

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 438  
Judiciary II Committee Substitute Adopted 5/2/91

Short Title: Confidential Info. Protected.

(Public)

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Sponsors:

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Referred to:

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April 1, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND  
3 NATURAL RESOURCES TO PROTECT CERTAIN CONFIDENTIAL  
4 INFORMATION.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 104E of the General Statutes is amended by adding a new  
7 section to read:

8 "**§ 104E-29. Confidential information protected.**

9 (a) The following information received or prepared by the Department in the  
10 course of carrying out its duties and responsibilities under this Chapter is confidential  
11 information and shall not be subject to disclosure under G.S. 132-6:

12 (1) Information which the Secretary determines is entitled to confidential  
13 treatment pursuant to G.S. 132-1.2. If the Secretary determines that  
14 information received by the Department is not entitled to confidential  
15 treatment, the Secretary shall inform the person who provided the  
16 information of that determination at the time such determination is  
17 made. The Secretary may refuse to accept or may return any  
18 information that is claimed to be confidential that the Secretary  
19 determines is not entitled to confidential treatment.

20 (2) Information that is confidential under any provision of federal or state  
21 law.

1           (3) Information compiled in anticipation of enforcement or criminal  
2           proceedings, but only to the extent disclosure could reasonably be  
3           expected to interfere with the institution of such proceedings.

4           (b) Confidential information may be disclosed to officers, employees, or  
5           authorized representatives of federal or state agencies if such disclosure is necessary to  
6           carry out a proper function of the Department or the requesting agency or when relevant  
7           in any proceeding under this Chapter.

8           (c) Except as provided in subsection (b) of this section or as otherwise provided  
9           by law, any officer or employee of the State who knowingly discloses information  
10          designated as confidential under this section shall be guilty of a misdemeanor  
11          punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment  
12          for not more than two years or both and shall be removed from office or discharged  
13          from employment."

14           Sec. 2. G.S. 130A-304 reads as rewritten:

15          "**§ 130A-304. Information received pursuant to this Article. Confidential information**  
16          **protected.**

17          (a) ~~For the purposes of this Article, upon a showing satisfactory to the~~  
18          ~~Department by a person that all or any part of records, reports or information to which~~  
19          ~~the Department has access under G.S. 130A-17, would divulge information entitled to~~  
20          ~~protection under subsection (b), the Department shall consider the information~~  
21          ~~confidential in accordance with the purposes of that subsection, except that the record,~~  
22          ~~report or information may be disclosed to other officers, employees or authorized~~  
23          ~~representatives of the Department concerned with carrying out this Article or when~~  
24          ~~relevant in any proceeding under this Article. The following information received or~~  
25          ~~prepared by the Department in the course of carrying out its duties and responsibilities~~  
26          ~~under this Article is confidential information and shall not be subject to disclosure under~~  
27          ~~G.S. 132-6:~~

28           (1) Information which the Secretary determines is entitled to confidential  
29           treatment pursuant to G.S. 132-1.2. If the Secretary determines that  
30           information received by the Department is not entitled to confidential  
31           treatment, the Secretary shall inform the person who provided the  
32           information of that determination at the time such determination is  
33           made. The Secretary may refuse to accept or may return any  
34           information that is claimed to be confidential that the Secretary  
35           determines is not entitled to confidential treatment.

36           (2) Information that is confidential under any provision of federal or state  
37           law.

38           (3) Information compiled in anticipation of enforcement or criminal  
39           proceedings, but only to the extent disclosure could reasonably be  
40           expected to interfere with the institution of such proceedings.

41          (b) Confidential information may be disclosed to officers, employees, or  
42          authorized representatives of federal or state agencies if such disclosure is necessary to  
43          carry out a proper function of the Department or the requesting agency or when relevant  
44          in any proceeding under this Article. ~~For the purposes of this Article, if an officer or~~

1 employee of the Department publishes, divulges, discloses or makes known in any manner or to  
2 any extent not authorized by law any information revealed in the course of employment or  
3 official duties or by reason of examination or investigation made by, or return, report or record  
4 made to or filed with the Department which information concerns or relates to the trade secrets,  
5 or to the identity, confidential statistical data, amount or source of any income, profits, losses,  
6 or expenditures of any person, firm, partnership, corporation, or association; or permits any  
7 income return or copy or any book containing any abstract or its particulars to be seen or  
8 examined by any person except as provided in subsection (a) shall be guilty of a misdemeanor  
9 and fined not more than five hundred dollars (\$500.00) or imprisoned not more than two years  
10 or both; and shall be removed from office or employment.

11 (c) Except as provided in subsection (b) of this section or as otherwise provided  
12 by law, any officer or employee of the State who knowingly discloses information  
13 designated as confidential under this section shall be guilty of a misdemeanor  
14 punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment  
15 for not more than two years or both and shall be removed from office or discharged  
16 from employment."

17 Sec. 3. G.S. 132-1.2 reads as rewritten:

18 "**§ 132-1.2. ~~Trade secrets.~~ Confidential information.**

19 Nothing in this Article shall be construed to require or authorize a public agency to  
20 disclose any information which:

- 21 (1) Constitutes a 'trade secret' as defined in G.S. 66-152(3);
- 22 (2) Is the property of a private 'person' as defined in G.S. 66-152(2);
- 23 (3) Is disclosed or furnished to the public agency in connection with the  
24 owner's performance of a public contract or in connection with a bid,  
25 application, proposal, ~~or industrial development project;~~ project, or in  
26 compliance with laws, regulations, rules, or ordinances of the United  
27 States, the State, or political subdivisions of the State; and
- 28 (4) Is designated or indicated as 'confidential' ~~and/or~~ or as a 'trade secret'  
29 at the time of its initial disclosure to the public agency."

30 Sec. 4. This act is effective upon ratification.