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1 A bill to be entitled

2 An act relating to public records exemptions; amending s.
3 1004.43, F.S.; expanding the public records exemption for
4 proprietary confidential business information owned or
5 controlled by the H. Lee Moffitt Cancer Center and
6 Research Institute to include information relating to
7 methods of manufacture or production, potential trade
8 secrets, potentially patentable material, and proprietary
9 information received, generated, ascertained, or
10 discovered during the course of research, and business
11 transactions resulting from such research; expanding the
12 public records exemption to include information received
13 from this or another state or nation or the Federal
14 Government which is otherwise exempt or confidential
15 pursuant to the laws of this or another state or nation or
16 pursuant to federal law; providing for future review and
17 repeal; providing a statement of public necessity;
18 amending s. 1004.445, F.S.; creating a public records
19 exemption for proprietary confidential business
20 information owned or controlled by the Florida Alzheimer's
21 Center and Research Institute; categorizing specified
22 types of information as proprietary confidential business
23 information; defining "managed care"; providing for access
24 to proprietary confidential business information by
25 specified agencies; providing for future review and repeal
26 of the exemption; providing a statement of public
27 necessity; providing for construction of the act in pari
28 materia with laws enacted during the 2003 Regular Session
29 or the 2003 Special Session A of the Legislature;
30 providing an effective date.



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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.

(8)

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



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61 the information may be released to the public; and which is
62 information concerning:

63 1. Internal auditing controls and reports of internal
64 auditors;

65 2. Matters reasonably encompassed in privileged attorney-
66 client communications;

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

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

77 5. Information relating to private contractual data, the
78 disclosure of which would impair the competitive interest of the
79 provider of the information;

80 6. Corporate officer and employee personnel information;

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

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

88 9. Information that reveals plans for marketing services
89 that the corporation or its subsidiaries reasonably expect to be
90 provided by competitors;



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

93 11. The identity of donors or prospective donors of
 94 property who wish to remain anonymous or any information
 95 identifying such donors or prospective donors. The anonymity of
 96 these donors or prospective donors must be maintained in the
 97 auditor's report; ~~-~~

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

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

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



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121 and modify benefit restrictions for high-cost patient care.

122 Section 2. Subparagraphs 12. and 13. of paragraph (b) of
123 subsection (8) of s. 1004.43, Florida Statutes, are subject to
124 the Open Government Sunset Review Act of 1995 in accordance with
125 s. 119.15, Florida Statutes, and shall stand repealed on October
126 2, 2008, unless reviewed and saved from repeal through
127 reenactment by the Legislature.

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



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

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

166 1004.445 Florida Alzheimer's Center and Research
 167 Institute.--

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

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

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

180 3.(c) Proprietary confidential business information. As



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181 used in this subparagraph, the term "proprietary confidential
 182 business information" means information, regardless of its form
 183 or characteristics, which is owned or controlled by the
 184 institute; is intended to be and is treated by the institute as
 185 private and the disclosure of which would harm the business
 186 operations of the institute; has not been intentionally
 187 disclosed by the institute unless pursuant to law, an order of a
 188 court or administrative body, a legislative proceeding pursuant
 189 to s. 5, Art. III of the State Constitution, or a private
 190 agreement that provides that the information may be released to
 191 the public; and which is information concerning:

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

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

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

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



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211 e. Internal auditing controls and reports of internal
212 auditors;

213 f. Contracts for managed-care arrangements, including
214 preferred provider organization contracts, health maintenance
215 organization contracts, and exclusive provider organization
216 contracts, and any documents directly relating to the
217 negotiation, performance, and implementation of any such
218 contracts for managed-care arrangements;

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

223 h. Information relating to private contractual data, the
224 disclosure of which would impair the competitive interest of the
225 provider of the information;

226 i. Corporate officer and employee personnel information;

227 j. Information relating to the proceedings and records of
228 the credentialing panels and committees and of the governing
229 board of the institute relating to credentialing;

230 k. Minutes of meetings of the governing board of the
231 institute, except minutes of meetings open to the public
232 pursuant to subsection (10); and

233 l. Information that reveals plans for marketing services
234 that the institute reasonably expects to be provided by
235 competitors.

236
237 As used in this subparagraph, the term "managed care" means
238 systems or techniques generally used by third-party payors or
239 their agents to affect access to and control payment for health
240 care services. Managed-care techniques most often include one or



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241 more of the following: prior, concurrent, and retrospective
 242 review of the medical necessity and appropriateness of services
 243 or site of services; contracts with selected health care
 244 providers; financial incentives or disincentives related to the
 245 use of specific providers, services, or service sites;
 246 controlled access to and coordination of services by a case
 247 manager; and payor efforts to identify treatment alternatives
 248 and modify benefit restrictions for high-cost patient care.

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

255 (c) Any governmental entity that demonstrates a need to
 256 access such confidential and exempt information in order to
 257 perform its duties and responsibilities shall have access to
 258 such information and shall otherwise keep such information
 259 confidential and exempt. ~~This section is subject to the Open~~
 260 ~~Government Sunset Review Act of 1995 in accordance with s.~~
 261 ~~119.15 and shall stand repealed on October 2, 2006, unless~~
 262 ~~reviewed and saved from repeal through reenactment by the~~
 263 ~~Legislature.~~

264 Section 5. Subsection (9) of s. 1004.445, Florida
 265 Statutes, is subject to the Open Government Sunset Review Act of
 266 1995 in accordance with s. 119.15, Florida Statutes, and shall
 267 stand repealed on October 2, 2008, unless reviewed and saved
 268 from repeal through reenactment by the Legislature.

269 Section 6. The Legislature finds that it is a public
 270 necessity that proprietary confidential business information



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



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301 of the Florida Alzheimer's Center and Research Institute and
302 would create an unfair competitive advantage for persons or
303 entities receiving such information. Also, such information and
304 records contain information of a sensitive, personal nature
305 regarding corporate officers and employees. Disclosure of such
306 information could be harmful to the officer or employee.

307 Section 7. If any law amended by this act was also amended
308 by a law enacted at the 2003 Regular Session of the Legislature
309 or at the 2003 Special Session A of the Legislature, such laws
310 shall be construed as if they had been enacted at the same
311 session of the Legislature, and full effect shall be given to
312 each if possible.

313 Section 8. This act shall take effect upon becoming a law.