By Senator Clary

7-320A-01

A bill to be entitled 1 2 An act relating to public records; creating ss. 458.353, 459.028, F.S.; providing exemptions 3 4 from public records requirements for 5 information contained in reports made by physicians and osteopathic physicians of 6 7 adverse incidents occurring in office practice settings; providing for future review and 8 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 Section 1. Section 458.353, Florida Statutes, is 14 created to read: 15 16 458.353 Notification of adverse incident; public records exemption. -- The information contained in the 17 notification of an adverse incident, which is required under 18 19 s. 458.351 and provided to the department by a physician licensed under this chapter, is confidential and exempt from 20 s. 119.07(1) and s. 24(a), Art. I of the State Constitution. 21 22 In addition, the information is not discoverable or admissible in a civil or administrative action, unless the action is a 23 disciplinary proceeding by the department or the appropriate 24 25 regulatory board. The information may not be made available to the public as part of the record of investigation or 26 27 prosecution in a disciplinary proceeding that is made 2.8 available for the department or a regulatory board. This section is subject to the Open Government Sunset Review Act of 29 30 1995 in accordance with s. 119.15 and shall stand repealed 31

1 October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature. 2 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 physician licensed under this chapter, is confidential and 9 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 or admissible in a civil or administrative action, unless the 12 action is a disciplinary proceeding by the department or the 13 appropriate regulatory board. The information may not be made 14 available to the public as part of the record of investigation 15 or prosecution in a disciplinary proceeding that is made 16 17 available for the department or a regulatory board. This section is subject to the Open Government Sunset Review Act of 18 19 1995 in accordance with s. 119.15 and shall stand repealed October 2, 2006, unless reviewed and saved from repeal through 20 reenactment by the Legislature. 21 Section 3. The Legislature finds that the exemptions 22 from public records requirements provided in sections 458.353 23 24 and 459.028, Florida Statutes, are a public necessity, and that it would be an invasion of a patient's privacy for 25 personal, sensitive information contained in the notification 26 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 by the Department of Health pursuant to section 458.351, 30 Florida Statutes, or section 459.026, Florida Statutes, 31

regarding an adverse incident, including, but not limited to, the identity of the patient, the type of adverse incident, and 2 3 the fact that an investigation is being conducted, would deter the collection and reporting of this information to the 4 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 necessary disciplinary action for practice violations. Release 8 9 of such information would deter physicians and osteopathic 10 physicians licensed in this state from reporting adverse incidents. This could lead to the deterioration of services 11 and care rendered, all to the detriment of the health of those 12 served. These exemptions apply the same exemption accorded 13 under sections 395.0198 and 395.0193, Florida Statutes, 14 15 relating to the reporting of adverse incidents by facilities licensed under chapter 395, Florida Statutes. The Legislature 16 has thus consistently and repeatedly acknowledged the public 17 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 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. 24 25 26 27 Provides a statement of public necessity and for future review and repeal. 28 29 30 31