

ENROLLED

HB 449, Engrossed 1

2005 Legislature

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

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Paragraph (b) of subsection (8) of section  
 19           1004.43, Florida Statutes, is amended, and paragraph (c) is  
 20           added to said subsection, to read:

21           1004.43 H. Lee Moffitt Cancer Center and Research  
 22           Institute.--There is established the H. Lee Moffitt Cancer  
 23           Center and Research Institute at the University of South  
 24           Florida.

25           (8)

26           (b) Proprietary confidential business information is  
 27           confidential and exempt from the provisions of s. 119.07(1) and  
 28           s. 24(a), Art. I of the State Constitution. However, the Auditor

## ENROLLED

HB 449, Engrossed 1

2005 Legislature

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

ENROLLED  
 HB 449, Engrossed 1

2005 Legislature

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~~

## ENROLLED

HB 449, Engrossed 1

2005 Legislature

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.

## ENROLLED

HB 449, Engrossed 1

2005 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

## ENROLLED

HB 449, Engrossed 1

2005 Legislature

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.