

By the Committee on Health Care Licensing & Regulation and Representatives Fasano, Heyman, Ritter, Morroni, Minton, Harrington, Villalobos and Ogles

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A bill to be entitled  
An act relating to public records; creating ss. 458.353 and 459.028, F.S.; providing exemptions from public records requirements relating to information contained in reports of adverse incidents occurring in specified settings; providing for future 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 458.353, Florida Statutes, is created to read:

458.353 Notification of adverse incident; public records exemption.--The information contained in the notification of an adverse incident, which is required under s. 458.351 and provided to the department by a physician licensed under this chapter, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. In addition, the information is not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or the appropriate regulatory board. The information may not be made available to the public as part of the record of investigation or prosecution in a disciplinary proceeding that is made available for the department or a regulatory board. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

1           Section 2. Section 459.028, Florida Statutes, is  
2 created to read:

3           459.028 Notification of adverse incident; public  
4 records exemption.--The information contained in the  
5 notification of an adverse incident, which is required under  
6 s. 459.026 and provided to the department by an osteopathic  
7 physician licensed under this chapter, is confidential and  
8 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
9 Constitution. In addition, the information is not discoverable  
10 or admissible in a civil or administrative action, unless the  
11 action is a disciplinary proceeding by the department or the  
12 appropriate regulatory board. The information may not be made  
13 available to the public as part of the record of investigation  
14 or prosecution in a disciplinary proceeding that is made  
15 available for the department or a regulatory board. This  
16 section is subject to the Open Government Sunset Review Act of  
17 1995 in accordance with s. 119.15 and shall stand repealed on  
18 October 2, 2004, unless reviewed and saved from repeal through  
19 reenactment by the Legislature.

20           Section 3. The Legislature finds that the exemptions  
21 from the public records law provided in ss. 458.323 and  
22 459.028, Florida Statutes, are a public necessity, and that it  
23 would be an invasion of a patient's privacy for such personal,  
24 sensitive information contained in the notification of an  
25 adverse incident to be publicly available. Furthermore, the  
26 Legislature finds that failure to protect the confidentiality  
27 of any information submitted to or collected by the Department  
28 of Health pursuant to s. 458.351 or s. 459.026, Florida  
29 Statutes, regarding an adverse incident, including, but not  
30 limited to the identity of the patient, the type of adverse  
31 incident, and the fact that an investigation is being

1 conducted, would deter the collection and reporting of this  
2 information to the department. This would prevent the  
3 department and the appropriate regulatory boards from  
4 effectively carrying out their responsibility to enforce safe  
5 patient care and take necessary disciplinary action for  
6 practice violations. Release of such information would deter  
7 physicians and osteopathic physicians licensed in this state  
8 from reporting adverse incidents. This could lead to the  
9 deterioration of services and care rendered, all to the  
10 detriment of the health of those served. These exemptions  
11 apply the same exemption accorded under s. 395.0198, Florida  
12 Statutes, relating to the reporting of adverse incidents by  
13 facilities licensed under chapter 395, Florida Statutes. The  
14 Legislature has thus consistently and repeatedly acknowledged  
15 the public necessity of these types of exemptions.

16 Section 4. This act shall take effect on the same date  
17 that House Bill \_\_\_ or similar legislation creating ss.  
18 458.351 and 459.026, Florida Statutes, relating to the  
19 reporting of adverse incidents in unlicensed settings, takes  
20 effect, if such legislation is adopted in the same legislative  
21 session or an extension thereof.

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23 HOUSE SUMMARY

24 Provides exemptions from public records requirements  
25 relating to information contained in reports of adverse  
26 incidents occurring in settings not licensed under ch.  
27 395, F.S. Provides for future review and repeal. Provides  
28 a finding of public necessity.