

By the Committees on Health, Aging, and Long-Term Care;
Education; and Senator Miller

317-2249-03

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.

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

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 this or
8 another state or nation or the Federal Government which is
9 otherwise confidential or exempt pursuant to the laws of this
10 or another state or 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. Section 1004.43(8)(b)12. and 13., Florida
26 Statutes, are subject to the Open Government Sunset Review Act
27 of 1995 in accordance with section 119.15, Florida Statutes,
28 and shall stand repealed on October 2, 2008, unless reviewed
29 and saved from repeal through reenactment by the Legislature.

30 Section 3. The Legislature finds that it is a public
31 necessity that information relating to methods of manufacture

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

1 exempt information would adversely impact the not-for-profit
2 corporation or its subsidiaries from fulfilling their mission
3 of cancer treatment, research, and education.

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

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 CS/Senate Bill 2216

10 The Committee Substitute for CS/SB 2216 provides a public
11 records exemption for information received from a person in
12 this state as well as from a person in another state.

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