

1                   A bill to be entitled  
2           An act relating to public records; creating ss.  
3           458.353 and 459.028, F.S.; providing exemptions  
4           from public records requirements relating to  
5           information contained in reports of adverse  
6           incidents occurring in specified settings;  
7           amending s. 455.647(1), F.S., providing  
8           exemptions from public records requirements  
9           relating to hospital and ambulatory surgical  
10          center discipline; providing for future review  
11          and repeal; providing a finding of public  
12          necessity; providing a contingent effective  
13          date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17           Section 1. Section 458.353, Florida Statutes, is  
18          created to read:

19           458.353 Notification of adverse incident; public  
20          records exemption.--The information contained in the  
21          notification of an adverse incident, which is required under  
22          s. 458.351 and provided to the department by a physician  
23          licensed under this chapter, is confidential and exempt from  
24          s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  
25          In addition, the information is not discoverable or admissible  
26          in a civil or administrative action, unless the action is a  
27          disciplinary proceeding by the department or the appropriate  
28          regulatory board. The information may not be made available to  
29          the public as part of the record of investigation or  
30          prosecution in a disciplinary proceeding that is made  
31          available for the department or a regulatory board. This

1 section is subject to the Open Government Sunset Review Act of  
2 1995 in accordance with s. 119.15 and shall stand repealed on  
3 October 2, 2004, unless reviewed and saved from repeal through  
4 reenactment by the Legislature.

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

7 459.028 Notification of adverse incident; public  
8 records exemption.--The information contained in the  
9 notification of an adverse incident, which is required under  
10 s. 459.026 and provided to the department by an osteopathic  
11 physician licensed under this chapter, is confidential and  
12 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
13 Constitution. In addition, the information is not discoverable  
14 or admissible in a civil or administrative action, unless the  
15 action is a disciplinary proceeding by the department or the  
16 appropriate regulatory board. The information may not be made  
17 available to the public as part of the record of investigation  
18 or prosecution in a disciplinary proceeding that is made  
19 available for the department or a regulatory board. This  
20 section is subject to the Open Government Sunset Review Act of  
21 1995 in accordance with s. 119.15 and shall stand repealed on  
22 October 2, 2004, unless reviewed and saved from repeal through  
23 reenactment by the Legislature.

24 Section 3. Subsection (1) of section 455.647, Florida  
25 Statutes, is amended to read:

26 455.647 Public inspection of information required from  
27 applicants; exceptions; examination hearing.--

28 (1) All information required by the department of any  
29 applicant shall be a public record and shall be open to public  
30 inspection pursuant to s. 119.07, except information obtained  
31 pursuant to s. 455.565(1)(a)8. regarding final disciplinary

1 action taken by a licensed hospital or ambulatory surgical  
2 center, financial information, medical information, school  
3 transcripts, examination questions, answers, papers, grades,  
4 and grading keys, which are confidential and exempt from s.  
5 119.07(1) and shall not be discussed with or made accessible  
6 to anyone except members of the board, the department, and  
7 staff thereof, who have a bona fide need to know such  
8 information. Any information supplied to the department by any  
9 other agency which is exempt from the provisions of chapter  
10 119 or is confidential shall remain exempt or confidential  
11 pursuant to applicable law while in the custody of the  
12 department or the agency.

13       Section 4. The Legislature finds that the exemptions  
14 from the public records law provided in ss. 455.647, 458.323  
15 and 459.028, Florida Statutes, are a public necessity, and  
16 that it would be an invasion of a patient's privacy for such  
17 personal, sensitive information contained in the notification  
18 of an adverse incident or hospital and ambulatory surgical  
19 center discipline to be publicly available. Furthermore, the  
20 Legislature finds that failure to protect the confidentiality  
21 of any information submitted to or collected by the Department  
22 of Health pursuant to s. 458.351 or s. 459.026, Florida  
23 Statutes, regarding an adverse incident, including, but not  
24 limited to the identity of the patient, the type of adverse  
25 incident, and the fact that an investigation is being  
26 conducted, and pursuant to s. 455.647 regarding hospital and  
27 ambulatory surgical center discipline, would deter the  
28 collection and reporting of this information to the  
29 department. This would prevent the department and the  
30 appropriate regulatory boards from effectively carrying out  
31 their responsibility to enforce safe patient care and take

1 necessary disciplinary action for practice violations. Release  
2 of such information would deter physicians and osteopathic  
3 physicians licensed in this state from reporting adverse  
4 incidents and hospital and ambulatory surgical center  
5 discipline. This could lead to the deterioration of services  
6 and care rendered, all to the detriment of the health of those  
7 served. These exemptions apply the same exemption accorded  
8 under s. 395.0198 and 395.0193, Florida Statutes, relating to  
9 the reporting of adverse incidents and hospital and ambulatory  
10 surgical center discipline by facilities licensed under  
11 chapter 395, Florida Statutes. The Legislature has thus  
12 consistently and repeatedly acknowledged the public necessity  
13 of these types of exemptions.

14           Section 5. This act shall take effect on the same date  
15 that House Bill 1847 or similar legislation creating ss.  
16 458.351 and 459.026, Florida Statutes, relating to the  
17 reporting of adverse incidents in unlicensed settings, takes  
18 effect, if such legislation is adopted in the same legislative  
19 session or an extension thereof.

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31