HLS 19RS-642 ENGROSSED

2019 Regular Session

HOUSE BILL NO. 258

20

BY REPRESENTATIVE MUSCARELLO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC RECORDS: Provides for the confidentiality of identifying information of certain persons or entities involved in the execution of a death sentence

1	AN ACT
2	To amend and reenact R.S. 15:570(G) and R.S. 44:4.1(B)(8), relative to the execution of a
3	death sentence; to provide for the confidentiality of identifying information of any
4	person or entity that manufactures, supplies, transports, procures, compounds,
5	dispenses, or prescribes any substance, medical supplies, or medical equipment
6	utilized in the execution of a death sentence; to provide that the identifying
7	information of such persons or entities shall remain confidential, not be subject to
8	disclosure, and not be admissible as evidence nor discoverable in any proceeding
9	to provide an exception to the Public Records Law for such purposes; to provide
10	certain information with regard to execution of the death penalty; and to provide for
11	related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 15:570(G) is hereby amended and reenacted to read as follows:
14	§570. Execution; officials and witnesses; minors excluded; time of execution; notice
15	to victim's relatives
16	* * *
17	G.(1) The identity of any persons other than the persons specified in
18	Subsection F of this Section who participate or perform ancillary functions in an
19	execution of the death sentence, either directly or indirectly, shall remain strictly

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confidential and the identities of those persons and information about those persons

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which could lead to the determination of the identities of those persons shall not be subject to public disclosure in any manner. Any information contained in records that could identify any person other than the persons specified in Subsection F of this Section shall remain confidential, shall not be subject to disclosure, and shall not be admissible as evidence nor discoverable in any proceeding before any court, tribunal, board, agency, or person.

(2)(a) The identity of any person or entity that manufactures, supplies, transports, procures, compounds, dispenses, prescribes, synthesizes, prepares, tests, uses, sells, imports, distributes, or administers any substance, medical supplies, or medical equipment utilized in the execution of a death sentence shall remain strictly confidential. The identity of such person or entity, and any information about such person or entity which could lead to the determination of the person's or entity's identity, shall not be subject to public disclosure in any manner. Any information contained in records that identifies or could identify any such person or entity shall remain confidential, shall not be subject to disclosure, and shall not be admissible as evidence nor discoverable in any proceeding before any court, tribunal, board, agency, commission, legislative or quasi-legislative body, or person.

(b) For purposes of this Paragraph, a person or entity that manufactures, supplies, transports, procures, compounds, dispenses, prescribes, synthesizes, prepares, tests, uses, sells, imports, distributes, or administers any substance, medical supplies, or medical equipment utilized in the execution of a death sentence includes but is not limited to any pharmacist, pharmacy, wholesale drug distributor, or outsourcing facility, including any officer or employee of such pharmacy, wholesale drug distributor, or outsourcing facility, that supplies any substance, medical supplies, or medical equipment to the Department of Public Safety and Corrections for use in the execution of a death sentence.

1	(c) This Paragraph applies retroactively to any request for information,
2	discovery request, or proceeding, no matter when made or initiated, including
3	pending litigation.
4	* * *
5	Section 2. R.S. 44:4.1(B)(8) is hereby amended and reenacted to read as follows:
6	§4.1. Exceptions
7	* * *
8	B. The legislature further recognizes that there exist exceptions, exemptions,
9	and limitations to the laws pertaining to public records throughout the revised
10	statutes and codes of this state. Therefore, the following exceptions, exemptions, and
11	limitations are hereby continued in effect by incorporation into this Chapter by
12	citation:
13	* * *
14	(8) R.S. 15:242, 440.6, 477.2, 549, 570(F) and (G), 574.12, 578.1, 616, 660,
15	840.1, 1176, 1204.1, 1212.1(E), 1507, 1614
16	* * *
17	Section 3. It is the purpose of this Act to ensure absolute confidentiality of any
18	documents, records, or information that could lead to the identification of a person or entity
19	involved in any way in the Department of Public Safety and Correction's acquisition or
20	preparation of drugs for lethal injections. It is necessary that the confidentiality provisions
21	of this Act be construed as broadly as possible to ensure the absolute confidentiality of this
22	identifying information so as to ensure that the Department of Public Safety and Corrections
23	is able to acquire the drugs necessary for lethal injections.

## **DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 258 Engrossed

2019 Regular Session

Muscarello

**Abstract:** Provides for the confidentiality of identifying information of any person or entity that performs certain functions with respect to any substance, medical supplies, or

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medical equipment utilized in the execution of a death sentence, and provides for retroactive application.

<u>Present law</u> requires the secretary of the Dept. of Public Safety and Corrections, or a competent person selected by him, to execute an offender who is sentenced to death in conformity with the death warrant issued in the case.

<u>Present law</u> further provides that every sentence of death executed on or after Sept. 15, 1991, shall be by lethal injection which is the intravenous injection of a substance or substances in a lethal quantity into the body of a person until such person is dead.

<u>Present law</u> provides that every execution of the death sentence shall take place in the presence of the following:

- (1) The warden of the La. State Penitentiary at Angola, or a competent person selected by him.
- (2) The coroner of the parish of West Feliciana, or his deputy.
- (3) A physician summoned by the warden of the La. State Penitentiary at Angola.
- (4) A competent person selected by the warden of the La. State Penitentiary to administer the lethal injection.
- (5) A priest or minister of the gospel, if the person sentenced to death so requests it.
- (6) Not less than five nor more than seven other witnesses.

<u>Present law</u> further authorizes two of the victim's family members, including any parent, guardian, spouse, or adult child, to be present and witness the execution.

<u>Present law</u> provides that only the identities of those persons listed in paragraphs (1), (2), (5), and (6) above, and the family members of the victim who are present at the execution shall be made public. <u>Present law</u> identifies this <u>present law</u> provision as an exception to the Public Records Law.

<u>Present law</u> provides that the identity of any other person who participates or performs ancillary functions in an execution of the death sentence, either directly or indirectly, shall remain strictly confidential and shall not be subject to public disclosure in any manner.

<u>Proposed law</u> retains <u>present law</u> and adds that the identity, and information that could lead to the identity, of any person or entity that manufactures, supplies, transports, procures, compounds, dispenses, prescribes, synthesizes, prepares, tests, uses, sells, imports, distributes, or administers any substance, medical supplies, or medical equipment utilized in the execution of a death sentence shall remain strictly confidential, shall not be subject to public disclosure in any manner, and shall not be admissible as evidence nor discoverable in any proceeding before any court, tribunal, board, agency, commission, legislative or quasi-legislative body, or person. Further provides that <u>proposed law</u> applies retroactively to any request for information, discovery request, or proceeding, no matter when made or initiated, including pending litigation.

<u>Proposed law</u> amends exceptions to <u>present law</u> (Public Records Law) to include <u>proposed</u> law as an exception.

<u>Proposed law</u> provides, in part, that the purpose of <u>proposed law</u> is to ensure absolute confidentiality.

(Amends R.S. 15:570(G) and R.S. 44:4.1(B)(8))

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## Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Administration of Criminal Justice</u> to the <u>original</u> bill:

- 1. Add to the list of persons whose identity shall not be disclosed those persons who synthesize, prepare, test, use, sell, import, distribute, or administer any substance, medical supplies, or medical equipment utilized in the execution of a death sentence.
- 2. Add that the identity and information about the identity of persons protected under <u>proposed law</u> shall not be admissible or discoverable in any proceeding before any commission or any legislative or quasi-legislative body.
- 3. Add that <u>proposed law</u> applies retroactively to any request for information, discovery request, or proceeding, no matter when made or initiated, including pending litigation.
- 4. Add provisions relative to the purpose of the Act.