

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

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

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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)1. 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 subparagraph ~~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

57 | the information may be released to the public; and which is
 58 | information concerning:

59 | ~~a.1.~~ Internal auditing controls and reports of internal
 60 | auditors;

61 | ~~b.2.~~ Matters reasonably encompassed in privileged
 62 | attorney-client communications;

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

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

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

76 | ~~f.6.~~ Corporate officer and employee personnel information;

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

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

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

87 j.10. Trade secrets as defined in s. 688.002, including
 88 information relating to methods of manufacture or production,
 89 potential trade secrets, potentially patentable material, or
 90 proprietary information received, generated, ascertained, or
 91 discovered during the course of research conducted by the not-
 92 for-profit corporation or its subsidiaries and business
 93 transactions resulting from such research, and reimbursement
 94 methodologies or rates; ~~or~~

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

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

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 106 As used in this ~~subparagraph~~ ~~paragraph~~, the term "managed care"
 107 means systems or techniques generally used by third-party payors
 108 or their agents to affect access to and control payment for
 109 health care services. Managed-care techniques most often include
 110 one or more of the following: prior, concurrent, and
 111 retrospective review of the medical necessity and

112 appropriateness of services or site of services; contracts with
113 selected health care providers; financial incentives or
114 disincentives related to the use of specific providers,
115 services, or service sites; controlled access to and
116 coordination of services by a case manager; and payor efforts to
117 identify treatment alternatives and modify benefit restrictions
118 for high-cost patient care.

119 2. Sub-subparagraphs j. and l. of subparagraph 1. are
120 subject to the Open Government Sunset Review Act of 1995 in
121 accordance with s. 119.15 and shall stand repealed on October 2,
122 2009, unless reviewed and saved from repeal through reenactment
123 by the Legislature.

124 Section 2. The Legislature finds that it is a public
125 necessity that information relating to methods of manufacture or
126 production, potential trade secrets, potentially patentable
127 materials, or proprietary information received, generated,
128 ascertained, or discovered during the course of research
129 conducted by the not-for-profit corporation organized solely for
130 the purpose of governing and operating the H. Lee Moffitt Cancer
131 Center and Research Institute or its subsidiaries, and business
132 transactions resulting from such research, be held confidential
133 and exempt 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 persons receiving such information.
137 If such confidential and exempt information regarding research
138 in progress were released pursuant to a public records request,
139 others would be allowed to take the benefit of the research

140 without compensation or reimbursement to the research center.
141 The Legislature further finds that information received by the
142 not-for-profit corporation or its subsidiaries from a person in
143 this or another state or nation or the Federal Government which
144 is otherwise exempt or confidential pursuant to the laws of this
145 or another state or nation or pursuant to federal law should
146 remain exempt or confidential because the highly confidential
147 nature of cancer-related research necessitates that the not-for-
148 profit corporation or its subsidiaries be authorized to maintain
149 the status of exempt or confidential information it receives
150 from the sponsors of research. Without the exemptions provided
151 for herein, the disclosure of confidential and exempt
152 information would place the not-for-profit corporation on an
153 unequal footing in the marketplace as compared with its private
154 health care and medical research competitors who are not
155 required to disclose such confidential and exempt information.
156 The Legislature finds that the disclosure of such confidential
157 and exempt information would adversely impact the not-for-profit
158 corporation or its subsidiaries in fulfilling their mission of
159 cancer treatment, research, and education.

160 Section 3. Subsection (9) of section 1004.445, Florida
161 Statutes, is amended, and subsection (10) is added to said
162 section, 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, Art. I of
167 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 which may be created or received by the institute;

177 3. Proprietary confidential business information. As used
178 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. Trade secrets as defined in s. 688.002, including
190 information relating

191 ~~(c) Materials that relate to methods of manufacture or~~
192 ~~production, potential trade secrets, potentially patentable~~
193 ~~material, actual trade secrets as defined in s. 688.002, or~~
194 ~~proprietary information received, generated, ascertained, or~~
195 ~~discovered during the course of research conducted by or through~~

196 | the institute and business transactions resulting from such
197 | research, and reimbursement methodologies or rates.†

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

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

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

209 | e. Internal auditing controls and reports of internal
210 | auditors.

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

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

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

- 224 i. Corporate officer and employee personnel information.
- 225 j. Information relating to the proceedings and records of
- 226 the credentialing panels and committees and of the governing
- 227 board of the institute relating to credentialing.
- 228 k. Minutes of exempt meetings of the governing board of
- 229 the institute.
- 230 l. Information that reveals plans for marketing services
- 231 that the institute reasonably expects to be provided by
- 232 competitors.

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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

238 or more of the following: prior, concurrent, and retrospective

239 review of the medical necessity and appropriateness of services

240 or site of services; contracts with selected health care

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 shall 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.

257 (d) This subsection ~~section~~ is subject to the Open
 258 Government Sunset Review Act of 1995 in accordance with s.
 259 119.15 and shall stand repealed on October 2, 2009 ~~2006~~, unless
 260 reviewed and saved from repeal through reenactment by the
 261 Legislature.

262 (10)(a) Meetings or portions of meetings of the governing
 263 board of the Florida Alzheimer's Center and Research Institute
 264 at which information is discussed that is made confidential and
 265 exempt pursuant to subsection (9) are exempt from s. 286.011 and
 266 s. 24(b), Art. I of the State Constitution.

267 (b) This subsection is subject to the Open Government
 268 Sunset Review Act of 1995 in accordance with s. 119.15 and shall
 269 stand repealed on October 2, 2009, unless reviewed and saved
 270 from repeal through reenactment by the Legislature.

271 Section 4. The Legislature finds that it is a public
 272 necessity that proprietary confidential business information
 273 owned or controlled by the Florida Alzheimer's Center and
 274 Research Institute, which includes reimbursement methodologies
 275 or rates; internal auditing controls and reports of internal
 276 auditors; contracts for managed-care arrangements and any
 277 documents directly relating to the negotiation, performance, and
 278 implementation of any such contracts for managed-care
 279 arrangements; bids or other contractual data, banking records,

280 and credit agreements; information relating to private
281 contractual data; corporate officer and employee personnel
282 information; information relating to the proceedings and records
283 of the credentialing panels and committees and of the governing
284 board of the institute relating to credentialing; minutes of
285 meetings of the governing board of the institute; and
286 information that reveals plans for marketing services that the
287 institute reasonably expects to be provided by competitors be
288 held confidential and exempt from public disclosure. The
289 institute must compete directly with its private-sector
290 counterparts. Its economic survival depends on the institute's
291 ability to so compete. As such, these exemptions are necessary
292 because release of this information would adversely impact the
293 institute in the competitive health care and medical research
294 environment. Disclosure of such information would place the
295 institute on an unequal footing in the marketplace as compared
296 with private health care providers that are not required to
297 disclose such confidential and exempt information. The highly
298 confidential nature of Alzheimer-related research discoveries
299 necessitates that the institute be authorized to maintain
300 confidential information it receives from, or generates for, the
301 sponsors of its research. Accordingly, disclosure of such
302 information would impede the effective and efficient
303 administration of the Florida Alzheimer's Center and Research
304 Institute and would create an unfair competitive advantage for
305 persons or entities receiving such information. Also, such
306 information is of a sensitive, personal nature regarding
307 corporate officers and employees. Disclosure of such information

308 | could be harmful to the officer or employee. It is likewise a
309 | public necessity that certain meetings or portions of meetings
310 | of the governing board of the institute be closed in order to
311 | protect the competitive interest of the institute and to
312 | guarantee the ability of the governing board to fulfill its
313 | Alzheimer's disease research and teaching mission for the
314 | benefit of the public. Furthermore, disclosing information made
315 | confidential and exempt pursuant to the institute's public
316 | records exemption via an open meeting defeats the purpose of the
317 | public records exemption.

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