

By Senator Aronberg

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A bill to be entitled
 An act relating to public records; creating s.
 893.0551, F.S.; exempting from public-records
 requirements information and records reported to the
 Department of Health under the electronic system for
 monitoring the dispensing of certain controlled
 substances; authorizing certain persons and entities
 access to information; providing guidelines for the
 use of such information and criminal penalties for
 violations; providing for future legislative review
 and repeal; providing a finding of public necessity;
 providing a contingent effective date.

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

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

893.0551 Electronic system for monitoring the dispensing of
 certain controlled substances; public-records exemption.-

(1) Information collected by pharmacists and health care
 practitioners and submitted to the department under s. 893.055
 or stored in a database under that section is confidential and
 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 Constitution.

(2) Notwithstanding subsection (1), the department shall
 disclose such confidential information to:

(a) The Agency for Health Care Administration when it has
 initiated a review for Medicaid fraud or abuse.

(b) A criminal justice agency, as defined in s. 119.011,

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30 that enforces the laws of this state or the United States
31 relating to controlled substances and that has initiated an
32 active investigation involving a specific violation of law.

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

38 (d) A pharmacist as defined in s. 465.003, or a pharmacy
39 intern or pharmacy technician who is acting on behalf of and at
40 the direction of the pharmacist, who requests such information
41 and certifies that the requested information will be used to
42 dispense controlled substances to a current patient in
43 accordance with s. 893.04.

44 (e) A patient who, upon written request, seeks a copy of
45 his or her biometric scan for the purpose of verifying the
46 identity of the person to whom the biometric scan belongs.

47 (3) Any person or agency that obtains such confidential and
48 exempt information must maintain the confidential and exempt
49 status of that information; however, the Agency for Health Care
50 Administration or a criminal justice agency that has lawful
51 access to such information may disclose confidential and exempt
52 information under this section to a criminal justice agency
53 involved in an active investigation involving a specific
54 violation of law.

55 (4) A health care practitioner or pharmacist who provides
56 any information in any capacity, whether or not required by law,
57 to the department, the federal Drug Enforcement Administration,
58 or state or local law enforcement concerning prescription fraud

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59 or abuse or a violation of s. 893.13 based upon information
60 lawfully obtained or received from the database shall not be
61 held liable in any civil action for providing or reporting such
62 information so long as the health care practitioner or
63 pharmacist acts without intentional fraud or malice.

64 (5) Any person who willfully and knowingly violates this
65 section commits a felony of the third degree, punishable as
66 provided in s. 775.083.

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

71 Section 2. The Legislature finds that it is a public
72 necessity that the information contained in the records provided
73 to the Department of Health, or any person or agency authorized
74 by the department, pursuant to s. 893.055, Florida Statutes, be
75 confidential and exempt from disclosure. Notwithstanding the
76 privacy issues surrounding the prescription and dispensing of
77 controlled substances listed in Schedule II, Schedule III, and
78 Schedule IV, the use of an electronic monitoring system, with
79 oversight by the department, will assist in the development of
80 improved prescription and dispensing practices and better
81 protect the public and its citizens. Further, the use of an
82 electronic monitoring system will facilitate investigations and
83 prosecutions of violations of state drug laws, thereby
84 increasing compliance with those laws. However, if information
85 that could identify a patient is not made confidential and
86 exempt from disclosure, any person could inspect and copy the
87 patient's records and have knowledge of the patient's

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88 prescriptions for controlled substances listed in Schedule II,
89 Schedule III, or Schedule IV. The availability of such
90 information to the public would result in the invasion of a
91 patient's privacy. Thus, the Legislature finds that personal
92 identifying information of a patient, a practitioner as defined
93 in s. 893.02, Florida Statutes, or a pharmacist as defined in s.
94 465.003, Florida Statutes, contained in information reported
95 pursuant to s. 893.055, Florida Statutes, must be confidential
96 and exempt from disclosure under s. 119.07(1), Florida Statutes,
97 and s. 24(a), Art. I of the State Constitution.

98 Section 3. This act shall take effect March 1, 2011, if SB
99 __ or similar legislation establishing an electronic system for
100 monitoring the dispensing of controlled substances listed in
101 Schedule II, Schedule III, and Schedule IV is adopted and
102 becomes law prior thereto.