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

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

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) 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

29 | Accountability, and the State Board of Education, pursuant to
30 | their oversight and auditing functions, must be given access to
31 | all proprietary confidential business information upon request
32 | and without subpoena and must maintain the confidentiality of
33 | information so received. As used in this paragraph, the term
34 | "proprietary confidential business information" means
35 | information, regardless of its form or characteristics, which is
36 | owned or controlled by the not-for-profit corporation or its
37 | subsidiaries; is intended to be and is treated by the not-for-
38 | profit corporation or its subsidiaries as private and the
39 | disclosure of which would harm the business operations of the
40 | not-for-profit corporation or its subsidiaries; has not been
41 | intentionally disclosed by the corporation or its subsidiaries
42 | unless pursuant to law, an order of a court or administrative
43 | body, a legislative proceeding pursuant to s. 5, Art. III of the
44 | State Constitution, or a private agreement that provides that
45 | the information may be released to the public; and which is
46 | information concerning:

- 47 | 1. Internal auditing controls and reports of internal
48 | auditors;
- 49 | 2. Matters reasonably encompassed in privileged attorney-
50 | client communications;
- 51 | 3. Contracts for managed-care arrangements, including
52 | preferred provider organization contracts, health maintenance
53 | organization contracts, and exclusive provider organization
54 | contracts, and any documents directly relating to the
55 | negotiation, performance, and implementation of any such
56 | contracts for managed-care arrangements;

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

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

64 6. Corporate officer and employee personnel information;

65 7. Information relating to the proceedings and records of
 66 credentialing panels and committees and of the governing board
 67 of the not-for-profit corporation or its subsidiaries relating
 68 to credentialing;

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

72 9. Information that reveals plans for marketing services
 73 that the corporation or its subsidiaries reasonably expect to be
 74 provided by competitors;

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

76 a. Information relating to methods of manufacture or
 77 production, potential trade secrets, potentially patentable
 78 materials, or proprietary information received, generated,
 79 ascertained, or discovered during the course of research
 80 conducted by the not-for-profit corporation or its subsidiaries;

81 b. Proprietary and confidential information relating to
 82 business transactions resulting from research conducted by the
 83 not-for-profit corporation or its subsidiaries; and

84 c. Reimbursement methodologies or rates; ~~or~~

85 11. The identity of donors or prospective donors of
 86 property who wish to remain anonymous or any information
 87 identifying such donors or prospective donors. The anonymity of
 88 these donors or prospective donors must be maintained in the
 89 auditor's report; or-

90 12. Any information received by the not-for-profit
 91 corporation or its subsidiaries from a person in this or another
 92 state or nation or the Federal Government which is otherwise
 93 exempt or confidential pursuant to the laws of this or another
 94 state or nation or pursuant to federal law.

95
 96 As used in this paragraph, the term "managed care" means systems
 97 or techniques generally used by third-party payors or their
 98 agents to affect access to and control payment for health care
 99 services. Managed-care techniques most often include one or more
 100 of the following: prior, concurrent, and retrospective review of
 101 the medical necessity and appropriateness of services or site of
 102 services; contracts with selected health care providers;
 103 financial incentives or disincentives related to the use of
 104 specific providers, services, or service sites; controlled
 105 access to and coordination of services by a case manager; and
 106 payor efforts to identify treatment alternatives and modify
 107 benefit restrictions for high-cost patient care.

108 Section 2. Subparagraph 1004.43(8)(b)12., Florida
 109 Statutes, is subject to the Open Government Sunset Review Act of
 110 1995 in accordance with s. 119.15, Florida Statutes, and shall
 111 stand repealed on October 2, 2010, unless reviewed and saved
 112 from repeal through reenactment by the Legislature.

113 Section 3. (1) The Legislature finds that it is a public
114 necessity that trade secrets of the H. Lee Moffitt Cancer Center
115 or its subsidiaries, as defined in s. 688.002, Florida Statutes,
116 be confidential and exempt from public disclosure. In accordance
117 with that definition, a "trade secret" consists of information
118 that derives economic value, actual or potential, from not being
119 readily ascertainable by others and that is the subject of
120 reasonable efforts to maintain its secrecy. The Legislature has
121 determined that the disclosure of such information would
122 adversely affect the H. Lee Moffitt Cancer Center and Research
123 Institute and its subsidiaries, which are resources of the State
124 of Florida, and would create an unfair competitive advantage to
125 a person receiving such information.

126 (2) Pursuant to s. 119.15, Florida Statutes, the
127 Legislature finds that the amendment to s. 1004.43(8)(b)10.,
128 Florida Statutes, referencing information relating to methods of
129 manufacture or production, potential trade secrets, potentially
130 patentable materials, or proprietary information received,
131 generated, ascertained, or discovered during the course of
132 research conducted by the H. Lee Moffitt Cancer Center and
133 Research Institute or any of its subsidiaries, and business
134 transactions resulting from such research, does not
135 substantially amend the existing exemption. The Legislature
136 finds and declares that each of the classes of information
137 specified meets the test of being a "trade secret" within the
138 meaning of the term as defined in s. 688.002, Florida Statutes.
139 To fulfill its legislative mandate of research, education,
140 treatment, prevention, and the early detection of cancer, an

141 exemption of confidential and proprietary information relating
142 to business transactions will allow the not-for-profit
143 corporation and its subsidiaries to more effectively partner
144 with other researchers. Although information relating to
145 business transactions may not qualify as intellectual property,
146 the terms and pricing of a research transaction and, in some
147 cases, the very fact of a research transaction may be considered
148 confidential information concerning an entity. This exemption
149 will assure collaborating partners that their confidential
150 business information will remain confidential and exempt from
151 public disclosure if shared with the not-for-profit corporation
152 or its subsidiaries. The Legislature finds that the ability of
153 the not-for-profit corporation and its subsidiaries to conduct
154 meaningful scientific research and meet their obligations will
155 be significantly impaired if certain proprietary business
156 information or scientific research is not made confidential and
157 exempt from public disclosure. Specifically, the Legislature
158 finds that it is a public necessity to make exempt and
159 confidential proprietary business information or scientific
160 research that relates to methods of manufacture or production,
161 potential trade secrets, patentable material, actual trade
162 secrets as defined in s. 688.002, Florida Statutes, or
163 proprietary information received, generated, ascertained, or
164 discovered by or through the not-for-profit corporation or its
165 subsidiaries because the disclosure of this information would
166 negate the benefit expected by exposing valuable proprietary
167 work to competitors. Business transactions resulting from
168 scientific research must be held confidential and exempt from

169 public records requirements because the disclosure of such
170 information would create an unfair competitive advantage for the
171 person receiving such information. Such an advantage would
172 adversely impact the
173 not-for-profit corporation and its subsidiaries. If confidential
174 and exempt information regarding research in progress were
175 released pursuant to a public records request, others would be
176 allowed to derive benefit from the research without compensation
177 or reimbursement to the not-for-profit corporation or its
178 subsidiaries. Without the exemptions provided for in this act,
179 the disclosure of confidential and exempt information would
180 place the not-for-profit corporation or its subsidiaries on an
181 unequal footing in the marketplace as compared with other
182 research competitors whose information is kept confidential and
183 exempt. The Legislature finds that disclosure of confidential
184 and exempt information would adversely impact the not-for-profit
185 corporation or its subsidiaries in fulfilling the mission of
186 research.

187 (3) The Legislature further finds that information
188 received by the not-for-profit corporation or its subsidiaries
189 from a person in this or another state or nation or the Federal
190 Government which is otherwise exempt or confidential pursuant to
191 the laws of this or another state or nation or pursuant to
192 federal law should remain exempt or confidential because the
193 highly confidential nature of cancer-related research
194 necessitates that the not-for-profit corporation or its
195 subsidiaries be authorized to maintain the status of exempt or
196 confidential information it receives from the sponsors of

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197 research. Without the exemptions provided for in this act, the
198 disclosure of exempt and confidential information would place
199 the not-for-profit corporation on an unequal footing in the
200 marketplace as compared with its private health care and medical
201 research competitors that are not required to disclose such
202 exempt and confidential information. The Legislature finds that
203 the disclosure of such exempt and confidential information would
204 adversely impact the not-for-profit corporation or its
205 subsidiaries in fulfilling their mission of cancer treatment,
206 research, and education.

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