

By the Committee on Health Care Licensing & Regulation and Representative Fasano

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.07, F.S.; providing an exemption from  
4           public records requirements for certain  
5           information on health care practitioners  
6           working in correctional or mental health  
7           facilities; amending s. 455.5656, F.S.;  
8           providing exemption from public records  
9           requirements for information obtained for  
10          practitioner profiles of health care  
11          practitioners not previously profiled; amending  
12          s. 943.0585, F.S.; providing exemption from  
13          public records requirements for expunged  
14          criminal history information on health care  
15          practitioners obtained for certain employment,  
16          licensure, or contracting purposes; providing a  
17          penalty; providing for future review and  
18          repeal; providing findings of public necessity;  
19          providing a contingent effective date.

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

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23           Section 1. Paragraph (dd) is added to subsection (3)  
24 of section 119.07, Florida Statutes, to read:

25           119.07 Inspection, examination, and duplication of  
26 records; exemptions.--

27           (3)

28           (dd) The home addresses and home telephone numbers of  
29 health care practitioners, as defined in s. 455.501(4),  
30 working in any type of correctional facility, including any  
31 prison or jail, or in any mental health facility are exempt

1 from the provisions of subsection (1) and s. 24(a), Art. I of  
2 the State Constitution.

3           Section 2. The Legislature finds that it is a public  
4 necessity that the home addresses and home telephone numbers  
5 of health care practitioners who work in any type of  
6 correctional facility, including any prison or jail, or in any  
7 mental health facility be held confidential and exempt from  
8 public records requirements because revealing such information  
9 may pose an unnecessary risk to the safety and well-being of  
10 such health care practitioners in their own homes from inmates  
11 or clients of such facilities who seek such information to  
12 stalk, intimidate, harass, or otherwise threaten or harm such  
13 health care practitioners. The disclosure of such information  
14 may also deter health care practitioners from seeking to work  
15 in such facilities, which would be contrary to the state's  
16 interest in ensuring the availability of health care services  
17 in such facilities.

18           Section 3. Section 455.5656, Florida Statutes, is  
19 amended to read:

20           455.5656 Practitioner's profiles; confidentiality.--

21           (1) Any patient name or other information that  
22 identifies a patient which is in a record obtained by the  
23 Department of Health or its agent for the purpose of compiling  
24 a practitioner profile is confidential and exempt from the  
25 provisions of chapter 119 and s. 24(a), Art. I of the State  
26 Constitution. Other data received by the department or its  
27 agent as a result of its duty to compile and promulgate  
28 practitioner profiles are confidential and exempt from the  
29 provisions of chapter 119 and s. 24(a), Art. I of the State  
30 Constitution until the profile into which the data are  
31 incorporated or with respect to which the data are submitted

1 is made public. Any information or record that the Department  
2 of Health obtains from the Agency for Health Care  
3 Administration or any other governmental entity for the  
4 purpose of compiling a practitioner profile or substantiating  
5 other information or records submitted for that purpose and  
6 that was exempt from the provisions of chapter 119 and s.  
7 24(a), Art. I of the State Constitution does not lose that  
8 character by coming into the possession of the Department of  
9 Health, and such information or record continues to be exempt  
10 from the provisions of chapter 119 and s. 24(a), Art. I of the  
11 State Constitution.

12 (2)(a) The provisions of subsection (1) with respect  
13 to practitioners who are subject to profiling under s. 455.565  
14 are ~~This section is~~ subject to the Open Government Sunset  
15 Review Act of 1995 in accordance with s. 119.15 and shall  
16 stand repealed on October 2, 2002, unless reviewed and saved  
17 from repeal through reenactment by the Legislature.

18 (b) The provisions of subsection (1) with respect to  
19 practitioners who are subject to profiling under s. 455.56505  
20 are subject to the Open Government Sunset Review Act of 1995  
21 in accordance with s. 119.15 and shall stand repealed on  
22 October 2, 2005, unless reviewed and saved from repeal through  
23 reenactment by the Legislature.

24 Section 4. The Legislature finds that public release  
25 of a patient record or other document which includes a  
26 statement of the patient's medical disease, condition, or  
27 treatment plan that identifies the patient by name or by other  
28 identifier could result in serious and irreparable damage to  
29 the patient. Such records obtained by the Department of Health  
30 or its agent for purposes of compiling a practitioner profile,  
31 if open to the public, may adversely affect the integrity and

1 trust of the practitioner-patient relationship and may deter  
2 affected parties from seeking needed health care services;  
3 therefore, it is a matter of public necessity to protect the  
4 confidentiality of such patient health information. The  
5 Legislature further finds that, because of the nature of the  
6 data submitted to the Department of Health or its agent for  
7 purposes of constructing practitioner profiles, the necessity  
8 of ensuring the accuracy of those data, the need to refrain  
9 from unnecessarily affecting the livelihood of persons who are  
10 the subject of practitioner profiles, and the need to maintain  
11 the integrity and trust of the practitioner-patient  
12 relationship without unwarranted aspersions on the  
13 professional competence and ability of these persons, it is a  
14 matter of public necessity to protect the confidentiality of  
15 the data during the period of their verification. The  
16 Legislature further finds that the need to learn or verify  
17 information about health care practitioners, though furthering  
18 a state interest, does not override the public policy  
19 determinations made to exempt certain information from public  
20 disclosure and that records so exempted should retain that  
21 status when obtained and used by another governmental entity.

22           Section 5. Paragraph (c) of subsection (4) of section  
23 943.0585, Florida Statutes, is amended to read:

24           943.0585 Court-ordered expunction of criminal history  
25 records.--The courts of this state have jurisdiction over  
26 their own procedures, including the maintenance, expunction,  
27 and correction of judicial records containing criminal history  
28 information to the extent such procedures are not inconsistent  
29 with the conditions, responsibilities, and duties established  
30 by this section. Any court of competent jurisdiction may  
31 order a criminal justice agency to expunge the criminal

1 history record of a minor or an adult who complies with the  
2 requirements of this section. The court shall not order a  
3 criminal justice agency to expunge a criminal history record  
4 until the person seeking to expunge a criminal history record  
5 has applied for and received a certificate of eligibility for  
6 expunction pursuant to subsection (2). A criminal history  
7 record that relates to a violation of chapter 794, s. 800.04,  
8 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a  
9 violation enumerated in s. 907.041 may not be expunged,  
10 without regard to whether adjudication was withheld, if the  
11 defendant was found guilty of or pled guilty or nolo  
12 contendere to the offense, or if the defendant, as a minor,  
13 was found to have committed, or pled guilty or nolo contendere  
14 to committing, the offense as a delinquent act. The court may  
15 only order expunction of a criminal history record pertaining  
16 to one arrest or one incident of alleged criminal activity,  
17 except as provided in this section. The court may, at its sole  
18 discretion, order the expunction of a criminal history record  
19 pertaining to more than one arrest if the additional arrests  
20 directly relate to the original arrest. If the court intends  
21 to order the expunction of records pertaining to such  
22 additional arrests, such intent must be specified in the  
23 order. A criminal justice agency may not expunge any record  
24 pertaining to such additional arrests if the order to expunge  
25 does not articulate the intention of the court to expunge a  
26 record pertaining to more than one arrest. This section does  
27 not prevent the court from ordering the expunction of only a  
28 portion of a criminal history record pertaining to one arrest  
29 or one incident of alleged criminal activity. Notwithstanding  
30 any law to the contrary, a criminal justice agency may comply  
31 with laws, court orders, and official requests of other

1 jurisdictions relating to expunction, correction, or  
2 confidential handling of criminal history records or  
3 information derived therefrom. This section does not confer  
4 any right to the expunction of any criminal history record,  
5 and any request for expunction of a criminal history record  
6 may be denied at the sole discretion of the court.

7 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
8 criminal history record of a minor or an adult which is  
9 ordered expunged by a court of competent jurisdiction pursuant  
10 to this section must be physically destroyed or obliterated by  
11 any criminal justice agency having custody of such record;  
12 except that any criminal history record in the custody of the  
13 department must be retained in all cases. A criminal history  
14 record ordered expunged that is retained by the department is  
15 confidential and exempt from the provisions of s. 119.07(1)  
16 and s. 24(a), Art. I of the State Constitution and not  
17 available to any person or entity except upon order of a court  
18 of competent jurisdiction. A criminal justice agency may  
19 retain a notation indicating compliance with an order to  
20 expunge.

21 (c)1. Information relating to the existence of an  
22 expunged criminal history record which is provided in  
23 accordance with subparagraphs (a)1.-6.~~paragraph (a)~~ is  
24 confidential and exempt from the provisions of s. 119.07(1)  
25 and s. 24(a), Art. I of the State Constitution, except that  
26 the department shall disclose the existence of a criminal  
27 history record ordered expunged to the entities set forth in  
28 subparagraphs (a)1., 4., 5., and 6. for their respective  
29 licensing and employment purposes, and to criminal justice  
30 agencies for their respective criminal justice purposes. It  
31 is unlawful for any employee of an entity set forth in

1 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or  
2 subparagraph (a)6. to disclose information relating to the  
3 existence of an expunged criminal history record of a person  
4 seeking employment or licensure with such entity or  
5 contractor, except to the person to whom the criminal history  
6 record relates or to persons having direct responsibility for  
7 employment or licensure decisions. Any person who violates  
8 this ~~subparagraph~~ ~~paragraph~~ commits a misdemeanor of the first  
9 degree, punishable as provided in s. 775.082 or s. 775.083.

10 2. Information relating to the existence of an  
11 expunged criminal history record which is provided in  
12 accordance with subparagraph (a)7. is confidential and exempt  
13 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
14 the State Constitution, except that the department shall  
15 disclose the existence of a criminal history record ordered  
16 expunged to the Department of Health as set forth in  
17 subparagraph (a)7. for its licensing and employment purposes,  
18 and to criminal justice agencies for their respective criminal  
19 justice purposes. It is unlawful for any employee of the  
20 Department of Health as set forth in subparagraph (a)7. to  
21 disclose information relating to the existence of an expunged  
22 criminal history record of a person seeking employment or  
23 licensure with such entity or contractor, except to the person  
24 to whom the criminal history record relates, to persons having  
25 direct responsibility for employment or licensure decisions,  
26 or to any other state agency that is authorized in this state  
27 to receive expunged criminal history records from the  
28 department. Any person who violates this subparagraph commits  
29 a misdemeanor of the first degree, punishable as provided in  
30 s. 775.082 or s. 775.083. This subparagraph is subject to the  
31 Open Government Sunset Review Act of 1995 in accordance with

1 s. 119.15 and shall stand repealed on October 2, 2005, unless  
2 reviewed and saved from repeal through reenactment by the  
3 Legislature.

4           Section 6. The Legislature finds that public release  
5 of expunged criminal history information on health care  
6 practitioners seeking employment, licensure, or a contract  
7 with the Department of Health to work with children, the  
8 developmentally disabled, the aged, or the elderly may  
9 adversely affect the integrity and trust of such a  
10 practitioner-patient relationship, may deter affected parties  
11 from seeking needed health care services as a result, and may  
12 cast unwarranted aspersions on the professional competence and  
13 ability of such practitioners and thereby affect their  
14 livelihood; therefore, it is a matter of public necessity to  
15 protect the confidentiality of such information. The  
16 Legislature further finds that such information is already  
17 confidential under identical circumstances for persons seeking  
18 employment, licensure, or a contract with the Department of  
19 Children and Family Services and the Department of Juvenile  
20 Justice. The Legislature further finds that the need to learn  
21 or verify information about health care practitioners, though  
22 furthering a state interest, does not override the public  
23 policy determinations made to exempt certain information from  
24 public disclosure and that records so exempted should retain  
25 that status when obtained and used by another governmental  
26 entity.

27           Section 7. This act shall take effect on the effective  
28 date of House Bill 1659 or similar legislation creating s.  
29 455.56505, Florida Statutes, to provide for practitioner  
30 profiling of additional health care practitioners, and s.  
31 943.0585(4)(a)7., Florida Statutes, to provide the Department



1 of Health access to expunged criminal history information on  
2 health care practitioners seeking to work with children, the  
3 developmentally disabled, or the aged or elderly, if such  
4 legislation is adopted in the same legislative session or an  
5 extension thereof.

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8 HOUSE SUMMARY

9  
10 Provides exemption from public records requirements for  
11 the home addresses and home telephone numbers of health  
12 care practitioners working in correctional or mental  
13 health facilities. Provides exemption from public records  
14 requirements for information obtained for practitioner  
15 profiles of health care practitioners not previously  
16 profiled and for expunged criminal history information  
17 obtained by the Department of Health on health care  
18 practitioners seeking employment, licensure, or a  
19 contract to work with children, the developmentally  
20 disabled, the aged, or the elderly. Provides for future  
21 review and repeal of such exemptions. Provides findings  
22 of public necessity. See bill for details.  
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