

Bill No. SB 2922

Amendment No. ____ Barcode 902042

CHAMBER ACTION

Senate

House

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Senator Miller moved the following amendment:

Senate Amendment (with title amendment)

On page 5, line 21,
page 6, line 10, delete those lines

and insert: Florida Statutes. To fulfill its legislative
mandate of research, education, treatment, prevention, and the
early detection of cancer, an exemption of confidential and
proprietary information relating to business transactions will
allow the not-for-profit corporation and its subsidiaries to
more effectively partner with other researchers. Although
information relating to business transactions may not qualify
as intellectual property, the terms and pricing of a research
transaction and, in some cases, the very fact of a research
transaction may be considered confidential information
concerning an entity. This exemption will assure collaborating
partners that their confidential business information will
remain confidential and exempt from public disclosure if
shared with the not-for-profit corporation or its
subsidiaries. The Legislature finds that the ability of the

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1 not-for-profit corporation and its subsidiaries to conduct
2 meaningful scientific research and meet their obligations will
3 be significantly impaired if certain proprietary business
4 information or scientific research is not made confidential
5 and exempt from public disclosure. Specifically, the
6 Legislature finds that it is a public necessity to make exempt
7 and confidential proprietary business information or
8 scientific research that relates to methods of manufacture or
9 production, potential trade secrets, patentable material,
10 actual trade secrets as defined in section 688.002, Florida
11 Statutes, or proprietary information received, generated,
12 ascertained, or discovered by or through the not-for-profit
13 corporation or its subsidiaries because the disclosure of this
14 information would negate the benefit expected by exposing
15 valuable proprietary work to competitors. Business
16 transactions resulting from scientific research must be held
17 confidential and exempt from public records requirements
18 because the disclosure of such information would create an
19 unfair competitive advantage for the person receiving such
20 information. Such an advantage would adversely impact the
21 not-for-profit corporation and its subsidiaries. If
22 confidential and exempt information regarding research in
23 progress were released pursuant to a public records request,
24 others would be allowed to derive benefit from the research
25 without compensation or reimbursement to the not-for-profit
26 corporation or its subsidiaries. Without the exemptions
27 provided for in this act, the disclosure of confidential and
28 exempt information would place the not-for-profit corporation
29 or its subsidiaries on an unequal footing in the marketplace
30 as compared with other research competitors whose information
31 is kept confidential and exempt. The Legislature finds that

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1 disclosure of confidential and exempt information would
2 adversely impact the not-for-profit corporation or its
3 subsidiaries in fulfilling the mission of research.

4 (3) The Legislature further finds that information
5 received by the not-for-profit corporation or its subsidiaries
6 from a person in this or another state or nation or the
7 Federal Government which is otherwise exempt or confidential
8 pursuant to the laws of this or another state or nation or
9 pursuant to federal law should remain exempt or confidential
10 because the highly confidential nature of cancer-related
11 research necessitates that the not-for-profit corporation or
12 its subsidiaries be authorized to maintain the status of
13 exempt or confidential information it receives from the
14 sponsors of research. Without the exemptions provided for in
15 this act, the disclosure of exempt and confidential
16 information would place the not-for-profit corporation on an
17 unequal footing in the marketplace as compared with its
18 private health care and medical research competitors that are
19 not required to disclose such exempt and confidential
20 information. The Legislature finds that the disclosure of such
21 exempt and confidential information would adversely impact the
22 not-for-profit corporation or its subsidiaries in fulfilling
23 their mission of cancer treatment, research, and education.

24 Section 4. Subsection (9) of section 1004.445, Florida
25 Statutes, is amended, and subsection (10) is added to said
26 section, to read:

27 1004.445 Florida Alzheimer's Center and Research
28 Institute.--

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

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1 1.(a) Personal identifying information relating to
 2 clients of programs created or funded through the Florida
 3 Alzheimer's Center and Research Institute which is held by the
 4 institute, the University of South Florida, or the State Board
 5 of Education or by persons who provide services to clients of
 6 programs created or funded through contracts with the Florida
 7 Alzheimer's Center and Research Institute;

8 2.(b) Any medical or health records relating to
 9 patients which may be created or received by the institute;

10 3. Proprietary confidential business information. As
 11 used in this subparagraph, the term "proprietary confidential
 12 business information" means information, regardless of its
 13 form or characteristics, which is owned or controlled by the
 14 institute; is intended to be and is treated by the institute
 15 as private and the disclosure of which would harm the business
 16 operations of the institute; has not been intentionally
 17 disclosed by the institute unless pursuant to law, an order of
 18 a court or administrative body, a legislative proceeding
 19 pursuant to s. 5, Art. III of the State Constitution, or a
 20 private agreement that provides that the information may be
 21 released to the public; and which is information concerning:

22 a. Trade secrets as defined in s. 688.002, including
 23 information relating

24 ~~(c) Materials that relate to methods of manufacture or~~
 25 ~~production, potential trade secrets, potentially patentable~~
 26 ~~material, actual trade secrets as defined in s. 688.002, or~~
 27 ~~proprietary information received, generated, ascertained, or~~
 28 ~~discovered during the course of research conducted by or~~
 29 ~~through the institute and business transactions resulting from~~
 30 ~~such research, and reimbursement methodologies or rates.†~~

31 b.(d) The identity of a donor or prospective donor to

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1 the ~~Florida Alzheimer's Center and Research~~ institute who
2 wishes to remain anonymous, and all information identifying
3 such donor or prospective donor.†

4 c.(e) Any information received by the institute in the
5 performance of its duties and responsibilities which is
6 otherwise confidential and exempt by law.†~~and~~

7 d.(f) Any information received by the institute from a
8 person from another state or nation or the Federal Government
9 which is otherwise confidential or exempt pursuant to that
10 state's or nation's laws or pursuant to federal law.

11 e. Internal auditing controls and reports of internal
12 auditors.

13 f. Contracts for managed-care arrangements, including
14 preferred provider organization contracts, health maintenance
15 organization contracts, and exclusive provider organization
16 contracts, and any documents directly relating to the
17 negotiation, performance, and implementation of any such
18 contracts for managed-care arrangements.

19 g. Bids or other contractual data, banking records,
20 and credit agreements the disclosure of which would impair the
21 efforts of the institute to contract for goods or services on
22 favorable terms.

23 h. Information relating to private contractual data,
24 the disclosure of which would impair the competitive interest
25 of the provider of the information.

26 i. Corporate officer and employee personnel
27 information.

28 j. Information relating to the proceedings and records
29 of the credentialing panels and committees and of the
30 governing board of the institute relating to credentialing.

31 k. Minutes of exempt meetings of the governing board

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1 of the institute.

2 1. Information that reveals plans for marketing
3 services that the institute reasonably expects to be provided
4 by competitors.

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7 As used in this subparagraph, the term "managed care" means
8 systems or techniques generally used by third-party payors or
9 their agents to affect access to and control payment for
10 health care services. Managed-care techniques most often
11 include one or more of the following: prior, concurrent, and
12 retrospective review of the medical necessity and
13 appropriateness of services or site of services; contracts
14 with selected health care providers; financial incentives or
15 disincentives related to the use of specific providers,
16 services, or service sites; controlled access to and
17 coordination of services by a case manager; and payor efforts
18 to identify treatment alternatives and modify benefit
19 restrictions for high-cost patient care.

20 (b) The Auditor General, the Office of Program Policy
21 Analysis and Government Accountability, and the State Board of
22 Education, pursuant to their oversight and auditing functions,
23 shall be given access to all proprietary confidential business
24 information upon request and without subpoena and must
25 maintain the confidentiality of information so received.

26 (c) Any governmental entity that demonstrates a need
27 to access such confidential and exempt information in order to
28 perform its duties and responsibilities shall have access to
29 such information and shall otherwise keep such information
30 confidential and exempt.

31 (d) This subsection ~~section~~ is subject to the Open

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1 Government Sunset Review Act of 1995 in accordance with s.
2 119.15 and shall stand repealed on October 2, 2009 ~~2006~~,
3 unless reviewed and saved from repeal through reenactment by
4 the Legislature.

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

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

15 Section 5. The Legislature finds that it is a public
16 necessity that proprietary confidential business information
17 owned or controlled by the Florida Alzheimer's Center and
18 Research Institute, which includes reimbursement methodologies
19 or rates; internal auditing controls and reports of internal
20 auditors; contracts for managed-care arrangements and any
21 documents directly relating to the negotiation, performance,
22 and implementation of any such contracts for managed-care
23 arrangements; bids or other contractual data, banking records,
24 and credit agreements; information relating to private
25 contractual data; corporate officer and employee personnel
26 information; information relating to the proceedings and
27 records of the credentialing panels and committees and of the
28 governing board of the institute relating to credentialing;
29 minutes of meetings of the governing board of the institute;
30 and information that reveals plans for marketing services that
31 the institute reasonably expects to be provided by competitors

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1 be held confidential and exempt from public disclosure. The
2 institute must compete directly with its private-sector
3 counterparts. Its economic survival depends on the institute s
4 ability to so compete. As such, these exemptions are necessary
5 because release of this information would adversely impact the
6 institute in the competitive health care and medical research
7 environment. Disclosure of such information would place the
8 institute on an unequal footing in the marketplace as compared
9 with private health care providers that are not required to
10 disclose such confidential and exempt information. The highly
11 confidential nature of Alzheimer-related research discoveries
12 necessitates that the institute be authorized to maintain
13 confidential information it receives from, or generates for,
14 the sponsors of its research. Accordingly, disclosure of such
15 information would impede the effective and efficient
16 administration of the Florida Alzheimer's Center and Research
17 Institute and would create an unfair competitive advantage for
18 persons or entities receiving such information. Also, such
19 information is of a sensitive, personal nature regarding
20 corporate officers and employees. Disclosure of such
21 information could be harmful to the officer or employee. It is
22 likewise a public necessity that certain meetings or portions
23 of meetings of the governing board of the institute be closed
24 in order to protect the competitive interest of the institute
25 and to guarantee the ability of the governing board to fulfill
26 its Alzheimer's disease research and teaching mission for the
27 benefit of the public. Furthermore, disclosing information
28 made confidential and exempt pursuant to the institute s
29 public records exemption via an open meeting defeats the
30 purpose of the public records exemption.

31 Section 6. If any provision of this act or its

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1 application to any person or circumstance is held invalid, the
 2 invalidity does not affect other provisions or applications of
 3 the act which can be given effect without the invalid
 4 provision or application, and to this end the provisions of
 5 this act are declared severable.

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8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 1, line 17, after the semicolon,

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12 insert:

13 amending s. 1004.445, F.S.; creating a public
 14 records exemption for proprietary confidential
 15 business information owned or controlled by the
 16 Florida Alzheimer's Center and Research
 17 Institute; specifying types of information that
 18 are deemed proprietary confidential business
 19 information; defining "managed care" for
 20 purposes of the act; creating a public meetings
 21 exemption for specified meetings or portions of
 22 meetings of the governing board of the Florida
 23 Alzheimer's Center and Research Institute;
 24 providing for future review and repeal;
 25 providing a statement of public necessity;
 26 providing severability;

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