

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

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 for
5 information contained in reports made by
6 physicians and osteopathic physicians of
7 adverse incidents occurring in office practice
8 settings; providing for future review and
9 repeal; providing findings of public necessity;
10 providing an effective date.

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

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14 Section 1. Section 458.353, Florida Statutes, is
15 created to read:

16 458.353 Notification of adverse incident; public
17 records exemption.--The information contained in the
18 notification of an adverse incident which is required under s.
19 458.351 and provided to the department by a physician licensed
20 under this chapter is confidential and exempt from s.
21 119.07(1) and s. 24(a), Art. I of the State Constitution. In
22 addition, the information is not discoverable or admissible in
23 a civil or administrative action, unless the action is a
24 disciplinary proceeding by the department or the appropriate
25 regulatory board. The information may not be made available to
26 the public as part of the record of investigation or
27 prosecution in a disciplinary proceeding that is made
28 available for the department or a regulatory board. This
29 section is subject to the Open Government Sunset Review Act of
30 1995 in accordance with s. 119.15 and shall stand repealed on
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1 October 2, 2005, unless reviewed and saved from repeal through
2 reenactment by the Legislature.

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

5 459.028 Notification of adverse incident; public
6 records exemption.--The information contained in the
7 notification of an adverse incident which is required under s.
8 459.026 and provided to the department by an osteopathic
9 physician licensed under this chapter is confidential and
10 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
11 Constitution. In addition, the information is not discoverable
12 or admissible in a civil or administrative action, unless the
13 action is a disciplinary proceeding by the department or the
14 appropriate regulatory board. The information may not be made
15 available to the public as part of the record of investigation
16 or prosecution in a disciplinary proceeding that is made
17 available for the department or a regulatory board. This
18 section is subject to the Open Government Sunset Review Act of
19 1995 in accordance with s. 119.15 and shall stand repealed on
20 October 2, 2005, unless reviewed and saved from repeal through
21 reenactment by the Legislature.

22 Section 3. The Legislature finds that the exemptions
23 from public records requirements provided in ss. 458.353 and
24 459.028, Florida Statutes, are a public necessity, and that it
25 would be an invasion of a patient's privacy for such personal,
26 sensitive information contained in the notification of an
27 adverse incident to be publicly available. Furthermore, the
28 Legislature finds that failure to protect the confidentiality
29 of any information submitted to or collected by the Department
30 of Health pursuant to s. 458.351, Florida Statutes, or s.
31 459.026, Florida Statutes, regarding an adverse incident,

1 including, but not limited to, the identity of the patient and
2 the type of adverse incident, would deter the collection and
3 reporting of this information to the department. This would
4 prevent the department and the appropriate regulatory boards
5 from effectively carrying out their responsibility to enforce
6 safe patient care and take necessary disciplinary action for
7 practice violations. Release of such information would deter
8 physicians and osteopathic physicians licensed in this state
9 from reporting adverse incidents. This could lead to the
10 deterioration of services and care rendered, all to the
11 detriment of the health of those served. These exemptions
12 apply the same exemption accorded under ss. 395.0198 and
13 395.0193, Florida Statutes, relating to the reporting of
14 adverse incidents by facilities licensed under chapter 395,
15 Florida Statutes. The Legislature has thus consistently and
16 repeatedly acknowledged the public necessity of these types of
17 exemptions.

18 Section 4. This act shall take effect upon becoming a
19 law.

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