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A bill to be entitled

1 An act relating to public records exemptions; amending s.
2 1004.43, F.S.; expanding the public records exemption for
3 proprietary confidential business information owned or
4 controlled by the H. Lee Moffitt Cancer Center and
5 Research Institute to include information relating to
6 methods of manufacture or production, potential trade
7 secrets, potentially patentable material, and proprietary
8 information received, generated, ascertained, or
9 discovered during the course of research, and business
10 transactions resulting from such research; expanding the
11 public records exemption to include information received
12 from this or another state or nation or the Federal
13 Government which is otherwise exempt or confidential
14 pursuant to the laws of this or another state or nation or
15 pursuant to federal law; providing for future review and
16 repeal; providing a statement of public necessity;
17 amending s. 1004.445, F.S.; creating a public records
18 exemption for proprietary confidential business
19 information owned or controlled by the Florida Alzheimer's
20 Center and Research Institute; categorizing specified
21 types of information as proprietary confidential business
22 information; defining "managed care"; providing for access
23 to proprietary confidential business information by
24 specified agencies; providing for future review and repeal
25 of the exemption; providing a statement of public
26 necessity; providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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31 Section 1. Paragraph (b) of subsection (8) of section
32 1004.43, Florida Statutes, is amended to read:

33 1004.43 H. Lee Moffitt Cancer Center and Research
34 Institute.--There is established the H. Lee Moffitt Cancer
35 Center and Research Institute at the University of South
36 Florida.

37 (8)

38 (b) Proprietary confidential business information is
39 confidential and exempt from the provisions of s. 119.07(1) and
40 s. 24(a), Art. I of the State Constitution. However, the Auditor
41 General, the Office of Program Policy Analysis and Government
42 Accountability, and the State Board of Education, pursuant to
43 their oversight and auditing functions, must be given access to
44 all proprietary confidential business information upon request
45 and without subpoena and must maintain the confidentiality of
46 information so received. As used in this paragraph, the term
47 "proprietary confidential business information" means
48 information, regardless of its form or characteristics, which is
49 owned or controlled by the not-for-profit corporation or its
50 subsidiaries; is intended to be and is treated by the not-for-
51 profit corporation or its subsidiaries as private and the
52 disclosure of which would harm the business operations of the
53 not-for-profit corporation or its subsidiaries; has not been
54 intentionally disclosed by the corporation or its subsidiaries
55 unless pursuant to law, an order of a court or administrative
56 body, a legislative proceeding pursuant to s. 5, Art. III of the
57 State Constitution, or a private agreement that provides that
58 the information may be released to the public; and which is
59 information concerning:

60 1. Internal auditing controls and reports of internal



61 auditors;

62 2. Matters reasonably encompassed in privileged attorney-
63 client communications;

64 3. Contracts for managed-care arrangements, including
65 preferred provider organization contracts, health maintenance
66 organization contracts, and exclusive provider organization
67 contracts, and any documents directly relating to the
68 negotiation, performance, and implementation of any such
69 contracts for managed-care arrangements;

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

74 5. Information relating to private contractual data, the
75 disclosure of which would impair the competitive interest of the
76 provider of the information;

77 6. Corporate officer and employee personnel information;

78 7. Information relating to the proceedings and records of
79 credentialing panels and committees and of the governing board
80 of the not-for-profit corporation or its subsidiaries relating
81 to credentialing;

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

85 9. Information that reveals plans for marketing services
86 that the corporation or its subsidiaries reasonably expect to be
87 provided by competitors;

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

90 11. The identity of donors or prospective donors of



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91 property who wish to remain anonymous or any information
 92 identifying such donors or prospective donors. The anonymity of
 93 these donors or prospective donors must be maintained in the
 94 auditor's report;—

95 12. Information relating to methods of manufacture or
 96 production, potential trade secrets, potentially patentable
 97 material, or proprietary information received, generated,
 98 ascertained, or discovered during the course of research
 99 conducted by the not-for-profit corporation or its subsidiaries
 100 and business transactions resulting from such research; or

101 13. Any information received by the not-for-profit
 102 corporation or its subsidiaries from a person in this or another
 103 state or nation or the Federal Government which is otherwise
 104 exempt or confidential pursuant to the laws of this or another
 105 state or nation or pursuant to federal law.

106
 107 As used in this paragraph, the term "managed care" means systems
 108 or techniques generally used by third-party payors or their
 109 agents to affect access to and control payment for health care
 110 services. Managed-care techniques most often include one or
 111 more of the following: prior, concurrent, and retrospective
 112 review of the medical necessity and appropriateness of services
 113 or site of services; contracts with selected health care
 114 providers; financial incentives or disincentives related to the
 115 use of specific providers, services, or services sites;
 116 controlled access to and coordination of services by a case
 117 manager; and payor efforts to identify treatment alternatives
 118 and modify benefit restrictions for high-cost patient care.

119 Section 2. Subparagraphs 12. and 13. of paragraph (b) of
 120 subsection (8) of s. 1004.43, Florida Statutes, are subject to



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121 the Open Government Sunset Review Act of 1995 in accordance with
122 s. 119.15, Florida Statutes, and shall stand repealed on October
123 2, 2008, unless reviewed and saved from repeal through
124 reenactment by the Legislature.

125 Section 3. The Legislature finds that it is a public
126 necessity that information relating to methods of manufacture or
127 production, potential trade secrets, potentially patentable
128 materials, or proprietary information received, generated,
129 ascertained, or discovered during the course of research
130 conducted by the H. Lee Moffitt Cancer Center and Research
131 Institute or any of its subsidiaries, and business transactions
132 resulting from such research, be made confidential and exempt
133 from public disclosure, because the disclosure of such
134 information would adversely impact the not-for-profit
135 corporation or its subsidiaries and would create an unfair
136 competitive advantage for the persons receiving such
137 information. If such confidential and exempt information
138 regarding research in progress were released pursuant to a
139 public records request, others would be allowed to take the
140 benefit of the research without compensation or reimbursement to
141 the research center. The Legislature further finds that
142 information received by the not-for-profit corporation or its
143 subsidiaries from a person in this or another state or nation or
144 the Federal Government which is otherwise exempt or confidential
145 pursuant to the laws of this or another state or nation or
146 pursuant to federal law should remain exempt or confidential
147 because the highly confidential nature of cancer-related
148 research necessitates that the not-for-profit corporation or its
149 subsidiaries be authorized to maintain the status of exempt or
150 confidential information it receives from the sponsors of



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151 research. Without the exemptions provided for herein, the
 152 disclosure of confidential and exempt information would place
 153 the not-for-profit corporation on an unequal footing in the
 154 marketplace as compared with its private health care and medical
 155 research competitors that are not required to disclose such
 156 confidential and exempt information. The Legislature finds that
 157 the disclosure of such confidential and exempt information would
 158 adversely impact the not-for-profit corporation or its
 159 subsidiaries in fulfilling their mission of cancer treatment,
 160 research, and education.

161 Section 4. Subsection (9) of section 1004.445, Florida
 162 Statutes, is amended to read:

163 1004.445 Florida Alzheimer's Center and Research
 164 Institute.--

165 (9)(a) The following information is confidential and
 166 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 167 of the State Constitution:

168 1.(a) Personal identifying information relating to clients
 169 of programs created or funded through the Florida Alzheimer's
 170 Center and Research Institute which is held by the institute,
 171 the University of South Florida, or the State Board of Education
 172 or by persons who provide services to clients of programs
 173 created or funded through contracts with the Florida Alzheimer's
 174 Center and Research Institute;

175 2.(b) Any medical or health records relating to patients
 176 held ~~which may be created or received~~ by the institute; and

177 3.(c) Proprietary confidential business information. As
 178 used in this subparagraph, the term "proprietary confidential
 179 business information" means information, regardless of its form
 180 or characteristics, which is owned or controlled by the



181 institute; is intended to be and is treated by the institute as
 182 private and the disclosure of which would harm the business
 183 operations of the institute; has not been intentionally
 184 disclosed by the institute unless pursuant to law, an order of a
 185 court or administrative body, a legislative proceeding pursuant
 186 to s. 5, Art. III of the State Constitution, or a private
 187 agreement that provides that the information may be released to
 188 the public; and which is information concerning:

189 a. Materials that relate to methods of manufacture or
 190 production, potential trade secrets, potentially patentable
 191 material, actual trade secrets as defined in s. 688.002, or
 192 proprietary information received, generated, ascertained, or
 193 discovered during the course of research conducted by or through
 194 the institute and business transactions resulting from such
 195 research;

196 b.~~(d)~~ The identity of a donor or prospective donor to the
 197 institute ~~Florida Alzheimer's Center and Research Institute~~ who
 198 wishes to remain anonymous, and all information identifying such
 199 donor or prospective donor;

200 c.~~(e)~~ Any information received by the institute in the
 201 performance of its duties and responsibilities which is
 202 otherwise confidential and exempt by law; ~~and~~

203 d.~~(f)~~ Any information received by the institute from a
 204 person from this or another state or nation or the Federal
 205 Government which is otherwise exempt or confidential ~~or exempt~~
 206 pursuant to this or another ~~that~~ state's or nation's laws or
 207 pursuant to federal law;

208 e. Internal auditing controls and reports of internal
 209 auditors;

210 f. Contracts for managed-care arrangements, including



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211 preferred provider organization contracts, health maintenance
212 organization contracts, and exclusive provider organization
213 contracts, and any documents directly relating to the
214 negotiation, performance, and implementation of any such
215 contracts for managed-care arrangements;

216 g. Bids or other contractual data, banking records, and
217 credit agreements the disclosure of which would impair the
218 efforts of the institute to contract for goods or services on
219 favorable terms;

220 h. Information relating to private contractual data, the
221 disclosure of which would impair the competitive interest of the
222 provider of the information;

223 i. Corporate officer and employee personnel information;

224 j. Information relating to the proceedings and records of
225 the credentialing panels and committees and of the governing
226 board of the institute relating to credentialing;

227 k. Minutes of meetings of the governing board of the
228 institute, except minutes of meetings open to the public
229 pursuant to subsection (10); and

230 l. Information that reveals plans for marketing services
231 that the institute reasonably expects to be provided by
232 competitors.

233
234 As used in this subparagraph, the term "managed care" means
235 systems or techniques generally used by third-party payors or
236 their agents to affect access to and control payment for health
237 care services. Managed-care techniques most often include one or
238 more of the following: prior, concurrent, and retrospective
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240 or site of services; contracts with selected health care



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241 providers; financial incentives or disincentives related to the
242 use of specific providers, services, or service sites;
243 controlled access to and coordination of services by a case
244 manager; and payor efforts to identify treatment alternatives
245 and modify benefit restrictions for high-cost patient care.

246 (b) The Auditor General, the Office of Program Policy
247 Analysis and Government Accountability, and the State Board of
248 Education, pursuant to their oversight and auditing functions,
249 must be given access to all proprietary confidential business
250 information upon request and without subpoena and must maintain
251 the confidentiality of information so received.

252 (c) Any governmental entity that demonstrates a need to
253 access such confidential and exempt information in order to
254 perform its duties and responsibilities shall have access to
255 such information and shall otherwise keep such information
256 confidential and exempt. This section is subject to the Open
257 Government Sunset Review Act of 1995 in accordance with s.
258 119.15 and shall stand repealed on October 2, 2006, unless
259 reviewed and saved from repeal through reenactment by the
260 Legislature.

261 Section 5. Subsection (9) of s. 1004.445, Florida
262 Statutes, is subject to the Open Government Sunset Review Act of
263 1995 in accordance with s. 119.15, Florida Statutes, and shall
264 stand repealed on October 2, 2008, unless reviewed and saved
265 from repeal through reenactment by the Legislature.

266 Section 6. The Legislature finds that it is a public
267 necessity that proprietary confidential business information
268 owned or controlled by the Florida Alzheimer's Center and
269 Research Institute; internal auditing controls and reports of
270 internal auditors; contracts for managed-care arrangements and



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271 any documents directly relating to the negotiation, performance,
272 and implementation of any such contracts for managed-care
273 arrangements; bids or other contractual data, banking records,
274 and credit agreements; information relating to private
275 contractual data; corporate officer and employee personnel
276 information; information relating to the proceedings and records
277 of the credentialing panels and committees and of the governing
278 board of the Florida Alzheimer's Center and Research Institute
279 relating to credentialing; minutes of meetings of the governing
280 board of the institute; and information that reveals plans for
281 marketing services that the institute reasonably expects to be
282 provided by competitors be made confidential and exempt from
283 public disclosure. The institute must compete directly with its
284 private-sector counterparts. Its economic survival depends on
285 the institute's ability to so compete. As such, these exemptions
286 are necessary because release of such information and records
287 would adversely impact the institute in the competitive health
288 care and medical research environment. Disclosure of such
289 information and records would place the institute on an unequal
290 footing in the marketplace as compared with private health care
291 providers that are not required to disclose such confidential
292 and exempt information and records. The highly confidential
293 nature of Alzheimer-related research discoveries necessitates
294 that the institute be authorized to maintain confidential
295 information it receives from, or generates for, the sponsors of
296 its research. Accordingly, disclosure of such information and
297 records would impede the effective and efficient administration
298 of the Florida Alzheimer's Center and Research Institute and
299 would create an unfair competitive advantage for persons or
300 entities receiving such information. Also, such information and



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301 records contain information of a sensitive, personal nature
302 regarding corporate officers and employees. Disclosure of such
303 information could be harmful to the officer or employee.

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