

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

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

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

19 893.056 Public records exemption for the electronic-
 20 monitoring system for the tracking of prescriptions of
 21 controlled substances listed in Schedule II, Schedule III, or
 22 Schedule IV in s. 893.03.--

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

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

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

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

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

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

52 (d) A pharmacist as defined in s. 465.003, or a pharmacy
 53 intern or pharmacy technician who is acting on behalf of and at
 54 the direction of the pharmacist, who requests such information
 55 and certifies that the requested information will be used to

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56 dispense controlled substances to a current patient in
57 accordance with s. 893.04.

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

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

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

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

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

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

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

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111 his or her prescriptions, it would be possible for the public to
112 become aware of the diseases or other medical concerns for which
113 a patient is being treated by his or her physician. This
114 knowledge could be used to embarrass or to humiliate a patient
115 or to discriminate against him or her. Requiring the reporting
116 of prescribing information, while protecting a patient's
117 personal identifying information, will facilitate efforts to
118 maintain compliance with the state's drug laws and will
119 facilitate the sharing of information between health care
120 practitioners and pharmacists, while maintaining and ensuring
121 patient privacy. Additionally, exempting from disclosure the
122 personal identifying information of practitioners will ensure
123 that an individual will not be able to identify which
124 practitioners prescribe the highest amount of a particular type
125 of drug and to seek those practitioners out in order to increase
126 the likelihood of obtaining a particular prescribed substance.
127 Further, protecting personal identifying information of
128 pharmacists ensures that an individual will not be able to
129 identify which pharmacists or pharmacies dispense the largest
130 amount of a particular substance and identify that pharmacy for
131 robbery or burglary. Thus, the Legislature finds that the
132 personal identifying information of a patient, a practitioner as
133 defined in s. 893.02, Florida Statutes, or a pharmacist as
134 defined in s. 465.003, Florida Statutes, contained in records
135 reported under s. 893.055, Florida Statutes, must be
136 confidential and exempt from disclosure.

137 Section 3. This act shall take effect July 1, 2009, if
138 House Bill 897, or similar legislation establishing an

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139 | electronic system to monitor the prescribing of controlled
140 | substances, is adopted in the same legislative session or an
141 | extension thereof and becomes law.