

By the Committee on Commerce and Tourism; and Senator Gruters

577-03442-19

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1 A bill to be entitled
2 An act relating to public records; creating s. 688.01,
3 F.S.; providing definitions; providing an exemption
4 from public records requirements for trade secrets
5 held by an agency; providing notice requirements for
6 trade secrets submitted to an agency; providing an
7 exception to the exemption; providing that an agency
8 employee is not liable for the release of records in
9 compliance with the act; providing applicability;
10 providing for future legislative review and repeal of
11 the exemption; amending ss. 688.001 and 688.006, F.S.;
12 conforming cross-references; providing a statement of
13 public necessity; providing a contingent effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 688.01, Florida Statutes, is created to
19 read:

20 688.01 Trade secret exemption from inspecting or copying
21 public records.—

22 (1) DEFINITIONS.—As used in this section, the term:

23 (a) "Agency" has the same meaning as in s. 119.011.

24 (b) "Trade secret" has the same meaning as in s. 688.002,
25 except that the term does not include any of the following
26 information related to any contract or agreement, or any
27 addendum thereto, with an agency:

28 1. The parties to the contract or agreement, or an addendum
29 thereto.

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30 2. The amount of money paid, any payment structure or plan,
31 expenditures, incentives, bonuses, fees, or penalties.

32 3. The nature or type of commodities or services purchased.

33 4. Applicable contract unit prices and deliverables.

34 (2) PUBLIC RECORDS EXEMPTION.—A trade secret held by an
35 agency is confidential and exempt from s. 119.07(1) and s.
36 24(a), Art. I of the State Constitution.

37 (3) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

38 (a) If a person who submits records to an agency claims
39 that the submission contains a trade secret, the person shall
40 submit to the agency a notice of trade secret when the records
41 are submitted to the agency. Failure to submit such notice
42 constitutes a waiver of any claim by such person that the
43 records contain a trade secret. The notice must provide the
44 name, telephone number, and mailing address of the person
45 claiming the records contain a trade secret. The person is
46 responsible for updating his or her contact information with the
47 agency.

48 (b) Each page of a record and specific portion of a record
49 that contains a trade secret must be clearly marked with the
50 words "trade secret."

51 (c) In submitting a notice of trade secret to the agency,
52 the submitting party shall verify to the agency through a
53 written declaration in the manner provided in s. 92.525 the
54 following:

55
56 ...(I have/my company has)... read the definition of a
57 trade secret in section 688.01, Florida Statutes, and ...(I
58 believe/my company believes)... the information contained in

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59 this record is a trade secret as defined in section 688.01,
60 Florida Statutes.

61 ...(I have/my company has)... taken measures to prevent the
62 disclosure of the record or specific portion of a record claimed
63 to be a trade secret to anyone other than those who have been
64 selected to have access for limited purposes, and ...(I
65 intend/my company intends)... to continue to take such measures.

66 The record or specific portion of a record claimed to be a
67 trade secret is not, and has not been, reasonably obtainable by
68 other persons through legitimate means without ...(my/our)...
69 consent.

70 The record or specific portion of a record claimed to be a
71 trade secret is not publicly available elsewhere.

72
73 (4) AGENCY ACCESS.—An agency may disclose a trade secret,
74 together with the notice of trade secret, to an officer or
75 employee of another agency or governmental entity whose use of
76 the trade secret is within the scope of his or her lawful duties
77 and responsibilities.

78 (5) LIABILITY.—An agency employee who, while acting in good
79 faith and in the performance of his or her duties, releases a
80 record containing a trade secret pursuant to this act is not
81 liable, civilly or criminally, for such release.

82 (6) APPLICABILITY.—This section does not apply to research
83 institutes created or established in law, divisions of sponsored
84 research at state universities, or technology transfer centers
85 at Florida College System institutions.

86 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
87 to the Open Government Sunset Review Act in accordance with s.

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88 119.15 and shall stand repealed on October 2, 2024, unless
89 reviewed and saved from repeal through reenactment by the
90 Legislature.

91 Section 2. Section 688.001, Florida Statutes, is amended to
92 read:

93 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
94 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

95 Section 3. Section 688.006, Florida Statutes, is amended to
96 read:

97 688.006 Preservation of secrecy.—In an action under ss.
98 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
99 secrecy of an alleged trade secret by reasonable means, which
100 may include granting protective orders in connection with
101 discovery proceedings, holding in camera hearings, sealing the
102 records of the action, and ordering any person involved in the
103 litigation not to disclose an alleged trade secret without prior
104 court approval.

105 Section 4. The Legislature finds that it is a public
106 necessity that trade secrets held by an agency be made
107 confidential and exempt from s. 119.07(1), Florida Statutes, and
108 s. 24(a), Article I of the State Constitution. The Legislature
109 recognizes that an agency may create trade secret information in
110 furtherance of the agency's duties and responsibilities and that
111 disclosure of such information would be detrimental to the
112 effective and efficient operation of the agency. If such trade
113 secret information were made available to the public, the agency
114 could suffer great economic harm. In addition, the Legislature
115 recognizes that in many instances, individuals and businesses
116 provide trade secret information for regulatory or other

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117 purposes to an agency and that disclosure of such information to
118 competitors of those businesses would be detrimental to the
119 businesses. Without the public records exemption, those entities
120 would hesitate to cooperate with an agency, which would impair
121 the effective and efficient administration of governmental
122 functions. As such, the Legislature's intent is to protect trade
123 secret information of a confidential nature which includes a
124 formula, pattern, compilation, program, device, method,
125 technique, or process used from which the owner derives
126 independent economic value, actual or potential, from the
127 information not being generally known to, and not being readily
128 ascertainable by proper means by, other persons who can obtain
129 economic value from its disclosure or use. Therefore, the
130 Legislature finds that the need to protect trade secrets is
131 sufficiently compelling to override this state's public policy
132 of open government and that the protection of such information
133 cannot be accomplished without this exemption.

134 Section 5. This act shall take effect on the same date that
135 SB 1416 or similar legislation takes effect, if such legislation
136 is adopted in the same legislative session or an extension
137 thereof and becomes a law.