

By the Committee on Governmental Oversight and Productivity;
and Senators Miller and Atwater

585-2022-05

1 A bill to be entitled
2 An act relating to a public-records exemption;
3 amending s. 1004.43, F.S.; expanding 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
10 exemption to include information received from
11 an agency in this or another state or nation or
12 the Federal Government which is otherwise
13 exempt or confidential pursuant to the laws of
14 this or another state or nation or pursuant to
15 federal law; providing for future review and
16 repeal under the Open Government Sunset Review
17 Act; providing a statement of public necessity;
18 providing an effective date.
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20 Be It Enacted by the Legislature of the State of Florida:
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22 Section 1. Paragraph (b) of subsection (8) of section
23 1004.43, Florida Statutes, is amended, and paragraph (c) is
24 added to that subsection, to read:
25 1004.43 H. Lee Moffitt Cancer Center and Research
26 Institute.--There is established the H. Lee Moffitt Cancer
27 Center and Research Institute at the University of South
28 Florida.
29 (8)
30 (b) Proprietary confidential business information is
31 confidential and exempt from the provisions of s. 119.07(1)

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

22 1. Internal auditing controls and reports of internal
23 auditors;

24 2. Matters reasonably encompassed in privileged
25 attorney-client communications;

26 3. Contracts for managed-care arrangements, including
27 preferred provider organization contracts, health maintenance
28 organization contracts, and exclusive provider organization
29 contracts, and any documents directly relating to the
30 negotiation, performance, and implementation of any such
31 contracts for managed-care arrangements;

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

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

8 6. Corporate officer and employee personnel
9 information;

10 7. Information relating to the proceedings and records
11 of credentialing panels and committees and of the governing
12 board of the not-for-profit corporation or its subsidiaries
13 relating to credentialing;

14 8. Minutes of meetings of the governing board of the
15 not-for-profit corporation and its subsidiaries, except
16 minutes of meetings open to the public pursuant to subsection
17 (9);

18 9. Information that reveals plans for marketing
19 services that the corporation or its subsidiaries reasonably
20 expect to be provided by competitors;

21 10. Trade secrets as defined in s. 688.002, including:

22 a. Information relating to methods of manufacture or
23 production, potential trade secrets, potentially patentable
24 materials, or proprietary information received, generated,
25 ascertained, or discovered during the course of research
26 conducted by the not-for-profit corporation or its
27 subsidiaries; and

28 b. Reimbursement methodologies or rates; ~~or~~

29 11. The identity of donors or prospective donors of
30 property who wish to remain anonymous or any information
31 identifying such donors or prospective donors. The anonymity

1 of these donors or prospective donors must be maintained in
2 the auditor's report; ~~or-~~

3 12. Any information received by the not-for-profit
4 corporation or its subsidiaries from an agency in this or
5 another state or nation or the Federal Government which is
6 otherwise exempt or confidential pursuant to the laws of this
7 or another state or nation or pursuant to federal law.

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

22 (c) Subparagraphs 10. and 12. of paragraph (b) are
23 subject to the Open Government Sunset Review Act of 1995 in
24 accordance with s. 119.15 and shall stand repealed on October
25 2, 2010, unless reviewed and saved from repeal through
26 reenactment by the Legislature.

27 Section 2. The Legislature finds that it is a public
28 necessity that information relating to methods of manufacture
29 or production, potential trade secrets, potentially patentable
30 materials, or proprietary information received, generated,
31 ascertained, or discovered during the course of research

1 conducted by the not-for-profit corporation organized solely
2 for the purpose of governing and operating the H. Lee Moffitt
3 Cancer Center and Research Institute or its subsidiaries be
4 held confidential and exempt from public disclosure because
5 the disclosure of such information would adversely impact the
6 not-for-profit corporation or its subsidiaries and would
7 create an unfair competitive advantage for persons receiving
8 such information. If such confidential and exempt information
9 regarding research in progress were released pursuant to a
10 public-records request, others would be allowed to take the
11 benefit of the research without compensation or reimbursement
12 to the research center. The Legislature further finds that it
13 is a public necessity that information received by the
14 not-for-profit corporation or its subsidiaries from an agency
15 in this or another state or nation or the Federal Government
16 which is otherwise exempt or confidential from public
17 disclosure pursuant to the laws of this or another state or
18 nation or pursuant to federal law should remain exempt or
19 confidential from public-records requirements because the
20 highly confidential nature of cancer-related research
21 necessitates that the not-for-profit corporation or its
22 subsidiaries be authorized to maintain the status of the
23 exempt or confidential information it receives. Without the
24 exemptions provided for in this act, the disclosure of
25 confidential and exempt information would place the
26 not-for-profit corporation on an unequal footing in the
27 marketplace as compared with its private health care and
28 medical research competitors that are not required to disclose
29 such confidential and exempt information. The Legislature
30 finds that the disclosure of such confidential and exempt
31 information would adversely impact the not-for-profit

1 corporation or its subsidiaries in fulfilling their mission of
2 cancer treatment, research, and education.

3 Section 3. This act shall take effect upon becoming a
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 1082

9 Removes proprietary and confidential information relating to
10 business transactions resulting from research from the bill.
11 Modifies statement of public necessity to reflect this change.

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