

By the Committee on Education; and Senator Miller

304-2017-03

1                                   A bill to be entitled  
2           An act relating to a public-records exemption  
3           for proprietary confidential business  
4           information owned or controlled by the H. Lee  
5           Moffitt Cancer Center and Research Institute;  
6           amending s. 1004.43, F.S.; expanding the  
7           public-records exemption for proprietary  
8           confidential business information to include  
9           specified materials, potential trade secrets,  
10          potentially patentable material, or proprietary  
11          information received, generated, ascertained,  
12          or discovered during the course of research;  
13          expanding the public-records exemption to  
14          include information received from another state  
15          or nation or the Federal Government which is  
16          otherwise confidential or exempt pursuant to  
17          the laws of that state or nation or pursuant to  
18          federal law; providing for future review and  
19          repeal of the exemption; providing a statement  
20          of public necessity; providing an effective  
21          date.

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

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25           Section 1. Paragraph (b) of subsection (8) of section  
26 1004.43, Florida Statutes, is amended to read:

27           1004.43 H. Lee Moffitt Cancer Center and Research  
28 Institute.--There is established the H. Lee Moffitt Cancer  
29 Center and Research Institute at the University of South  
30 Florida.

31           (8)

1           (b) Proprietary confidential business information is  
2 confidential and exempt from the provisions of s. 119.07(1)  
3 and s. 24(a), Art. I of the State Constitution. However, the  
4 Auditor General, the Office of Program Policy Analysis and  
5 Government Accountability, and the State Board of Education,  
6 pursuant to their oversight and auditing functions, must be  
7 given access to all proprietary confidential business  
8 information upon request and without subpoena and must  
9 maintain the confidentiality of information so received. As  
10 used in this paragraph, the term "proprietary confidential  
11 business information" means information, regardless of its  
12 form or characteristics, which is owned or controlled by the  
13 not-for-profit corporation or its subsidiaries; is intended to  
14 be and is treated by the not-for-profit corporation or its  
15 subsidiaries as private and the disclosure of which would harm  
16 the business operations of the not-for-profit corporation or  
17 its subsidiaries; has not been intentionally disclosed by the  
18 corporation or its subsidiaries unless pursuant to law, an  
19 order of a court or administrative body, a legislative  
20 proceeding pursuant to s. 5, Art. III of the State  
21 Constitution, or a private agreement that provides that the  
22 information may be released to the public; and which is  
23 information concerning:

24           1. Internal auditing controls and reports of internal  
25 auditors;

26           2. Matters reasonably encompassed in privileged  
27 attorney-client communications;

28           3. Contracts for managed-care arrangements, including  
29 preferred provider organization contracts, health maintenance  
30 organization contracts, and exclusive provider organization  
31 contracts, and any documents directly relating to the

1 negotiation, performance, and implementation of any such  
2 contracts for managed-care arrangements;

3 4. Bids or other contractual data, banking records,  
4 and credit agreements the disclosure of which would impair the  
5 efforts of the not-for-profit corporation or its subsidiaries  
6 to contract for goods or services on favorable terms;

7 5. Information relating to private contractual data,  
8 the disclosure of which would impair the competitive interest  
9 of the provider of the information;

10 6. Corporate officer and employee personnel  
11 information;

12 7. Information relating to the proceedings and records  
13 of credentialing panels and committees and of the governing  
14 board of the not-for-profit corporation or its subsidiaries  
15 relating to credentialing;

16 8. Minutes of meetings of the governing board of the  
17 not-for-profit corporation and its subsidiaries, except  
18 minutes of meetings open to the public pursuant to subsection  
19 (9);

20 9. Information that reveals plans for marketing  
21 services that the corporation or its subsidiaries reasonably  
22 expect to be provided by competitors;

23 10. Trade secrets as defined in s. 688.002, including  
24 reimbursement methodologies or rates; ~~or~~

25 11. The identity of donors or prospective donors of  
26 property who wish to remain anonymous or any information  
27 identifying such donors or prospective donors. The anonymity  
28 of these donors or prospective donors must be maintained in  
29 the auditor's report;;

30 12. Information relating to methods of manufacture or  
31 production, potential trade secrets, potentially patentable

1 material, or proprietary information received, generated,  
2 ascertained, or discovered during the course of research  
3 conducted by the not-for-profit corporation or its  
4 subsidiaries and business transactions resulting from such  
5 research; or

6 13. Any information received by the not-for-profit  
7 corporation or its subsidiaries from a person in another state  
8 or nation or the Federal Government which is otherwise  
9 confidential or exempt pursuant to the laws of that state or  
10 nation or pursuant to federal law.

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12 As used in this paragraph, the term "managed care" means  
13 systems or techniques generally used by third-party payors or  
14 their agents to affect access to and control payment for  
15 health care services. Managed-care techniques most often  
16 include one or more of the following: prior, concurrent, and  
17 retrospective review of the medical necessity and  
18 appropriateness of services or site of services; contracts  
19 with selected health care providers; financial incentives or  
20 disincentives related to the use of specific providers,  
21 services, or service sites; controlled access to and  
22 coordination of services by a case manager; and payor efforts  
23 to identify treatment alternatives and modify benefit  
24 restrictions for high-cost patient care.

25 Section 2. Subparagraphs 12. and 13. or paragraph (b)  
26 of subsection (8) of section 1004.43, Florida Statutes, are  
27 subject to the Open Government Sunset Review Act of 1995 in  
28 accordance with section 119.15, Florida Statutes, and shall  
29 stand repealed on October 2, 2008, unless reviewed and saved  
30 from repeal through reenactment by the Legislature.

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1           Section 3. The Legislature finds that it is a public  
2 necessity that information relating to methods of manufacture  
3 or production, potential trade secrets, potentially patentable  
4 materials, or proprietary information received, generated,  
5 ascertained, or discovered during the course of research  
6 conducted by the H. Lee Moffitt Cancer Center and Research  
7 Institute or any of its subsidiaries and business transactions  
8 resulting from such research, be made confidential and exempt  
9 from public disclosure because the disclosure of such  
10 information would adversely impact the not-for-profit  
11 corporation or its subsidiaries and would create an unfair  
12 competitive advantage for the persons receiving such  
13 information. If such confidential and exempt information  
14 regarding research in progress were released pursuant to a  
15 public records request, others would be allowed to take the  
16 benefit of the research without compensation or reimbursement  
17 to the research center. The Legislature further finds that  
18 information received by the not-for-profit corporation or its  
19 subsidiaries from a person in another state or nation or the  
20 Federal Government which is otherwise confidential or exempt  
21 pursuant to the laws of that state or nation or pursuant to  
22 federal law should remain confidential or exempt because the  
23 highly confidential nature of cancer-related research  
24 necessitates that the not-for-profit corporation or its  
25 subsidiaries be authorized to maintain the status of  
26 confidential or exempt information it receives from the  
27 sponsors of research. Without the exemptions provided for  
28 herein, the disclosure of confidential and exempt information  
29 would place the not-for-profit corporation in an unequal  
30 footing in the marketplace as compared with its private health  
31 care and medical research competitors that are not required to

1 disclose such confidential and exempt information. The  
2 Legislature finds that the disclosure of such confidential and  
3 exempt information would adversely impact the not-for-profit  
4 corporation or its subsidiaries from fulfilling their mission  
5 of cancer treatment, research, and education.

6 Section 4. This act shall take effect upon becoming a  
7 law.

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9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
10 COMMITTEE SUBSTITUTE FOR  
11 Senate Bill 2216

12 The committee substitute expands the public records exemption  
13 to include: information relating to methods of manufacture or  
14 production; potential trade secrets; potentially patentable  
15 material; or proprietary information received, generated,  
16 ascertained, or discovered during the course of research  
17 conducted by the not-for-profit corporation or its  
18 subsidiaries, and business transactions resulting from such  
19 research.

20 The committee substitute expands the public records exemption  
21 to include any information received by the not-for-profit  
22 corporation or its subsidiaries from a person in another  
23 state, nation, or the Federal Government which is otherwise  
24 confidential or exempt pursuant to the laws of that state,  
25 nation or Federal Government.

26 The committee substitute revises the public necessity  
27 statement to provide that the exemptions are needed to avoid  
28 adversely impacting the not-for-profit corporation's  
29 competitive position in the marketplace.  
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