

House Bill No. 449

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

1. Internal auditing controls and reports of internal auditors;
2. Matters reasonably encompassed in privileged attorney-client communications;
3. Contracts for managed-care arrangements, including preferred provider organization contracts, health maintenance organization contracts,

and exclusive provider organization contracts, and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;

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

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

6. Corporate officer and employee personnel information;

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

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

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

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

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

b. Reimbursement methodologies or rates; or

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

12. Any information received by the not-for-profit corporation or its subsidiaries 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.

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

manager; and payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.

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

Section 2. The Legislature finds that it is a public necessity that information relating to methods of manufacture or production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the not-for-profit corporation organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute or its subsidiaries be held confidential and exempt from public disclosure because the disclosure of such information would adversely impact the not-for-profit corporation or its subsidiaries and would create an unfair competitive advantage for persons receiving such information. If such confidential and exempt information regarding research in progress were released pursuant to a public records request, others would be allowed to take the benefit of the research without compensation or reimbursement to the research center. The Legislature further finds that it is a public necessity that information received by the not-for-profit corporation or its subsidiaries from an agency in this or another state or nation or the Federal Government which is otherwise exempt or confidential from public disclosure pursuant to the laws of this or another state or nation or pursuant to federal law should remain exempt or confidential from public records requirements because the highly confidential nature of cancer-related research necessitates that the not-for-profit corporation or its subsidiaries be authorized to maintain the status of the exempt or confidential information it receives. Without the exemptions provided for in this act, the disclosure of confidential and exempt information would place the not-for-profit corporation on an unequal footing in the marketplace as compared with its private health care and medical research competitors that are not required to disclose such confidential and exempt information. The Legislature finds that the disclosure of such confidential and exempt information would adversely impact the not-for-profit corporation or its subsidiaries in fulfilling their mission of cancer treatment, research, and education.

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

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.