

By Senator Miller

18-1171-04

1                                   A bill to be entitled  
 2           An act relating to public records exemptions;  
 3           amending s. 1004.43, F.S.; clarifying the  
 4           public records exemption for proprietary  
 5           confidential business information owned or  
 6           controlled by the not-for-profit corporation  
 7           operating the H. Lee Moffitt Cancer Center and  
 8           Research Institute and its subsidiaries  
 9           relating to trade secrets; expanding the public  
 10          records exemption to include information  
 11          received from a person in this or another state  
 12          or nation or the Federal Government which is  
 13          otherwise exempt or confidential pursuant to  
 14          the laws of this or another state or nation or  
 15          pursuant to federal law; providing for future  
 16          review and repeal; providing a statement of  
 17          public necessity; providing an effective date.

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

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 21           Section 1. Paragraph (b) of subsection (8) of section  
 22 1004.43, Florida Statutes, is amended to read:

23           1004.43 H. Lee Moffitt Cancer Center and Research  
 24 Institute.--There is established the H. Lee Moffitt Cancer  
 25 Center and Research Institute at the University of South  
 26 Florida.

27           (8)

28           (b) Proprietary confidential business information is  
 29 confidential and exempt from the provisions of s. 119.07(1)  
 30 and s. 24(a), Art. I of the State Constitution. However, the  
 31 Auditor General, the Office of Program Policy Analysis and

1 Government Accountability, and the State Board of Education,  
2 pursuant to their oversight and auditing functions, must be  
3 given access to all proprietary confidential business  
4 information upon request and without subpoena and must  
5 maintain the confidentiality of information so received. As  
6 used in this paragraph, the term "proprietary confidential  
7 business information" means information, regardless of its  
8 form or characteristics, which is owned or controlled by the  
9 not-for-profit corporation or its subsidiaries; is intended to  
10 be and is treated by the not-for-profit corporation or its  
11 subsidiaries as private and the disclosure of which would harm  
12 the business operations of the not-for-profit corporation or  
13 its subsidiaries; has not been intentionally disclosed by the  
14 corporation or its subsidiaries unless pursuant to law, an  
15 order of a court or administrative body, a legislative  
16 proceeding pursuant to s. 5, Art. III of the State  
17 Constitution, or a private agreement that provides that the  
18 information may be released to the public; and which is  
19 information concerning:

- 20 1. Internal auditing controls and reports of internal  
21 auditors;
- 22 2. Matters reasonably encompassed in privileged  
23 attorney-client communications;
- 24 3. Contracts for managed-care arrangements, including  
25 preferred provider organization contracts, health maintenance  
26 organization contracts, and exclusive provider organization  
27 contracts, and any documents directly relating to the  
28 negotiation, performance, and implementation of any such  
29 contracts for managed-care arrangements;
- 30 4. Bids or other contractual data, banking records,  
31 and credit agreements the disclosure of which would impair the

1 efforts of the not-for-profit corporation or its subsidiaries  
2 to contract for goods or services on favorable terms;  
3 5. Information relating to private contractual data,  
4 the disclosure of which would impair the competitive interest  
5 of the provider of the information;  
6 6. Corporate officer and employee personnel  
7 information;  
8 7. Information relating to the proceedings and records  
9 of credentialing panels and committees and of the governing  
10 board of the not-for-profit corporation or its subsidiaries  
11 relating to credentialing;  
12 8. Minutes of meetings of the governing board of the  
13 not-for-profit corporation and its subsidiaries, except  
14 minutes of meetings open to the public pursuant to subsection  
15 (9);  
16 9. Information that reveals plans for marketing  
17 services that the corporation or its subsidiaries reasonably  
18 expect to be provided by competitors;  
19 10. Trade secrets as defined in s. 688.002, including  
20 information relating to methods of manufacture or production,  
21 potential trade secrets, potentially patentable materials, or  
22 proprietary information received, generated, ascertained, or  
23 discovered during the course of research conducted by the  
24 not-for-profit corporation or its subsidiaries and business  
25 transactions resulting from such research, and reimbursement  
26 methodologies or rates; ~~or~~  
27 11. The identity of donors or prospective donors of  
28 property who wish to remain anonymous or any information  
29 identifying such donors or prospective donors. The anonymity  
30 of these donors or prospective donors must be maintained in  
31 the auditor's report; or.

1           12. Any information received by the not-for-profit  
2 corporation or its subsidiaries from a person in this or  
3 another state or nation or the Federal Government which is  
4 otherwise exempt or confidential pursuant to the laws of this  
5 or another state or nation or pursuant to federal law.  
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7 As used in this paragraph, 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           Section 2. Subparagraph 1004.43(8)(b)12., Florida  
21 Statutes, is subject to the Open Government Sunset Review Act  
22 of 1995 in accordance with section 119.15, Florida Statutes,  
23 and shall stand repealed on October 2, 2009, unless reviewed  
24 and saved from repeal through reenactment by the Legislature.

25           Section 3. (1) The Legislature finds that it is a  
26 public necessity that trade secrets of the H. Lee Moffitt  
27 Cancer Center or its subsidiaries, as defined in section  
28 688.002, Florida Statutes, be confidential and exempt from  
29 public disclosure. In accordance with that definition, a  
30 "trade secret" consists of information that derives economic  
31 value, actual or potential, from not being readily

1 ascertainable by others and that is the subject of reasonable  
2 efforts to maintain its secrecy. The Legislature has  
3 determined that the disclosure of such information would  
4 adversely affect the H. Lee Moffitt Cancer Center and Research  
5 Institute and its subsidiaries, which are resources of the  
6 State of Florida, and would create an unfair competitive  
7 advantage to a person receiving such information.

8 (2) Pursuant to section 119.15, Florida Statutes, the  
9 Legislature finds that the amendment to subparagraph  
10 1004.43(8)(b)10., Florida Statutes, referencing information  
11 relating to methods of manufacture or production, potential  
12 trade secrets, potentially patentable materials, or  
13 proprietary information received, generated, ascertained, or  
14 discovered during the course of research conducted by the H.  
15 Lee Moffit Cancer Center and Research Institute or any of its  
16 subsidiaries, and business transactions resulting from such  
17 research, does not substantially amend the existing exemption.  
18 The Legislature finds and declares that each of the classes of  
19 information specified meets the test of being a "trade secret"  
20 within the meaning of term as defined in section 688.002,  
21 Florida Statutes.

22 (3) The Legislature further finds that information  
23 received by the not-for-profit corporation or its subsidiaries  
24 from a person in this or another state or nation or the  
25 Federal Government which is otherwise exempt or confidential  
26 pursuant to the laws of this or another state or nation or  
27 pursuant to federal law should remain exempt or confidential  
28 because the highly confidential nature of cancer-related  
29 research necessitates that the not-for-profit corporation or  
30 its subsidiaries be authorized to maintain the status of  
31 exempt or confidential information it receives from the

1 sponsors of research. Without the exemptions provided for in  
2 this act, the disclosure of exempt and confidential  
3 information would place the not-for-profit corporation on an  
4 unequal footing in the marketplace as compared with its  
5 private health care and medical research competitors that are  
6 not required to disclose such exempt and confidential  
7 information. The Legislature finds that the disclosure of such  
8 exempt and confidential information would adversely impact the  
9 not-for-profit corporation or its subsidiaries in fulfilling  
10 their mission of cancer treatment, research, and education.

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

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15 SENATE SUMMARY

16 Exempts certain information that constitutes "trade  
17 secrets" of the corporation that operates the H. Lee  
18 Moffitt Cancer Center and Research Institute and the  
19 corporation's subsidiaries and information received which  
20 is already made confidential by the laws of this or  
21 another state or nation or under federal law from  
22 public-records disclosure. Provides for future review and  
23 repeal of the exemption.  
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