

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.
- 15 (6) A discovery or innovation produced by the public entity that an employee or  
16 the entity intends to commercialize.
- 17 (7) A computer software program and components of a computer software  
18 program that are subject to a copyright or a patent and any formula, pattern,  
19 compilation, program, device, method, technique, or process supplied to a  
20 public entity that is the subject of efforts by the supplying person to maintain  
21 its secrecy and that may derive independent economic value, actual or  
22 potential, from not being generally known to, and not being readily  
23 ascertainable by proper means by, other persons that might obtain  
24 economic value from its disclosure or use.
- 25 (8) A discovery or innovation that is subject to a patent or a copyright, and any  
26 formula, pattern, compilation, program, device, combination of devices,  
27 method, technique, technical know-how or process that is for use, or is  
28 used, in the operation of a business and is supplied to or prepared by a  
29 public entity that is the subject of efforts by the supplying or preparing  
30 person to maintain its secrecy and provides the preparing person an  
31 advantage or an opportunity to obtain an advantage over those who do not

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

10          7. Unless made confidential under subsection 1, records received by the state  
11          department of emergency services under chapter 37-17.1 from the federal government  
12          and any public or private agency or entity for disaster mitigation, preparation,  
13          response, and recovery are exempt.