

1 A bill to be entitled
 2 An act relating to trade secrets; amending s. 812.081,
 3 F.S.; including financial information in provisions
 4 prohibiting the theft, embezzlement, or unlawful
 5 copying of trade secrets; providing criminal
 6 penalties; reenacting ss. 581.199, 721.071(1),
 7 812.035(1), (2), (5), (7), (8), (10), and (11), and
 8 815.04(4), F.S., relating to confidential business
 9 information, trade secret information filed with the
 10 Division of Florida Condominiums, Timeshares, and
 11 Mobile Homes within the Department of Business and
 12 Professional Regulation, civil remedies, and offenses
 13 against intellectual property, respectively, to
 14 incorporate changes made by this act to the definition
 15 of the term "trade secret" in s. 812.081, F.S., in
 16 references thereto; providing an effective date.

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 18 Be It Enacted by the Legislature of the State of Florida:
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20 Section 1. Section 812.081, Florida Statutes, is amended
 21 to read:

22 812.081 Trade secrets; theft, embezzlement; unlawful
 23 copying; definitions; penalty.—

24 (1) As used in this section, the term:

25 (a) "Article" means any object, device, machine, material,
 26 substance, or composition of matter, or any mixture or copy

27 | thereof, whether in whole or in part, including any complete or
28 | partial writing, record, recording, drawing, sample, specimen,
29 | prototype model, photograph, microorganism, blueprint, map, or
30 | copy thereof.

31 | (b) "Representing" means completely or partially
32 | describing, depicting, embodying, containing, constituting,
33 | reflecting, or recording.

34 | (c) "Trade secret" means the whole or any portion or phase
35 | of any formula, pattern, device, combination of devices, or
36 | compilation of information which is for use, or is used, in the
37 | operation of a business and which provides the business an
38 | advantage, or an opportunity to obtain an advantage, over those
39 | who do not know or use it. The term ~~"Trade secret"~~ includes any
40 | scientific, technical, or commercial information, including
41 | financial information, and includes any design, process,
42 | procedure, list of suppliers, list of customers, business code,
43 | or improvement thereof. Irrespective of novelty, invention,
44 | patentability, the state of the prior art, and the level of
45 | skill in the business, art, or field to which the subject matter
46 | pertains, a trade secret is considered to be:

- 47 | 1. Secret;
- 48 | 2. Of value;
- 49 | 3. For use or in use by the business; and
- 50 | 4. Of advantage to the business, or providing an
51 | opportunity to obtain an advantage, over those who do not know
52 | or use it

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54 when the owner thereof takes measures to prevent it from
55 becoming available to persons other than those selected by the
56 owner to have access thereto for limited purposes.

57 (d) "Copy" means any facsimile, replica, photograph, or
58 other reproduction in whole or in part of an article and any
59 note, drawing, or sketch made of or from an article or part or
60 portion thereof.

61 (2) Any person who, with intent to deprive or withhold
62 from the owner thereof the control of a trade secret, or with an
63 intent to appropriate a trade secret to his or her own use or to
64 the use of another, steals or embezzles an article representing
65 a trade secret or without authority makes or causes to be made a
66 copy of an article representing a trade secret commits ~~is guilty~~
67 ~~of~~ a felony of the third degree, punishable as provided in s.
68 775.082 or s. 775.083.

69 (3) In a prosecution for a violation of ~~the provisions of~~
70 this section, the fact ~~it is no defense~~ that the person so
71 charged returned or intended to return the article so stolen,
72 embezzled, or copied is not a defense.

73 Section 2. For the purpose of incorporating the amendment
74 made by this act to section 812.081, Florida Statutes, in a
75 reference thereto, section 581.199, Florida Statutes, is
76 reenacted to read:

77 581.199 Confidential business information.—It is unlawful
78 for any authorized representative who in an official capacity

79 obtains under the provisions of this chapter any information
80 entitled to protection as a trade secret, as defined in s.
81 812.081, to use that information for personal gain or to reveal
82 it to any unauthorized person.

83 Section 3. For the purpose of incorporating the amendment
84 made by this act to section 812.081, Florida Statutes, in a
85 reference thereto, subsection (1) of section 721.071, Florida
86 Statutes, is reenacted to read:

87 721.071 Trade secrets.—

88 (1) If a developer or any other person filing material
89 with the division pursuant to this chapter expects the division
90 to keep the material confidential on grounds that the material
91 constitutes a trade secret, as that term is defined in s.
92 812.081, the developer or other person shall file the material
93 together with an affidavit of confidentiality. "Filed material"
94 for purposes of this section shall mean material that is filed
95 with the division with the expectation that the material will be
96 kept confidential and that is accompanied by an affidavit of
97 confidentiality. Filed material that is trade secret information
98 includes, but is not limited to, service contracts relating to
99 the operation of reservation systems and those items and matters
100 described in s. 815.04(3).

101 Section 4. For the purpose of incorporating the amendment
102 made by this act to section 812.081, Florida Statutes, in
103 references thereto, subsections (1), (2), (5), (7), (8), (10),
104 and (11) of section 812.035, Florida Statutes, are reenacted to

105 read:

106 812.035 Civil remedies; limitation on civil and criminal
107 actions.—

108 (1) Any circuit court may, after making due provisions for
109 the rights of innocent persons, enjoin violations of the
110 provisions of ss. 812.012-812.037 or s. 812.081 by issuing
111 appropriate orders and judgments, including, but not limited to:

112 (a) Ordering any defendant to divest himself or herself of
113 any interest in any enterprise, including real estate.

114 (b) Imposing reasonable restrictions upon the future
115 activities or investments of any defendant, including, but not
116 limited to, prohibiting any defendant from engaging in the same
117 type of endeavor as the enterprise in which he or she was
118 engaged in violation of the provisions of ss. 812.012-812.037 or
119 s. 812.081.

120 (c) Ordering the dissolution or reorganization of any
121 enterprise.

122 (d) Ordering the suspension or revocation of any license,
123 permit, or prior approval granted to any enterprise by any
124 department or agency of the state.

125 (e) Ordering the forfeiture of the charter of a
126 corporation organized under the laws of the state or the
127 revocation of a certificate authorizing a foreign corporation to
128 conduct business within the state, upon finding that the board
129 of directors or a managerial agent acting on behalf of the
130 corporation, in conducting the affairs of the corporation, has

131 authorized or engaged in conduct in violation of ss. 812.012-
 132 812.037 or s. 812.081 and that, for the prevention of future
 133 criminal activity, the public interest requires the charter of
 134 the corporation forfeited and the corporation dissolved or the
 135 certificate revoked.

136 (2) All property, real or personal, including money, used
 137 in the course of, intended for use in the course of, derived
 138 from, or realized through conduct in violation of a provision of
 139 ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture
 140 to the state. The state shall dispose of all forfeited property
 141 as soon as commercially feasible. If property is not exercisable
 142 or transferable for value by the state, it shall expire. All
 143 forfeitures or dispositions under this section shall be made
 144 with due provision for the rights of innocent persons.

145 (5) The Department of Legal Affairs, any state attorney,
 146 or any state agency having jurisdiction over conduct in
 147 violation of a provision of ss. 812.012-812.037 or s. 812.081
 148 may institute civil proceedings under this section. In any
 149 action brought under this section, the circuit court shall
 150 proceed as soon as practicable to the hearing and determination.
 151 Pending final determination, the circuit court may at any time
 152 enter such injunctions, prohibitions, or restraining orders, or
 153 take such actions, including the acceptance of satisfactory
 154 performance bonds, as the court may deem proper.

155 (7) The state, including any of its agencies,
 156 instrumentalities, subdivisions, or municipalities, if it proves

157 | by clear and convincing evidence that it has been injured in any
158 | fashion by reason of any violation of the provisions of ss.
159 | 812.012-812.037 or s. 812.081, has a cause of action for
160 | threefold the actual damages sustained and, in any such action,
161 | is entitled to minimum damages in the amount of \$200 and shall
162 | also recover court costs and reasonable attorney's fees in the
163 | trial and appellate courts. In no event shall punitive damages
164 | be awarded under this section. The defendant shall be entitled
165 | to recover reasonable attorney's fees and court costs in the
166 | trial and appellate courts upon a finding that the claimant
167 | raised a claim which was without substantial fact or legal
168 | support.

169 | (8) A final judgment or decree rendered in favor of the
170 | state in any criminal proceeding under ss. 812.012-812.037 or s.
171 | 812.081 shall estop the defendant in any subsequent civil action
172 | or proceeding as to all matters as to which such judgment or
173 | decree would be an estoppel as between the parties.

174 | (10) Notwithstanding any other provision of law, a
175 | criminal or civil action or proceeding under ss. 812.012-812.037
176 | or s. 812.081 may be commenced at any time within 5 years after
177 | the cause of action accrues; however, in a criminal proceeding
178 | under ss. 812.012-812.037 or s. 812.081, the period of
179 | limitation does not run during any time when the defendant is
180 | continuously absent from the state or is without a reasonably
181 | ascertainable place of abode or work within the state, but in no
182 | case shall this extend the period of limitation otherwise

183 applicable by more than 1 year. If a criminal prosecution or
184 civil action or other proceeding is brought, or intervened in,
185 to punish, prevent, or restrain any violation of the provisions
186 of ss. 812.012-812.037 or s. 812.081, the running of the period
187 of limitations prescribed by this section with respect to any
188 cause of action arising under subsection (6) or subsection (7)
189 which is based in whole or in part upon any matter complained of
190 in any such prosecution, action, or proceeding shall be
191 suspended during the pendency of such prosecution, action, or
192 proceeding and for 2 years following its termination.

193 (11) The application of one civil remedy under any
194 provision of ss. 812.012-812.037 or s. 812.081 shall not
195 preclude the application of any other remedy, civil or criminal,
196 under ss. 812.012-812.037 or s. 812.081 or any other section of
197 the Florida Statutes.

198 Section 5. For the purpose of incorporating the amendment
199 made by this act to section 812.081, Florida Statutes, in a
200 reference thereto, subsection (4) of section 815.04, Florida
201 Statutes, is reenacted to read:

202 815.04 Offenses against intellectual property; public
203 records exemption.—

204 (4) A person who willfully, knowingly, and without
205 authorization discloses or takes data, programs, or supporting
206 documentation that is a trade secret as defined in s. 812.081 or
207 is confidential as provided by law residing or existing internal
208 or external to a computer, computer system, computer network, or

CS/HB 55

2016

209 | electronic device commits an offense against intellectual
210 | property.

211 | Section 6. This act shall take effect October 1, 2016.