

By Senator Clary

7-435-00

See HB

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 455.647, F.S.; providing an exemption from
 4 public records requirements for certain
 5 information obtained by the Department of
 6 Health from applicants for licensure relating
 7 to disciplinary action taken against the
 8 applicant; creating ss. 458.353 and 459.028,
 9 F.S.; providing exemptions from public records
 10 requirements for information contained in
 11 reports made by physicians and osteopathic
 12 physicians of adverse incidents occurring in
 13 office practice settings; amending s. 766.106,
 14 F.S.; providing an exemption from public
 15 records requirements for a notice of intent to
 16 initiate litigation for medical malpractice
 17 against a health care provider received by the
 18 Department of Health and for related
 19 investigatory information; providing for future
 20 review and repeal; providing findings of public
 21 necessity; providing an effective date.

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

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

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

29 (1)(a) All information required by the department of
 30 any applicant shall be a public record and shall be open to
 31 public inspection pursuant to s. 119.07, except as provided in

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

12 (b) Information obtained pursuant to s.
13 455.565(1)(a)8. regarding final disciplinary action taken by a
14 licensed hospital or ambulatory surgical center is
15 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
16 of the State Constitution, and shall not be discussed with or
17 made accessible to anyone except members of the board, the
18 department, and staff thereof, who have a bona fide need to
19 know such information. This paragraph is subject to the Open
20 Government Sunset Review Act of 1995 in accordance with s.
21 119.15, and shall stand repealed on October 2, 2005, unless
22 reviewed and saved from repeal through reenactment by the
23 Legislature.

24 Section 2. Section 458.353, Florida Statutes, is
25 created to read:

26 458.353 Notification of adverse incident; public
27 records exemption.--The information contained in the
28 notification of an adverse incident, which is required under
29 s. 458.351 and provided to the department by a physician
30 licensed under this chapter, is confidential and exempt from
31 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

1 In addition, the information is not discoverable or admissible
2 in a civil or administrative action, unless the action is a
3 disciplinary proceeding by the department or the appropriate
4 regulatory board. The information may not be made available to
5 the public as part of the record of investigation or
6 prosecution in a disciplinary proceeding that is made
7 available for the department or a regulatory board. This
8 section is subject to the Open Government Sunset Review Act of
9 1995 in accordance with s. 119.15 and shall stand repealed on
10 October 2, 2005, unless reviewed and saved from repeal through
11 reenactment by the Legislature.

12 Section 3. Section 459.028, Florida Statutes, is
13 created to read:

14 459.028 Notification of adverse incident; public
15 records exemption.--The information contained in the
16 notification of an adverse incident, which is required under
17 s. 459.026 and provided to the department by an osteopathic
18 physician licensed under this chapter, is confidential and
19 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
20 Constitution. In addition, the information is not discoverable
21 or admissible in a civil or administrative action, unless the
22 action is a disciplinary proceeding by the department or the
23 appropriate regulatory board. The information may not be made
24 available to the public as part of the record of investigation
25 or prosecution in a disciplinary proceeding that is made
26 available for the department or a regulatory board. This
27 section is subject to the Open Government Sunset Review Act of
28 1995 in accordance with s. 119.15 and shall stand repealed on
29 October 2, 2005, unless reviewed and saved from repeal through
30 reenactment by the Legislature.

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1 Section 4. Subsection (2) of section 766.106, Florida
2 Statutes, is amended to read:

3 766.106 Notice before filing action for medical
4 malpractice; presuit screening period; offers for admission of
5 liability and for arbitration; informal discovery; review.--

6 (2)(a) After completion of presuit investigation
7 pursuant to s. 766.203 and prior to filing a claim for medical
8 malpractice, a claimant shall notify each prospective
9 defendant and, if any prospective defendant is a health care
10 provider licensed under chapter 458, chapter 459, chapter 460,
11 chapter 461, or chapter 466, the Department of Health by
12 certified mail, return receipt requested, of intent to
13 initiate litigation for medical malpractice. Notice to the
14 Department of Health must include the full name and address of
15 the claimant; the full names and any known addresses of any
16 health care providers licensed under chapter 458, chapter 459,
17 chapter 460, chapter 461, or chapter 466 who are prospective
18 defendants identified at the time; the date and a summary of
19 the occurrence giving rise to the claim; and a description of
20 the injury to the claimant. The requirement for notice to the
21 Department of Health does not impair the claimant's legal
22 rights or ability to seek relief for his or her claim, and the
23 notice provided to the department is not discoverable or
24 admissible in any civil or administrative action. The
25 Department of Health shall review each incident and determine
26 whether it involved conduct by a licensee which is potentially
27 subject to disciplinary action, in which case the provisions
28 of s. 455.621 apply.

29 (b) The presuit notice and all information obtained
30 pursuant to the investigation by the Department of Health are
31 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

1 of the State Constitution until 10 days after probable cause
2 has been found to exist by the probable cause panel or by the
3 department, or until the regulated professional or subject of
4 the investigation waives his or her privilege of
5 confidentiality, whichever occurs first. This paragraph is
6 subject to the Open Government Sunset Review Act of 1995 in
7 accordance with s. 119.15, and shall stand repealed on October
8 2, 2005, unless reviewed and saved from repeal through
9 reenactment by the Legislature.

10 Section 5. The Legislature finds that the exemptions
11 from public records requirements provided in sections 455.647,
12 458.353, 459.028, and 766.106, Florida Statutes, are a public
13 necessity, and that it would be an invasion of a patient's
14 privacy for such personal, sensitive information contained in
15 the notification of an adverse incident, hospital and
16 ambulatory surgical center discipline, or presuit notice to be
17 publicly available. Furthermore, the Legislature finds that
18 failure to protect the confidentiality of any information
19 submitted to or collected by the Department of Health pursuant
20 to section 458.351, Florida Statutes, or section 459.026,
21 Florida Statutes, regarding an adverse incident, including,
22 but not limited to, the identity of the patient, the type of
23 adverse incident, and the fact that an investigation is being
24 conducted, and pursuant to section 455.647, Florida Statutes,
25 regarding hospital and ambulatory surgical center discipline,
26 and pursuant to section 766.106, Florida Statutes, regarding
27 presuit notices, would deter the collection and reporting of
28 this information to the department. This would prevent the
29 department and the appropriate regulatory boards from
30 effectively carrying out their responsibility to enforce safe
31 patient care and take necessary disciplinary action for

1 practice violations. Release of such information would deter
2 physicians and osteopathic physicians licensed in this state
3 from reporting adverse incidents and hospital and ambulatory
4 surgical center discipline. This could lead to the
5 deterioration of services and care rendered, all to the
6 detriment of the health of those served. These exemptions
7 apply the same exemption accorded under sections 395.0198 and
8 395.0193, Florida Statutes, relating to the reporting of
9 adverse incidents and hospital and ambulatory surgical center
10 discipline by facilities licensed under chapter 395, Florida
11 Statutes, the exemption accorded peer review documents under
12 section 395.0193, Florida Statutes, and the exemption under
13 section 455.621, Florida Statutes, regarding information
14 obtained prior to probable cause being found. The Legislature
15 has thus consistently and repeatedly acknowledged the public
16 necessity of these types of exemptions.

17 Section 6. This act shall take effect upon becoming a
18 law.

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LEGISLATIVE SUMMARY

Provides an exemption from public records requirements for certain information obtained by the Department of Health from applicants for licensure relating to disciplinary action taken against the applicant.

Provides exemptions from public records requirements for information contained in reports made by physicians and osteopathic physicians of adverse incidents occurring in office practice settings.

Provides an exemption from public records requirements for a notice of intent to initiate litigation for medical malpractice against a health care provider received by the Department of Health and for related investigatory information.

Provides for future review and repeal.