



HB 0021C

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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, the 2003 Special Session A, or the 2003 Special Session B 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, the 2003 Special  
157 Session A, or the 2003 Special Session B of the Legislature,  
158 such laws shall be construed as if they had been enacted at the  
159 same session of the Legislature, and full effect shall be given  
160 to each if possible.

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