

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1099

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Higher Education)

1 A BILL for an Act to amend and reenact section 44-04-18.4 of the North Dakota Century Code,
2 relating to confidentiality of trade secret, proprietary, commercial, and financial information; and
3 to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 44-04-18.4 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial**
8 **information.**

9 1. Trade secret, proprietary, commercial, and financial information is confidential if it
10 is of a privileged nature and it has not been previously publicly disclosed.

11 2. Under this section, unless the context otherwise requires:

12 a. "Commercial information" means information pertaining to buying or selling of
13 goods and services that has not been previously publicly disclosed and that if
14 the information were to be disclosed would impair the public entity's future
15 ability to obtain necessary information or would cause substantial competitive
16 injury to the person from which the information was obtained.

17 b. "Financial information" means information pertaining to monetary resources of
18 a person that has not been previously publicly disclosed and that if the
19 information were to be disclosed would impair the public entity's future ability
20 to obtain necessary information or would cause substantial competitive injury
21 to the person from which the information was obtained.

22 c. "Proprietary information" includes:

- (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
- (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.
- (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
- (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
- (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
- (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
- (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
- (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or

1 prepared by a public entity that is the subject of efforts by the supplying
2 or preparing person to maintain its secrecy and provides the preparing
3 person an advantage or an opportunity to obtain an advantage over
4 those who do not know or use it or that may derive independent
5 economic value, actual or potential, from not being generally known to,
6 and not being readily ascertainable by proper means by, a person that
7 might obtain economic value from its disclosure or use.

8 d. ~~"Trade secret" includes~~ means information, including a formula, pattern,
9 compilation, program, device, method, technique, technical know-how, or
10 process, that:

11 a. ~~A computer software program and components of a computer software~~
12 ~~program which are subject to a copyright or a patent, and any formula,~~
13 ~~pattern, compilation, program, device, method, technique, or process supplied~~
14 ~~to any state agency, institution, department, or board which is the subject of~~
15 ~~efforts by the supplying person or organization to maintain its secrecy and~~
16 ~~that may derive~~

17 (1) Derives independent economic value, actual or potential, from not
18 being generally known to, and not being readily ascertainable by proper
19 means by, other persons ~~or organizations~~ that ~~might~~ can obtain
20 economic value from its disclosure or use; and

21 b. ~~A discovery or innovation which is subject to a patent or a copyright, and any~~
22 ~~formula, pattern, compilation, program, device, method, technique, or process~~
23 ~~supplied to or prepared by any public entity which is~~

24 (2) Is the subject of efforts by the supplying or preparing entity, person,
25 business, or industry that are reasonable under the circumstances to
26 maintain its the secrecy and that may derive independent economic
27 value, actual or potential, from not being generally known to, and not
28 being readily ascertainable by proper means by, any person who might
29 obtain economic value from its disclosure or use of the information.

30 3. ~~"Proprietary information" includes information received from a sponsor of research~~
31 ~~conducted by a public entity, as well as any discovery or innovation generated by~~

~~that research, technical, financial, and marketing information and other documents
related to the commercialization, and any other discovery or innovation produced
by the public entity which an employee or the entity intends to commercialize.~~

4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

- ~~5.~~ 4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.

5. Unless made confidential under subsection 1, the following economic development records and information are exempt:

- a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, ~~or~~ expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
- b. Trade secrets and proprietary, commercial, or financial information received from a person, ~~business, or industry~~ that is interested in ~~or is~~ applying for or receiving financing ~~or~~, technical assistance, or other forms of business assistance.

6. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until ~~such time~~ all of the proposals have been received and opened by the public entity or until ~~such time that~~ all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal ~~shall be~~ are open.

1 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.