

Sixtieth  
Legislative Assembly  
of North Dakota

## 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.

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

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

6 **44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial**  
7 **information.**

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

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

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

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

21 c. "Proprietary information" includes:

22 (1) Information shared between a sponsor of research or a potential  
23 sponsor of research and a public entity conducting or negotiating an  
24 agreement for the research.

- 1                   (2)   Information received from a private business that has entered into or is  
2                               negotiating an agreement with a public entity to conduct research or  
3                               manufacture or create a product for potential commercialization.
- 4                   (3)   A discovery or innovation generated by the research information,  
5                               technical information, financial information, or marketing information  
6                               acquired under activities described under paragraph 1 or 2.
- 7                   (4)   A document specifically and directly related to the licensing or  
8                               commercialization resulting from activities described under paragraph 1  
9                               or 2.
- 10                  (5)   A discovery or innovation produced by the public entity that an  
11                               employee or the entity intends to commercialize.
- 12                  (6)   A computer software program and components of a computer software  
13                               program that are subject to a copyright or a patent and any formula,  
14                               pattern, compilation, program, device, method, technique, or process  
15                               supplied to a public entity that is the subject of efforts by the supplying  
16                               person to maintain its secrecy and that may derive independent  
17                               economic value, actual or potential, from not being generally known to,  
18                               and not being readily ascertainable by proper means by, other persons  
19                               that might obtain economic value from its disclosure or use.
- 20                  (7)   A discovery or innovation that is subject to a patent or a copyright and  
21                               any formula, pattern, compilation, program, device, combination of  
22                               devices, method, technique, technical know-how or process that is for  
23                               use, or is used, in the operation of a business and is supplied to or  
24                               prepared by a public entity that is the subject of efforts by the supplying  
25                               or preparing person to maintain its secrecy and provides the preparing  
26                               person an advantage or an opportunity to obtain an advantage over  
27                               those who do not know or use it or that may derive independent  
28                               economic value, actual or potential, from not being generally known to,  
29                               and not being readily ascertainable by proper means by, a person that  
30                               might obtain economic value from its disclosure or use.

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

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

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

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

(2) Is the subject of efforts ~~by the supplying or preparing entity, person, business, or industry~~ that are reasonable under the circumstances to maintain its ~~the~~ 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, any person who might obtain economic value from its disclosure or use of the information.

3. ~~"Proprietary information" includes information received from a sponsor of research 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.

1       5- 4. Unless made confidential under subsection 1, the following economic development  
2 records and information are exempt:

- 3           a. Records and information pertaining to a prospective location of a business or  
4 industry, including the identity, nature, and location of the business or  
5 industry, when no previous public disclosure has been made by the business  
6 or industry of the interest or intent of the business or industry to locate in,  
7 relocate within, or expand within this state. This exemption does not include  
8 records pertaining to the application for permits or licenses necessary to do  
9 business or to expand business operations within this state, except as  
10 otherwise provided by law.
- 11          b. Trade secrets and proprietary, commercial, or financial information received  
12 from a person, ~~business, or industry~~ that is interested in or is applying for or  
13 receiving financing or, technical assistance, or other forms of business  
14 assistance.

15       6- 5. Unless made confidential under subsection 1 or made exempt under subsection 5  
16 4, bids or proposals received by a public entity in response to a request for  
17 proposals by the public entity are exempt until ~~such time~~ all of the proposals have  
18 been received and opened by the public entity or until ~~such time that~~ all oral  
19 presentations regarding the proposals, if any, have been heard by the public entity.  
20 Records included with any bid or proposal naming and generally describing the  
21 entity submitting the proposal ~~shall be~~ are open.