

By Representative Frankel

1 A bill to be entitled
2 An act relating to public meetings and public
3 records; amending s. 400.351, F.S.; providing
4 an exemption from public meetings and public
5 records requirements for nursing home governing
6 board or committee meetings held solely for the
7 purpose of achieving internal risk management
8 objectives; providing for future review and
9 repeal; providing a finding of public
10 necessity; creating s. 400.351, F.S., and
11 creating s. 400.352, F.S.; providing an
12 exemption from public records requirements for
13 information contained in a notification of an
14 adverse incident provided to the Agency for
15 Health Care Administration by a nursing home
16 facility, and information and reports obtained
17 by the agency related to such adverse
18 incidents; providing that such information is
19 not discoverable or admissible in a civil
20 action or administrative proceeding unless such
21 action or proceeding is a disciplinary
22 proceeding conducted by the agency or a
23 regulatory board; providing for future review
24 and repeal; providing a finding of public
25 necessity; amending s. 400.354, F.S.; providing
26 exemptions from public records requirements for
27 any complaint against a nursing home for
28 violation of pt. II of ch. 400, F.S., and for
29 information obtained by the Agency for Health
30 Care Administration during an investigation
31 related thereto; providing conditions for

1 disclosure; providing for future review and
2 repeal; providing a finding of public
3 necessity; providing a contingent effective
4 date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Subsection (18) is added to section
9 400.351, Florida Statutes, to read:

10 400.351 Nursing home internal risk management
11 program.--

12 (18) The meetings of the committees and any governing
13 board of a nursing home facility held solely for the purpose
14 of achieving the objectives of internal risk management as
15 provided by this section are exempt from the provisions of s.
16 286.011 and s. 24(b), Art. I of the State Constitution, and
17 shall not be open to the public. In addition, the records of
18 such meetings are confidential and exempt from the provisions
19 of s. 119.07 and s. 24(a), Art. I of the State Constitution,
20 except as otherwise provided in this section. The exemptions
21 provided in this subsection are subject to the Open Government
22 Sunset Review Act of 1995 and shall stand repealed on October
23 2, 2006, unless reviewed and saved from repeal through
24 reenactment by the Legislature.

25 Section 2. The Legislature finds that it is a public
26 necessity that the meetings of the committees and any
27 governing board of a nursing home facility held solely for the
28 purpose of achieving the objectives of internal risk
29 management as provided in s. 400.351, Florida Statutes, and
30 the records of such meetings, be confidential and closed to
31 the public because such meetings often require careful review

1 of an individual's medical records. Such records, as well as
2 other information contained in an adverse incident report
3 giving rise to such an internal risk management discussion,
4 often concern matters of a personal, sensitive, and private
5 nature. Furthermore, the disclosure to the public of
6 discussions at such meetings regarding investigations of
7 adverse incidents at the nursing home, the potential risk to
8 other nursing home residents, the prevention of future such
9 incidents, and the resolution of risk management issues could
10 deter nursing homes from internally reporting and correcting
11 the situations resulting in adverse incidents, which, in turn,
12 could lead to a deterioration of the services rendered at the
13 nursing home, to the detriment of the health of those served.
14 Therefore, the Legislature finds that the public benefit in
15 providing this exception to public meetings and records
16 requirements substantially outweighs the benefits of
17 preserving open public access to such meetings and records.

18 Section 3. Paragraph (c) of subsection (6), subsection
19 (8), and subsection (13) of section 400.351, Florida Statutes,
20 are amended to read:

21 400.351 Nursing home internal risk management
22 program.--

23 (6)

24 (c) The report submitted to the agency shall also
25 contain the name and license number of the risk manager of the
26 nursing home facility, a copy of its policy and procedures
27 which govern the measures taken by the facility and its risk
28 manager to reduce the risk of injuries and adverse incidents,
29 and the results of such measures. The annual report is
30 confidential as provided in s. 400.352 and exempt from s.
31 119.07(1) and s. 24(a), Art. I of the State Constitution. The

1 annual report is not discoverable or admissible in any civil
2 or administrative action, except in disciplinary proceedings
3 by the agency or the appropriate regulatory board. The annual
4 report is not available to the public as part of the record of
5 investigation for and prosecution in disciplinary proceedings
6 made available to the public by the agency or the appropriate
7 regulatory board. However, the agency or the appropriate
8 regulatory board shall make available, upon written request by
9 a health care professional against whom probable cause has
10 been found, any such records which form the basis of the
11 determination of probable cause. The public records exemption
12 provided in this subsection is subject to the Open Government
13 Sunset Review Act of 1995 in accordance with s. 119.15, and
14 shall stand repealed on October 2, 2006, unless reviewed and
15 saved from repeal through reenactment by the Legislature.

16 (8) Any of the following adverse incidents, whether
17 occurring in the facility or arising from health care prior to
18 admission in the facility, shall be reported by the facility
19 to the agency within 15 calendar days after its occurrence:

- 20 (a) The death of a resident.
21 (b) Brain or spinal damage to a resident.

22
23 The agency may grant extensions to this reporting requirement
24 for more than 15 days upon justification submitted in writing
25 by the facility administrator to the agency. The agency may
26 require an additional, final report. Pursuant to s. 400.352,
27 these reports are confidential and exempt from s. 119.07(1)
28 and s. 24(a), Art. I of the State Constitution. In addition,
29 these reports shall not be discoverable or admissible in any
30 civil or administrative action, except in disciplinary
31 proceedings by the agency or the appropriate regulatory board,

1 nor shall they be available to the public as part of the
2 record of investigation for and prosecution in disciplinary
3 proceedings made available to the public by the agency or the
4 appropriate regulatory board. However, the agency or the
5 appropriate regulatory board shall make available, upon
6 written request by a health care professional against whom
7 probable cause has been found, any such records which form the
8 basis of the determination of probable cause. The agency may
9 investigate, as it deems appropriate, any such incident and
10 prescribe measures that must or may be taken in response to
11 the incident. The agency shall review each incident and
12 determine whether it potentially involved conduct by the
13 health care professional who is subject to disciplinary
14 action, in which case the provisions of s. 456.073 shall
15 apply. The exemption provided in this subsection is subject to
16 the Open Government Sunset Review Act of 1995 in accordance
17 with s. 119.15, and shall stand repealed on October 2, 2006,
18 unless reviewed and saved from repeal through reenactment by
19 the Legislature.

20 (13) The agency shall have access to all facility
21 records necessary to carry out the provisions of this section.
22 Pursuant to s. 400.352, the records obtained by the agency
23 under subsection (6), subsection (7), or subsection (8) are
24 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
25 of the State Constitution. In addition, they shall not be
26 discoverable or admissible in any civil or administrative
27 action, except in disciplinary proceedings by the agency or
28 the appropriate regulatory board, nor shall records obtained
29 pursuant to s. 456.071 be available to the public as part of
30 the record of investigation for and prosecution in
31 disciplinary proceedings made available to the public by the

1 agency or the appropriate regulatory board. However, the
2 agency or the appropriate regulatory board shall make
3 available, upon written request by a health care professional
4 against whom probable cause has been found, any such records
5 which form the basis of the determination of probable cause.
6 The public records exemption provided in this subsection is
7 subject to the Open Government Sunset Review Act of 1995 in
8 accordance with s. 119.15, and shall stand repealed on October
9 2, 2006, unless reviewed and saved from repeal through
10 reenactment by the Legislature.

11 Section 4. Section 400.352, Florida Statutes, is
12 created to read:

13 400.352 Notification of adverse incident; public
14 records exemption.--The information contained in the
15 notification by a nursing home facility licensed under this
16 part of an adverse incident, which is required under s.
17 400.351(6), (7), and (8) to be provided to the agency, and
18 information and reports obtained by the agency related to such
19 adverse incidents, is confidential and exempt from s.
20 119.07(1) and s. 24(a), Art. I of the State Constitution. In
21 addition, the information is not discoverable or admissible in
22 a civil or administrative action, unless the action is a
23 disciplinary proceeding by the agency or the appropriate
24 regulatory board. The information may not be made available to
25 the public as part of the record of investigation or
26 prosecution in a disciplinary proceeding which is made
27 available by the agency or a regulatory board. This exemption
28 is subject to the Open Government Sunset Review Act of 1995 in
29 accordance with s. 119.15 and shall stand repealed on October
30 2, 2006, unless reviewed and saved from repeal through
31 reenactment by the Legislature.

1 Section 5. The Legislature finds that it is a public
2 necessity that information contained in a nursing home's
3 required notification to the Agency for Health Care
4 Administration of an adverse incident, and information and
5 reports obtained by the agency related to such adverse
6 incidents, be confidential because disclosure would reveal
7 information regarding a patient's identity and medical
8 records, including information of a personal and sensitive
9 nature. Further, the failure to protect the confidentiality of
10 information submitted to or collected by the agency pursuant
11 to s. 400.351(6), (7), and (8), Florida Statutes, regarding an
12 adverse incident, including the identity of the resident, the
13 type of adverse incident, the potential risk to other
14 residents, and the fact that an investigation is being
15 conducted, would deter the collection of this information and
16 the reporting of it to the agency, which in turn would prevent
17 the agency from effectively carrying out its responsibility to
18 enforce facility corrective measures regarding the occurrences
19 of adverse incidents. Release of such information would deter
20 nursing home facilities from internally reporting and
21 correcting the situations resulting in adverse incidents,
22 which could lead to the deterioration of services rendered,
23 all to the detriment of the health of those served. This
24 exemption provides the same confidentiality protection for
25 nursing home adverse incident reports as is currently provided
26 for hospital adverse incident reports. The Legislature has
27 consistently acknowledged the public necessity of this type of
28 exemption.

29 Section 6. Subsection (3) is added to section 400.354,
30 Florida Statutes, to read:

31 400.354 Complaint investigation procedures.--

1 (3) The complaint and all information obtained by the
2 agency during an investigation conducted pursuant to this
3 section are confidential and exempt from the provisions of s.
4 119.07(1) and s. 24(a), Art. I of the State Constitution until
5 10 days after probable cause has been found to exist by the
6 agency, or until the person who is the subject of the
7 investigation waives his or her privilege of confidentiality,
8 whichever occurs first. In cases where the agency finds that
9 the complaint is not legally sufficient or when the agency
10 determines that no probable cause exists, all records
11 pertaining thereto are confidential and exempt from the
12 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
13 Constitution. However, the complaint and a summary of the
14 agency's findings shall be available, although information
15 therein identifying an individual shall not be disclosed. The
16 exemptions provided in this subsection are subject to the Open
17 Government Sunset Review Act of 1995 in accordance with s.
18 119.15, and shall stand repealed on October 2, 2006, unless
19 reviewed and saved from repeal through reenactment by the
20 Legislature.

21 Section 7. The Legislature finds that it is a public
22 necessity that a complaint against a nursing home and
23 information obtained by the Agency for Health Care
24 Administration during investigation of the complaint be
25 confidential because disclosure would involve revealing a
26 complainant's identity and patient medical records, and other
27 matters of a personal and sensitive nature. The disclosure to
28 the public of a complainant's identity, a patient's medical
29 records, and other personal information would significantly
30 discourage the filing of complaints, thus preventing the
31 agency from carrying out its responsibility to enforce

