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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 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.

(8)

(b) Proprietary confidential business information is confidential and exempt from the provisions of s. 119.07(1) and



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

51 1. Internal auditing controls and reports of internal
52 auditors;

53 2. Matters reasonably encompassed in privileged attorney-
54 client communications;

55 3. Contracts for managed-care arrangements, including
56 preferred provider organization contracts, health maintenance
57 organization contracts, and exclusive provider organization
58 contracts, and any documents directly relating to the
59 negotiation, performance, and implementation of any such
60 contracts for managed-care arrangements;



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

65 5. Information relating to private contractual data, the
 66 disclosure of which would impair the competitive interest of the
 67 provider of the information;

68 6. Corporate officer and employee personnel information;

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

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

76 9. Information that reveals plans for marketing services
 77 that the corporation or its subsidiaries reasonably expect to be
 78 provided by competitors;

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

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

86 12. Information relating to methods of manufacture or
 87 production, potential trade secrets, potentially patentable
 88 material, or proprietary information received, generated,
 89 ascertained, or discovered during the course of research



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90 conducted by the not-for-profit corporation or its subsidiaries
 91 and business transactions resulting from such research; or

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

97
 98 As used in this paragraph, the term "managed care" means systems
 99 or techniques generally used by third-party payors or their
 100 agents to affect access to and control payment for health care
 101 services. Managed-care techniques most often include one or
 102 more of the following: prior, concurrent, and retrospective
 103 review of the medical necessity and appropriateness of services
 104 or site of services; contracts with selected health care
 105 providers; financial incentives or disincentives related to the
 106 use of specific providers, services, or services sites;
 107 controlled access to and coordination of services by a case
 108 manager; and payor efforts to identify treatment alternatives
 109 and modify benefit restrictions for high-cost patient care.

110 Section 2. Subparagraphs 12. and 13. of paragraph (b) of
 111 subsection (8) of s. 1004.43, Florida Statutes, are subject to
 112 the Open Government Sunset Review Act of 1995 in accordance with
 113 s. 119.15, Florida Statutes, and shall stand repealed on October
 114 2, 2009, unless reviewed and saved from repeal through
 115 reenactment by the Legislature.

116 Section 3. The Legislature finds that it is a public
 117 necessity that information relating to methods of manufacture or
 118 production, potential trade secrets, potentially patentable
 119 materials, or proprietary information received, generated,



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



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150 subsidiaries in fulfilling their mission of cancer treatment,
151 research, and education.

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