

By 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.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
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
19 s. 458.351 and provided to the department by a physician
20 licensed under this chapter, is confidential and exempt from
21 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
22 In addition, the information is not discoverable or admissible
23 in 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30 1995 in accordance with s. 119.15 and shall stand repealed

31

1 October 2, 2006, 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
8 s. 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
20 October 2, 2006, 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 sections 458.353
24 and 459.028, Florida Statutes, are a public necessity, and
25 that it would be an invasion of a patient's privacy for
26 personal, sensitive information contained in the notification
27 of an adverse incident to be publicly available. Furthermore,
28 the Legislature finds that failure to protect the
29 confidentiality of any information submitted to or collected
30 by the Department of Health pursuant to section 458.351,
31 Florida Statutes, or section 459.026, Florida Statutes,

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

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

21
22 *****

23 SENATE SUMMARY

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

27 Provides a statement of public necessity and for future
28 review and repeal.
29
30
31