75 (5) (a) The State Surgeon General may enter into reciprocal
76 agreements for the sharing of prescription drug monitoring
77 information with any other state or states that have compatible
78 prescription drug monitoring programs. If the State Surgeon
79 General elects to evaluate the prescription drug monitoring
80 program of another state as authorized by this subsection,
81 priority shall be given to a state that is contiguous with the
82 borders of this state.

83 (b) In determining compatibility, the State Surgeon
84 General shall consider:

85 1. The essential purposes of the program and the success
86 of the program in fulfilling those purposes.

87 2. The safeguards for privacy of patient records and the
88 success of the program in protecting patient privacy.

89 3. The persons authorized to view the data collected by
90 the program.

91 4. The schedules of the controlled substances monitored.

92 5. The data required to be submitted on each prescription.

93 6. Any implementation criteria deemed essential for a
94 thorough comparison.

95 7. The costs and benefits to the state in sharing
96 particular information available in the state's database with
97 the program under consideration.

98 (c) The State Surgeon General shall review any agreement
99 on an annual basis to determine its continued compatibility with
100 the prescription drug monitoring program in this state.

101 (d) The State Surgeon General shall submit an annual
102 report to the Governor, the President of the Senate, and the
103 Speaker of the House of Representatives that summarizes any
104 agreement entered into under this subsection and that analyzes
105 the effectiveness of that agreement in monitoring the dispensing
106 of controlled substances in this state.

107 (e) Any agreement between the State Surgeon General and
108 another state shall prohibit the sharing of information about a
109 resident of this state or a practitioner, pharmacist, or other
110 prescriber for any purpose not otherwise authorized by this
111 section or s. 893.055.

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
117 necessity that the information contained in the records provided
118 to the Department of Health, or any person or agency authorized
119 by the department, pursuant to s. 893.055, Florida Statutes, be
120 confidential and exempt from disclosure. Notwithstanding the
121 privacy issues surrounding the prescription and dispensing of
122 controlled substances listed in Schedule II, Schedule III, and
123 Schedule IV of s. 893.03, Florida Statutes, the use of an
124 electronic monitoring system, with oversight by the department,
125 will assist in the development of improved prescription and
126 dispensing practices and better protect the public and its
127 citizens. Further, the use of an electronic monitoring system
128 will facilitate investigations and prosecutions of violations of
129 state drug laws, thereby increasing compliance with those laws.
130 However, if such information is not made confidential and exempt
131 from disclosure, any person could inspect and copy a patient's
132 records and have knowledge of that patient's prescriptions for
133 controlled substances listed in Schedule II, Schedule III, or
134 Schedule IV. The availability of such information to the public
135 would result in the invasion of a patient's privacy. Thus, the
136 Legislature finds that information reported pursuant to s.
137 893.055, Florida Statutes, must be confidential and exempt from
138 disclosure under s. 119.07(1), Florida Statutes, and s. 24(a),
139 Art. I of the State Constitution.

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140 Section 3. This act shall take effect July 1, 2009, if HB
141 583 or similar legislation establishing an electronic system for
142 monitoring the dispensing of controlled substances listed in
143 Schedule II, Schedule III, and Schedule IV is adopted in the
144 same legislative session or an extension thereof and becomes
145 law.