

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 745
SENATE BILL 438

AN ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES TO PROTECT CERTAIN CONFIDENTIAL
INFORMATION.

The General Assembly of North Carolina enacts:

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

"§ 104E-29. Confidential information protected.

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

- (1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.
- (2) Information that is confidential under any provision of federal or state law.
- (3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

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

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

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

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

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

- ~~(1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.~~
- ~~(2) Information that is confidential under any provision of federal or state law.~~
- ~~(3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.~~

~~(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Article. For the purposes of this Article, if an officer or employee of the Department publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information revealed in the course of employment or official duties or by reason of examination or investigation made by, or return, report or record made to or filed with the Department which information concerns or relates to the trade secrets, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy or any book containing any abstract or its particulars to be seen or examined by any person except as provided in subsection (a) shall be guilty of a misdemeanor and fined not more than five hundred dollars (\$500.00) or imprisoned not more than two years or both; and shall be removed from office or employment.~~

~~(c) Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a misdemeanor~~

punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than two years or both and shall be removed from office or discharged from employment."

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

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

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

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

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives