

By Senator Campbell

33-1737-00

See HB

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

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

17
 18 Section 1. 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16 stand repealed on October 2, 2002, unless reviewed and saved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 2. The Legislature finds that public release
25 of a patient record or other document that includes a
26 statement of the patient's medical disease, condition, or
27 treatment plan and identifies a 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 3. 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 another state agency that is authorized in this state to
27 receive expunged criminal history records from the department.
28 Any person who violates this subparagraph commits a
29 misdemeanor of the first degree, punishable as provided in s.
30 775.082 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 4. 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 5. This act shall take effect on the effective
28 date of Senate Bill ____ or similar legislation creating
29 section 455.56505, Florida Statutes, to provide for
30 practitioner profiling of additional health care
31 practitioners, and section 943.0585(4)(a)7., Florida Statutes,

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

6
7 *****

8 LEGISLATIVE SUMMARY

9
10 Provides exemption from public records requirements for
11 information obtained for practitioner profiles of health
12 care practitioners not previously profiled and for
13 expunged criminal history information obtained by the
14 Department of Health on health care practitioners seeking
15 employment, licensure, or a contract to work with
16 children, the developmentally disabled, the aged, or the
17 elderly. Provides for future review and repeal of such
18 exemptions. Provides findings of public necessity. (See
19 bill for details.)
20
21
22
23
24
25
26
27
28
29
30
31