

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2115

Introduced by

Judiciary Committee

(At the request of the Adjutant General)

1 A BILL for an Act to amend and reenact section 44-04-18.4 of the North Dakota Century Code,
2 relating to exemption of technical, financial, or marketing records.

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 is of
9 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 the
13 information were to be disclosed would impair the public entity's future ability to
14 obtain necessary information or would cause substantial competitive injury to the
15 person from which the information was obtained.

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

21 c. "Proprietary information" includes:

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

- 1 (2) Information received from a private business that has entered 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, technical
5 information, financial information, or marketing information acquired under
6 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, 2,
9 or 6.
- 10 (5) Technical, financial, or marketing records that are received by a public
11 entity, which are owned or controlled by the submitting person, are intended
12 to be and are treated by the submitting person as private, and the disclosure
13 of which would cause harm to the submitting person's business as
14 ~~determined by the agency to which the records are submitted~~formally
15 declared by the submitting person upon submission.
- 16 (6) A discovery or innovation produced by the public entity that an employee or
17 the entity intends to commercialize.
- 18 (7) A computer software program and components of a computer software
19 program that are subject to a copyright or a patent and any formula, pattern,
20 compilation, program, device, method, technique, or process supplied to a
21 public entity that is the subject of efforts by the supplying person to maintain
22 its secrecy and that may derive independent economic value, actual or
23 potential, from not being generally known to, and not being readily
24 ascertainable by proper means by, other persons that might obtain
25 economic value from its disclosure or use.
- 26 (8) A discovery or innovation that is subject to a patent or a copyright, and any
27 formula, pattern, compilation, program, device, combination of devices,
28 method, technique, technical know-how or process that is for use, or is
29 used, in the operation of a business and is supplied to or prepared by a
30 public entity that is the subject of efforts by the supplying or preparing
31 person to maintain its secrecy and provides the preparing person an

- 1 advantage or an opportunity to obtain an advantage over those who do not
2 know or use it or that may derive independent economic value, actual or
3 potential, from not being generally known to, and not being readily
4 ascertainable by proper means by, a person that might obtain economic
5 value from its disclosure or use.
- 6 d. "Trade secret" means information, including a formula, pattern, compilation,
7 program, device, method, technique, technical know-how, or process, that:
- 8 (1) Derives independent economic value, actual or potential, from not being
9 generally known to, and not being readily ascertainable by proper means by,
10 other persons that can obtain economic value from its disclosure or use;
11 and
- 12 (2) Is the subject of efforts that are reasonable under the circumstances to
13 maintain the secrecy of the information.
- 14 3. This section does not limit or otherwise affect a record pertaining to any rule of the
15 state department of health or to any record pertaining to the application for a permit or
16 license necessary to do business or to expand business operations within this state,
17 except as otherwise provided by law.
- 18 4. This section does not limit the release or use of records obtained in an investigation by
19 the attorney general or other law enforcement official.
- 20 5. Unless made confidential under subsection 1, the following economic development
21 records and information are exempt:
- 22 a. Records and information pertaining to a prospective location of a business or
23 industry, including the identity, nature, and location of the business or industry,
24 when no previous public disclosure has been made by the business or industry of
25 the interest or intent of the business or industry to locate in, relocate within,
26 expand within this state, or partner with a public entity to conduct research or to
27 license a discovery or innovation. This exemption does not include records
28 pertaining to the application for permits or licenses necessary to do business or
29 to expand business operations within this state, except as otherwise provided by
30 law.

- 1 b. Trade secrets and proprietary, commercial, or financial information received from
2 a person that is interested in applying for or receiving financing, technical
3 assistance, or other forms of business assistance.
- 4 6. Unless made confidential under subsection 1 or made exempt under subsection 5,
5 bids or proposals received by a public entity in response to a request for proposals by
6 the public entity are exempt until all of the proposals have been received and opened
7 by the public entity or until all oral presentations regarding the proposals, if any, have
8 been heard by the public entity. Records included with any bid or proposal naming and
9 generally describing the entity submitting the proposal are open.