

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 180

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Trade Secrets

DATE: December 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 180 expands the definition of the term “trade secret,” as provided in s. 812.081, F.S., to expressly include financial information.

An individual who steals, copies without authorization, or misappropriates financial information which meets the criteria as a trade secret is guilty of a third degree felony under s. 812.081, F.S.

The committee substitute also reenacts relevant statutes for the purpose of incorporating the expanded definition of “trade secret.”

The bill takes effect on October 1, 2016.

II. Present Situation:

Trade Secret

Section 812.081, F.S., defines a “trade secret” as information¹ used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida

¹ A trade secret may manifest as “any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof” pursuant to s. 812.081(1)(c), F.S.

courts,² requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.³

Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony⁴ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.⁵
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it unlawful for a designated employee, inspector, or collaborator of the Florida Department of Agriculture and Consumer Services' Division of Plant Industry or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets,⁶ but others provide procedural safeguards or civil remedies instead.⁷

Related Definitions and Law

The federal Freedom of Information Act exempts "trade secrets and commercial or financial information" from public disclosure.⁸ In order to withhold financial or commercial information from public review, it must be shown that the release of the information is likely to (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm

² See, e.g., *Sepro Corp. v. Dep't. of Env't. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³ Section 812.081(1)(c), F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine, pursuant to sections 775.082 and 775.083, F.S.

⁵ The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

⁶ Sections 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(8)(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁷ Sections 721.071 and 812.035, F.S.

⁸ 5 USC s. 552(b)(4).

to the competitive position of the person from whom the information was obtained.⁹ “Substantial harm” may manifest as the disclosure of a company’s assets, profits, losses, and market shares.¹⁰

Florida law also defines “trade secret” in the Florida Uniform Trade Secrets Act¹¹ as a “formula, pattern, compilation, program, device, method, technique, or process” that derives actual or potential economic independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use when it is the subject of reasonable efforts under the circumstances to maintain its secrecy.

III. Effect of Proposed Changes:

Section 1 adds financial information to protected information classified as a trade secret in s. 812.081, F.S., in the penal code. This bill makes theft of trade secret financial information a third degree felony.

Section 2 reenacts s. 581.199, F.S., which makes it unlawful for any authorized representative of the Department of Agriculture and Consumer Services, Division of Plant Industry, to use a trade secret, as defined by s. 812.081, F.S., obtained under the provisions of ch. 581, F.S., for personal gain. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 3 reenacts s. 721.071(1), F.S., which provides methods for developers to establish that materials filed with the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, are trade secrets, as defined by s. 812.081, F.S. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 4 reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., which relate to civil and criminal remedies available for violations of s. 812.081, F.S. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 5 reenacts s. 815.04, F.S., which establishes a criminal offense for the willful disclosure of a trade secret, as defined by s. 812.081, F.S., which are located on a computer system or electronic devise. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 6 provides an effective date of October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a city or county to expend funds to comply with its terms, the provisions of Article VII, section 18(a) of the Florida Constitution, may apply.

⁹ 110 Am. Jur, Trials 367, Pt. 3 (August 2015).

¹⁰ *Id.*

¹¹ Section 688.002(4), F.S.

However, Article VII, section 18(d) of the Florida Constitution exempts bills relating to criminal laws from the mandates requirements. This bill makes theft of trade secret financial information a third degree felony.

B. Public Records/Open Meetings Issues:

This bill expands the definition of trade secrets as found in s. 812.081, F.S. A number of public records and meetings exemptions for trade secrets use the definition of trade secrets located in s. 812.081, F.S. The companion, CS/SB 182, addresses the impact of this expansion on public records and open meetings.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses previously hesitant to enter into contracts with the state because of fear of release of their trade secrets may now feel more secure entering into such contracts.

C. Government Sector Impact:

On October 28, 2015, the Criminal Justice Impact Conference estimated that this bill will result in an insignificant increase in costs to the criminal justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define what type of documents constitute “financial information.”

VIII. Statutes Affected:

This bill substantially amends section 812.081, of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on October 5, 2015:

The Committee Substitute reenacts sections 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), Florida Statutes, to incorporate the expanded definition of “trade secret” into the application of each section.

- B. **Amendments:**

None.