

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

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

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3 Section 1. Paragraph (b) of subsection (8) of section
4 1004.43, Florida Statutes, is amended to read:

5 1004.43 H. Lee Moffitt Cancer Center and Research
6 Institute.--There is established the H. Lee Moffitt Cancer
7 Center and Research Institute at the University of South
8 Florida.

9 (8)

10 (b) Proprietary confidential business information is
11 confidential and exempt from the provisions of s. 119.07(1)
12 and s. 24(a), Art. I of the State Constitution. However, the
13 Auditor General, the Office of Program Policy Analysis and
14 Government Accountability, and the State Board of Education,
15 pursuant to their oversight and auditing functions, must be
16 given access to all proprietary confidential business
17 information upon request and without subpoena and must
18 maintain the confidentiality of information so received. As
19 used in this paragraph, the term "proprietary confidential
20 business information" means information, regardless of its
21 form or characteristics, which is owned or controlled by the
22 not-for-profit corporation or its subsidiaries; is intended to
23 be and is treated by the not-for-profit corporation or its
24 subsidiaries as private and the disclosure of which would harm
25 the business operations of the not-for-profit corporation or
26 its subsidiaries; has not been intentionally disclosed by the
27 corporation or its subsidiaries unless pursuant to law, an
28 order of a court or administrative body, a legislative
29 proceeding pursuant to s. 5, Art. III of the State
30 Constitution, or a private agreement that provides that the

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1 | information may be released to the public; and which is
2 | information concerning:

3 | 1. Internal auditing controls and reports of internal
4 | auditors;

5 | 2. Matters reasonably encompassed in privileged
6 | attorney-client communications;

7 | 3. Contracts for managed-care arrangements, including
8 | preferred provider organization contracts, health maintenance
9 | organization contracts, and exclusive provider organization
10 | contracts, and any documents directly relating to the
11 | negotiation, performance, and implementation of any such
12 | contracts for managed-care arrangements;

13 | 4. Bids or other contractual data, banking records,
14 | and credit agreements the disclosure of which would impair the
15 | efforts of the not-for-profit corporation or its subsidiaries
16 | to contract for goods or services on favorable terms;

17 | 5. Information relating to private contractual data,
18 | the disclosure of which would impair the competitive interest
19 | of the provider of the information;

20 | 6. Corporate officer and employee personnel
21 | information;

22 | 7. Information relating to the proceedings and records
23 | of credentialing panels and committees and of the governing
24 | board of the not-for-profit corporation or its subsidiaries
25 | relating to credentialing;

26 | 8. Minutes of meetings of the governing board of the
27 | not-for-profit corporation and its subsidiaries, except
28 | minutes of meetings open to the public pursuant to subsection
29 | (9);
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1 9. Information that reveals plans for marketing
2 services that the corporation or its subsidiaries reasonably
3 expect to be provided by competitors;

4 10. Trade secrets as defined in s. 688.002, including
5 information relating to methods of manufacture or production,
6 potential trade secrets, potentially patentable materials, or
7 proprietary information received, generated, ascertained, or
8 discovered during the course of research conducted by the
9 not-for-profit corporation or its subsidiaries and business
10 transactions resulting from such research, and reimbursement
11 methodologies or rates; ~~or~~

12 11. The identity of donors or prospective donors of
13 property who wish to remain anonymous or any information
14 identifying such donors or prospective donors. The anonymity
15 of these donors or prospective donors must be maintained in
16 the auditor's report; ~~or-~~

17 12. Any information received by the not-for-profit
18 corporation or its subsidiaries from a person in this or
19 another state or nation or the Federal Government which is
20 otherwise exempt or confidential pursuant to the laws of this
21 or another state or nation or pursuant to federal law.

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23 As used in this paragraph, the term "managed care" means
24 systems or techniques generally used by third-party payors or
25 their agents to affect access to and control payment for
26 health care services. Managed-care techniques most often
27 include one or more of the following: prior, concurrent, and
28 retrospective review of the medical necessity and
29 appropriateness of services or site of services; contracts
30 with selected health care providers; financial incentives or
31 disincentives related to the use of specific providers,

1 services, or service sites; controlled access to and
2 coordination of services by a case manager; and payor efforts
3 to identify treatment alternatives and modify benefit
4 restrictions for high-cost patient care.

5 Section 2. Subparagraph 1004.43(8)(b)12., Florida
6 Statutes, is subject to the Open Government Sunset Review Act
7 of 1995 in accordance with section 119.15, Florida Statutes,
8 and shall stand repealed on October 2, 2009, unless reviewed
9 and saved from repeal through reenactment by the Legislature.

10 Section 3. (1) The Legislature finds that it is a
11 public necessity that trade secrets of the H. Lee Moffitt
12 Cancer Center or its subsidiaries, as defined in section
13 688.002, Florida Statutes, be confidential and exempt from
14 public disclosure. In accordance with that definition, a
15 "trade secret" consists of information that derives economic
16 value, actual or potential, from not being readily
17 ascertainable by others and that is the subject of reasonable
18 efforts to maintain its secrecy. The Legislature has
19 determined that the disclosure of such information would
20 adversely affect the H. Lee Moffitt Cancer Center and Research
21 Institute and its subsidiaries, which are resources of the
22 State of Florida, and would create an unfair competitive
23 advantage to a person receiving such information.

24 (2) Pursuant to section 119.15, Florida Statutes, the
25 Legislature finds that the amendment to subparagraph
26 1004.43(8)(b)10., Florida Statutes, referencing information
27 relating to methods of manufacture or production, potential
28 trade secrets, potentially patentable materials, or
29 proprietary information received, generated, ascertained, or
30 discovered during the course of research conducted by the H.
31 Lee Moffitt Cancer Center and Research Institute or any of its

1 subsidiaries, and business transactions resulting from such
2 research, does not substantially amend the existing exemption.
3 The Legislature finds and declares that each of the classes of
4 information specified meets the test of being a "trade secret"
5 within the meaning of term as defined in section 688.002,
6 Florida Statutes. To fulfill its legislative mandate of
7 research, education, treatment, prevention, and the early
8 detection of cancer, an exemption of confidential and
9 proprietary information relating to business transactions will
10 allow the not-for-profit corporation and its subsidiaries to
11 more effectively partner with other researchers. Although
12 information relating to business transactions may not qualify
13 as intellectual property, the terms and pricing of a research
14 transaction and, in some cases, the very fact of a research
15 transaction may be considered confidential information
16 concerning an entity. This exemption will assure collaborating
17 partners that their confidential business information will
18 remain confidential and exempt from public disclosure if
19 shared with the not-for-profit corporation or its
20 subsidiaries. The Legislature finds that the ability of the
21 not-for-profit corporation and its subsidiaries to conduct
22 meaningful scientific research and meet their obligations will
23 be significantly impaired if certain proprietary business
24 information or scientific research is not made confidential
25 and exempt from public disclosure. Specifically, the
26 Legislature finds that it is a public necessity to make exempt
27 and confidential proprietary business information or
28 scientific research that relates to methods of manufacture or
29 production, potential trade secrets, patentable material,
30 actual trade secrets as defined in section 688.002, Florida
31 Statutes, or proprietary information received, generated,

1 ascertained, or discovered by or through the not-for-profit
2 corporation or its subsidiaries because the disclosure of this
3 information would negate the benefit expected by exposing
4 valuable proprietary work to competitors. Business
5 transactions resulting from scientific research must be held
6 confidential and exempt from public records requirements
7 because the disclosure of such information would create an
8 unfair competitive advantage for the person receiving such
9 information. Such an advantage would adversely impact the
10 not-for-profit corporation and its subsidiaries. If
11 confidential and exempt information regarding research in
12 progress were released pursuant to a public records request,
13 others would be allowed to derive benefit from the research
14 without compensation or reimbursement to the not-for-profit
15 corporation or its subsidiaries. Without the exemptions
16 provided for in this act, the disclosure of confidential and
17 exempt information would place the not-for-profit corporation
18 or its subsidiaries on an unequal footing in the marketplace
19 as compared with other research competitors whose information
20 is kept confidential and exempt. The Legislature finds that
21 disclosure of confidential and exempt information would
22 adversely impact the not-for-profit corporation or its
23 subsidiaries in fulfilling the mission of research.

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

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

13 Section 4. Subsection (9) of section 1004.445, Florida
14 Statutes, is amended, and subsection (10) is added to said
15 section, to read:

16 1004.445 Florida Alzheimer's Center and Research
17 Institute.--

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

21 1.(a) Personal identifying information relating to
22 clients of programs created or funded through the Florida
23 Alzheimer's Center and Research Institute which is held by the
24 institute, the University of South Florida, or the State Board
25 of Education or by persons who provide services to clients of
26 programs created or funded through contracts with the Florida
27 Alzheimer's Center and Research Institute;

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

30 3. Proprietary confidential business information. As
31 used in this subparagraph, the term "proprietary confidential

1 business information" means information, regardless of its
 2 form or characteristics, which is owned or controlled by the
 3 institute; is intended to be and is treated by the institute
 4 as private and the disclosure of which would harm the business
 5 operations of the institute; has not been intentionally
 6 disclosed by the institute unless pursuant to law, an order of
 7 a court or administrative body, a legislative proceeding
 8 pursuant to s. 5, Art. III of the State Constitution, or a
 9 private agreement that provides that the information may be
 10 released to the public; and which is information concerning:

11 a. Trade secrets as defined in s. 688.002, including
 12 information relating

13 ~~(c) Materials that relate to methods of manufacture or~~
 14 ~~production, potential trade secrets, potentially patentable~~
 15 ~~material, actual trade secrets as defined in s. 688.002, or~~
 16 ~~proprietary information received, generated, ascertained, or~~
 17 ~~discovered during the course of research conducted by or~~
 18 ~~through the institute and business transactions resulting from~~
 19 ~~such research, and reimbursement methodologies or rates.;~~

20 b.(d) The identity of a donor or prospective donor to
 21 ~~the Florida Alzheimer's Center and Research~~ institute who
 22 wishes to remain anonymous, and all information identifying
 23 such donor or prospective donor.;

24 c.(e) Any information received by the institute in the
 25 performance of its duties and responsibilities which is
 26 otherwise confidential and exempt by law.; ~~and~~

27 d.(f) Any information received by the institute from a
 28 person from another state or nation or the Federal Government
 29 which is otherwise confidential or exempt pursuant to that
 30 state's or nation's laws or pursuant to federal law.
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1 e. Internal auditing controls and reports of internal
2 auditors.

3 f. Contracts for managed-care arrangements, including
4 preferred provider organization contracts, health maintenance
5 organization contracts, and exclusive provider organization
6 contracts, and any documents directly relating to the
7 negotiation, performance, and implementation of any such
8 contracts for managed-care arrangements.

9 g. Bids or other contractual data, banking records,
10 and credit agreements the disclosure of which would impair the
11 efforts of the institute to contract for goods or services on
12 favorable terms.

13 h. Information relating to private contractual data,
14 the disclosure of which would impair the competitive interest
15 of the provider of the information.

16 i. Corporate officer and employee personnel
17 information.

18 j. Information relating to the proceedings and records
19 of the credentialing panels and committees and of the
20 governing board of the institute relating to credentialing.

21 k. Minutes of exempt meetings of the governing board
22 of the institute.

23 l. Information that reveals plans for marketing
24 services that the institute reasonably expects to be provided
25 by competitors.

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28 As used in this subparagraph, the term "managed care" means
29 systems or techniques generally used by third-party payors or
30 their agents to affect access to and control payment for
31 health care services. Managed-care techniques most often

1 include one or more of the following: prior, concurrent, and
2 retrospective review of the medical necessity and
3 appropriateness of services or site of services; contracts
4 with selected health care providers; financial incentives or
5 disincentives related to the use of specific providers,
6 services, or service sites; controlled access to and
7 coordination of services by a case manager; and payor efforts
8 to identify treatment alternatives and modify benefit
9 restrictions for high-cost patient care.

10 (b) The Auditor General, the Office of Program Policy
11 Analysis and Government Accountability, and the State Board of
12 Education, pursuant to their oversight and auditing functions,
13 shall be given access to all proprietary confidential business
14 information upon request and without subpoena and must
15 maintain the confidentiality of information so received.

16 (c) Any governmental entity that demonstrates a need
17 to access such confidential and exempt information in order to
18 perform its duties and responsibilities shall have access to
19 such information and shall otherwise keep such information
20 confidential and exempt.

21 (d) This subsection ~~section~~ is subject to the Open
22 Government Sunset Review Act of 1995 in accordance with s.
23 119.15 and shall stand repealed on October 2, ~~2009~~ 2006,
24 unless reviewed and saved from repeal through reenactment by
25 the Legislature.

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

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

5 Section 5. The Legislature finds that it is a public
6 necessity that proprietary confidential business information
7 owned or controlled by the Florida Alzheimer's Center and
8 Research Institute, which includes reimbursement methodologies
9 or rates; internal auditing controls and reports of internal
10 auditors; contracts for managed-care arrangements and any
11 documents directly relating to the negotiation, performance,
12 and implementation of any such contracts for managed-care
13 arrangements; bids or other contractual data, banking records,
14 and credit agreements; information relating to private
15 contractual data; corporate officer and employee personnel
16 information; information relating to the proceedings and
17 records of the credentialing panels and committees and of the
18 governing board of the institute relating to credentialing;
19 minutes of meetings of the governing board of the institute;
20 and information that reveals plans for marketing services that
21 the institute reasonably expects to be provided by competitors
22 be held confidential and exempt from public disclosure. The
23 institute must compete directly with its private-sector
24 counterparts. Its economic survival depends on the institute s
25 ability to so compete. As such, these exemptions are necessary
26 because release of this information would adversely impact the
27 institute in the competitive health care and medical research
28 environment. Disclosure of such information would place the
29 institute on an unequal footing in the marketplace as compared
30 with private health care providers that are not required to
31 disclose such confidential and exempt information. The highly

1 confidential nature of Alzheimer-related research discoveries
2 necessitates that the institute be authorized to maintain
3 confidential information it receives from, or generates for,
4 the sponsors of its research. Accordingly, disclosure of such
5 information would impede the effective and efficient
6 administration of the Florida Alzheimer's Center and Research
7 Institute and would create an unfair competitive advantage for
8 persons or entities receiving such information. Also, such
9 information is of a sensitive, personal nature regarding
10 corporate officers and employees. Disclosure of such
11 information could be harmful to the officer or employee. It is
12 likewise a public necessity that certain meetings or portions
13 of meetings of the governing board of the institute be closed
14 in order to protect the competitive interest of the institute
15 and to guarantee the ability of the governing board to fulfill
16 its Alzheimer's disease research and teaching mission for the
17 benefit of the public. Furthermore, disclosing information
18 made confidential and exempt pursuant to the institute s
19 public records exemption via an open meeting defeats the
20 purpose of the public records exemption.

21 Section 6. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 invalidity does not affect other provisions or applications of
24 the act which can be given effect without the invalid
25 provision or application, and to this end the provisions of
26 this act are declared severable.

27 Section 7. This act shall take effect upon becoming a
28 law.

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