



HB 0025B

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A bill to be entitled

An act relating to public records exemptions; amending s. 1004.43, F.S.; expanding the public records exemption for proprietary confidential business information owned or controlled by the H. Lee Moffitt Cancer Center and Research Institute to include information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, and proprietary information received, generated, ascertained, or discovered during the course of research, and business transactions resulting from such research; expanding the public records exemption to include information received from this or another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law; providing for future review and repeal; providing a statement of public necessity; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or the 2003 Special Session A of the Legislature; providing an effective date.

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

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

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



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31 (8)

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

54 1. Internal auditing controls and reports of internal
55 auditors;

56 2. Matters reasonably encompassed in privileged attorney-
57 client communications;

58 3. Contracts for managed-care arrangements, including
59 preferred provider organization contracts, health maintenance
60 organization contracts, and exclusive provider organization



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61 contracts, and any documents directly relating to the
 62 negotiation, performance, and implementation of any such
 63 contracts for managed-care arrangements;

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

68 5. Information relating to private contractual data, the
 69 disclosure of which would impair the competitive interest of the
 70 provider of the information;

71 6. Corporate officer and employee personnel information;

72 7. Information relating to the proceedings and records of
 73 credentialing panels and committees and of the governing board
 74 of the not-for-profit corporation or its subsidiaries relating
 75 to credentialing;

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

79 9. Information that reveals plans for marketing services
 80 that the corporation or its subsidiaries reasonably expect to be
 81 provided by competitors;

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

84 11. The identity of donors or prospective donors of
 85 property who wish to remain anonymous or any information
 86 identifying such donors or prospective donors. The anonymity of
 87 these donors or prospective donors must be maintained in the
 88 auditor's report; ~~-~~

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



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91 material, or proprietary information received, generated,
 92 ascertained, or discovered during the course of research
 93 conducted by the not-for-profit corporation or its subsidiaries
 94 and business transactions resulting from such research; or

95 13. Any information received by the not-for-profit
 96 corporation or its subsidiaries from a person in this or another
 97 state or nation or the Federal Government which is otherwise
 98 exempt or confidential pursuant to the laws of this or another
 99 state or nation or pursuant to federal law.

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

113 Section 2. Subparagraphs 12. and 13. of paragraph (b) of
 114 subsection (8) of s. 1004.43, Florida Statutes, are subject to
 115 the Open Government Sunset Review Act of 1995 in accordance with
 116 s. 119.15, Florida Statutes, and shall stand repealed on October
 117 2, 2008, unless reviewed and saved from repeal through
 118 reenactment by the Legislature.

119 Section 3. The Legislature finds that it is a public
 120 necessity that information relating to methods of manufacture or



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



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151 the disclosure of such confidential and exempt information would
152 adversely impact the not-for-profit corporation or its
153 subsidiaries in fulfilling their mission of cancer treatment,
154 research, and education.

155 Section 4. If any law amended by this act was also amended
156 by a law enacted at the 2003 Regular Session of the Legislature
157 or at the 2003 Special Session A of the Legislature, such laws
158 shall be construed as if they had been enacted at the same
159 session of the Legislature, and full effect shall be given to
160 each if possible.

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