

By the Committee on Commerce and Tourism; and Senator Richter

577-00706-16

2016180c1

A bill to be entitled

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

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

Section 1. Section 812.081, Florida Statutes, is amended to read:

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

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

(a) "Article" means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or

577-00706-16

2016180c1

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

53
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

577-00706-16

2016180c1

note, drawing, or sketch made of or from an article or part or portion thereof.

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

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

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

581.199 Confidential business information.—It is unlawful for any authorized representative who in an official capacity obtains under the provisions of this chapter any information entitled to protection as a trade secret, as defined in s. 812.081, to use that information for personal gain or to reveal it to any unauthorized person.

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

721.071 Trade secrets.—

577-00706-16

2016180c1

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

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

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

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

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

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same

577-00706-16

2016180c1

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 corporation
126 organized under the laws of the state or the revocation of a
127 certificate authorizing a foreign corporation to conduct
128 business within the state, upon finding that the board of
129 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, or

577-00706-16

2016180c1

any state agency having jurisdiction over conduct in violation of a provision of ss. 812.012-812.037 or s. 812.081 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(7) The state, including any of its agencies, instrumentalities, subdivisions, or municipalities, if it proves by clear and convincing evidence that it has been injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037 or s. 812.081, has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200 and shall also recover court costs and reasonable attorney's fees in the trial and appellate courts. In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support.

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

(10) Notwithstanding any other provision of law, a criminal

577-00706-16

2016180c1

175 or civil action or proceeding under ss. 812.012-812.037 or s.
176 812.081 may be commenced at any time within 5 years after the
177 cause of action accrues; however, in a criminal proceeding under
178 ss. 812.012-812.037 or s. 812.081, the period of limitation does
179 not run during any time when the defendant is continuously
180 absent from the state or is without a reasonably ascertainable
181 place of abode or work within the state, but in no case shall
182 this extend the period of limitation otherwise applicable by
183 more than 1 year. If a criminal prosecution or civil action or
184 other proceeding is brought, or intervened in, to punish,
185 prevent, or restrain any violation of the provisions of ss.
186 812.012-812.037 or s. 812.081, the running of the period of
187 limitations prescribed by this section with respect to any cause
188 of action arising under subsection (6) or subsection (7) which
189 is based in whole or in part upon any matter complained of in
190 any such prosecution, action, or proceeding shall be suspended
191 during the pendency of such prosecution, action, or proceeding
192 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.—

577-00706-16

2016180c1

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
209 electronic device commits an offense against intellectual
210 property.

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