

By the Committee on Health, Aging and Long-Term Care; and  
Senator Campbell

317-1937A-00

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.07, F.S.; providing an exemption for home  
4           addresses and home telephone numbers of certain  
5           health care practitioners who work in  
6           correctional facilities and who are licensed by  
7           the Department of Health; amending s. 455.5656,  
8           F.S.; 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 exemption from public  
18          records requirements for identity of licensed  
19          health professionals who are subject to a  
20          compelled mental or physical examination;  
21          providing for future review and repeal;  
22          providing findings of public necessity;  
23          providing a contingent effective date.

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

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27           Section 1. Paragraph (dd) is added to subsection (3)  
28 of section 119.07, Florida Statutes, to read:  
29           119.07 Inspection, examination, and duplication of  
30 records; exemptions.--

31           (3)

1        (dd) The home addresses and home telephone numbers of  
2 health care practitioners, as defined in s. 455.501(4),  
3 working in any type of correctional facility, including any  
4 prison or jail, or in any mental health facility, are exempt  
5 from the provisions of subsection (1) and s. 24(a), Art. I of  
6 the State Constitution.

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

22        Section 3. Section 455.5656, Florida Statutes, is  
23 amended to read:

24        455.5656 Practitioner's profiles; confidentiality.--

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

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

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

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

28 Section 4. The Legislature finds that public release  
29 of a patient record or other document that includes a  
30 statement of the patient's medical disease, condition, or  
31 treatment plan and identifies a patient by name or by other

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

26 Section 5. Paragraphs (a) and (c) of subsection (4) of  
27 section 943.0585, Florida Statutes, are amended to read:

28 943.0585 Court-ordered expunction of criminal history  
29 records.--The courts of this state have jurisdiction over  
30 their own procedures, including the maintenance, expunction,  
31 and correction of judicial records containing criminal history

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

1 portion of a criminal history record pertaining to one arrest  
2 or one incident of alleged criminal activity. Notwithstanding  
3 any law to the contrary, a criminal justice agency may comply  
4 with laws, court orders, and official requests of other  
5 jurisdictions relating to expunction, correction, or  
6 confidential handling of criminal history records or  
7 information derived therefrom. This section does not confer  
8 any right to the expunction of any criminal history record,  
9 and any request for expunction of a criminal history record  
10 may be denied at the sole discretion of the court.

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

25 (a) The person who is the subject of a criminal  
26 history record that is expunged under this section or under  
27 other provisions of law, including former s. 893.14, former s.  
28 901.33, and former s. 943.058, may lawfully deny or fail to  
29 acknowledge the arrests covered by the expunged record, except  
30 when the subject of the record:

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- 1           1. Is a candidate for employment with a criminal  
2 justice agency;
- 3           2. Is a defendant in a criminal prosecution;
- 4           3. Concurrently or subsequently petitions for relief  
5 under this section or s. 943.059;
- 6           4. Is a candidate for admission to The Florida Bar;
- 7           5. Is seeking to be employed or licensed by or to  
8 contract with the Department of Children and Family Services  
9 or the Department of Juvenile Justice or to be employed or  
10 used by such contractor or licensee in a sensitive position  
11 having direct contact with children, the developmentally  
12 disabled, the aged, or the elderly as provided in s.  
13 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
14 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
15 415.1075(4), s. 985.407, or chapter 400; ~~or~~
- 16           6. Is seeking to be employed or licensed by the Office  
17 of Teacher Education, Certification, Staff Development, and  
18 Professional Practices of the Department of Education, any  
19 district school board, or any local governmental entity that  
20 licenses child care facilities; or.
- 21           7. Is seeking to be employed or licensed by or to  
22 contract with the Department of Health or to be employed or  
23 used by such contractor or licensee in a sensitive position  
24 having direct contact with children, the developmentally  
25 disabled, the aged, or the elderly as provided in s.  
26 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
27 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
28 415.1075(4), s. 985.407, or chapter 400.
- 29           (c)1. Information relating to the existence of an  
30 expunged criminal history record which is provided in  
31 accordance with subparagraphs (a)1.-6.~~paragraph (a)~~ is

1 confidential and exempt from the provisions of s. 119.07(1)  
2 and s. 24(a), Art. I of the State Constitution, except that  
3 the department shall disclose the existence of a criminal  
4 history record ordered expunged to the entities set forth in  
5 subparagraphs (a)1., 4., 5., and 6. for their respective  
6 licensing and employment purposes, and to criminal justice  
7 agencies for their respective criminal justice purposes. It  
8 is unlawful for any employee of an entity set forth in  
9 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or  
10 subparagraph (a)6. to disclose information relating to the  
11 existence of an expunged criminal history record of a person  
12 seeking employment or licensure with such entity or  
13 contractor, except to the person to whom the criminal history  
14 record relates or to persons having direct responsibility for  
15 employment or licensure decisions. Any person who violates  
16 this ~~subparagraph~~ ~~paragraph~~ commits a misdemeanor of the first  
17 degree, punishable as provided in s. 775.082 or s. 775.083.

18 2. Information relating to the existence of an  
19 expunged criminal history record which is provided in  
20 accordance with subparagraph (a)7. is confidential and exempt  
21 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
22 the State Constitution, except that the department shall  
23 disclose the existence of a criminal history record ordered  
24 expunged to the Department of Health as set forth in  
25 subparagraph (a)7. for its licensing and employment purposes,  
26 and to criminal justice agencies for their respective criminal  
27 justice purposes. It is unlawful for any employee of the  
28 Department of Health as set forth in subparagraph (a)7. to  
29 disclose information relating to the existence of an expunged  
30 criminal history record of a person seeking employment or  
31 licensure with such entity or contractor, except to the person



1 to whom the criminal history record relates, to persons having  
2 direct responsibility for employment or licensure decisions,  
3 or to another state agency that is authorized in this state to  
4 receive expunged criminal history records from the department.  
5 Any person who violates this subparagraph commits a  
6 misdemeanor of the first degree, punishable as provided in s.  
7 775.082 or s. 775.083. This subparagraph is subject to the  
8 Open Government Sunset Review Act of 1995 in accordance with  
9 s. 119.15 and shall stand repealed on October 2, 2005, unless  
10 reviewed and saved from repeal through reenactment by the  
11 Legislature.

12       Section 6. In any court proceeding to enforce an order  
13 by the Department of Health to compel a licensed health care  
14 practitioner to submit to a mental or physical examination by  
15 physicians designated by the department under section 455.624,  
16 Florida Statutes, the licensee against whom the petition for  
17 enforcement is filed may not be named or identified by  
18 initials in any public court records or documents and is  
19 confidential and exempt from the provisions of chapter 119,  
20 Florida Statutes, and Section (24)(a), Article I of the State  
21 Constitution, and the proceedings shall be closed to the  
22 public. This section is subject to the Open Government Sunset  
23 Review Act of 1995 in accordance with section 119.15, Florida  
24 Statutes, and shall stand repealed on October 2, 2005, unless  
25 reviewed and saved from repeal through reenactment by the  
26 Legislature.

27       Section 7. The Legislature finds that public release  
28 of expunged criminal history information on health care  
29 practitioners seeking employment, licensure, or a contract  
30 with the Department of Health to work with children, the  
31 developmentally disabled, the aged, or the elderly may

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

24       Section 8. This act shall take effect on the effective  
25 date of Committee Substitute for Senate Bill 2354 or similar  
26 legislation creating section 455.56505, Florida Statutes, to  
27 provide for practitioner profiling of additional health care  
28 practitioners.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2394

The bill is revised to include a Public Records Law exemption for the name or initials in any public court records or documents of any licensed health care practitioner regulated by the Division of Medical Quality Assurance within the Department of Health who is the subject of court proceedings to compel the licensee to submit to a physical or mental examination, and for home addresses and home telephone numbers of health care practitioners, as defined in s. 455.501(4), F.S., working in any type of correctional facility, including any prison or jail, or in any mental health facility.