

A bill to be entitled

An act relating to a public records exemption; amending s. 1004.43, F.S.; expanding 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 exemption to include information received from an agency 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, and paragraph (c) is added to said subsection, 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

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

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

56 negotiation, performance, and implementation of any such
 57 contracts for managed-care arrangements;

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

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

65 6. Corporate officer and employee personnel information;

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

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

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

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

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

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

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

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

94
95 As used in this paragraph, the term "managed care" means systems
96 or techniques generally used by third-party payors or their
97 agents to affect access to and control payment for health care
98 services. Managed-care techniques most often include one or more
99 of the following: prior, concurrent, and retrospective review of
100 the medical necessity and appropriateness of services or site of
101 services; contracts with selected health care providers;
102 financial incentives or disincentives related to the use of
103 specific providers, services, or service sites; controlled
104 access to and coordination of services by a case manager; and
105 payor efforts to identify treatment alternatives and modify
106 benefit restrictions for high-cost patient care.

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

112 Section 2. The Legislature finds that it is a public
113 necessity that information relating to methods of manufacture or
114 production, potential trade secrets, potentially patentable
115 materials, or proprietary information received, generated,
116 ascertained, or discovered during the course of research
117 conducted by the not-for-profit corporation organized solely for
118 the purpose of governing and operating the H. Lee Moffitt Cancer
119 Center and Research Institute or its subsidiaries be held
120 confidential and exempt from public disclosure because the
121 disclosure of such information would adversely impact the not-
122 for-profit corporation or its subsidiaries and would create an
123 unfair competitive advantage for persons receiving such
124 information. If such confidential and exempt information
125 regarding research in progress were released pursuant to a
126 public records request, others would be allowed to take the
127 benefit of the research without compensation or reimbursement to
128 the research center. The Legislature further finds that it is a
129 public necessity that information received by the not-for-profit
130 corporation or its subsidiaries from an agency in this or
131 another state or nation or the Federal Government which is
132 otherwise exempt or confidential from public disclosure pursuant
133 to the laws of this or another state or nation or pursuant to
134 federal law should remain exempt or confidential from public
135 records requirements because the highly confidential nature of
136 cancer-related research necessitates that the not-for-profit
137 corporation or its subsidiaries be authorized to maintain the
138 status of the exempt or confidential information it receives.
139 Without the exemptions provided for in this act, the disclosure

140 of confidential and exempt information would place the not-for-
141 profit corporation on an unequal footing in the marketplace as
142 compared with its private health care and medical research
143 competitors that are not required to disclose such confidential
144 and exempt information. The Legislature finds that the
145 disclosure of such confidential and exempt information would
146 adversely impact the not-for-profit corporation or its
147 subsidiaries in fulfilling their mission of cancer treatment,
148 research, and education.

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