

Criminal Justice Subcommittee

**Wednesday, September 16, 2015
10:30 AM – 12:30 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, September 16, 2015 10:30 am
End Date and Time: Wednesday, September 16, 2015 12:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 41 Discharge of Firearms on Residential Property by Combee, Rouson
HB 55 Trade Secrets by Pilon
HB 57 Public Records and Meetings/Trade Secrets by Pilon
HB 4001 Licenses to Carry Concealed Weapons or Firearms by Steube
HB 4003 Repeal of a Prohibition on Cohabitation by Rehwinkel Vasilinda, Stark

NOTICE FINALIZED on 09/09/2015 16:03 by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 41 Discharge of Firearms on Residential Property
SPONSOR(S): Combee and Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		White	White
2) Local & Federal Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

With respect to the discharge of a firearm in a residential area, s. 790.15, F.S., provides that it is a first degree misdemeanor for a person to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling or zoned exclusively for residential use. The bill amends this section to also provide that it is a first degree misdemeanor for a person to recreationally discharge a firearm outdoors in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. The bill specifies that "recreationally discharge" includes target shooting or celebratory shooting. The penalty does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm; or
- If, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

The bill may have a positive jail bed impact (i.e., increase the need for jail beds) because it creates a misdemeanor offense.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In recent Florida news articles, it has been reported that individuals have constructed “gun ranges” in the backyards of their homes.¹ In some cases, these individuals live in densely residential neighborhoods, resulting in safety concerns among residents. As discussed below, under current Florida statute, the lawfulness of such “gun ranges” depends on the circumstances surrounding the discharge of the firearm on the residential property, i.e., whether the discharge was reckless or negligent, and whether the range may be deemed a “sport shooting range” subject to a local government regulation, which may or may not exist depending on the locality, governing its construction or location.

Under s. 790.15(1), F.S., it is a first degree misdemeanor² for any person to recklessly or negligently discharge a firearm³ outdoors on any property used primarily as the site of a dwelling⁴ or zoned exclusively for residential use.⁵ The penalty does not apply to a person:

- Lawfully defending life or property;
- Performing official duties requiring the discharge of a firearm; or
- Discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.

Florida’s Standard Jury Instructions for Criminal Cases defines the term “recklessly” as “with a conscious and intentional indifference to consequences.”⁶ The term “negligently” is defined as “failing to use reasonable care under the circumstances.”⁷

Local government authority to regulate firearms and ammunition is restricted. The Legislature has preempted “the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof.”⁸ Based on this preemption, the Attorney General issued an opinion indicating that “... a county may not regulate the recreational discharge of firearms in residentially zoned areas when the discharge is not on a ‘shooting range,’ but merely recreational shooting on private property.”⁹

¹ See, e.g., *Backyard gun range concerns St. Pete neighbors*, <http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421/> (last visited September 9, 2015), and *Fla. law allows backyard shooting ranges*, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited September 9, 2015).

² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

³ Section 790.001(6), F.S., defines “firearm” as “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.”

⁴ The term “dwelling” is defined to mean “... a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.” ss. 776.013(5)(a) and 790.15(1), F.S.

⁵ Section 790.15, F.S., also provides that it is a: (a) first degree misdemeanor to knowingly discharge a firearm in any public place or on the right-of-way of any paved public road, highway, or street and to knowingly discharge any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises; (b) a second degree felony or any occupant of any vehicle to knowingly and willfully discharge any firearm from the vehicle within 1,000 feet of any person; and (c) a third degree felony for any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle.

⁶ FLA. STD. JURY INSTR. (Crim.) 10.6.

⁷ *Id.*

⁸ s. 790.33(1), F.S.

⁹ 11-17 Fla. Op. Att’y Gen. 1 (2011).

With respect to shooting ranges, the Legislature has preempted local government regulation of firearms and ammunition use at a “sport shooting and training range,”¹⁰ but has authorized local governments to regulate the location and construction of a “sport shooting range.”¹¹ The term “sport shooting range” is defined as “an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.”¹² Whether this definition may be construed to authorize local regulation of residential areas where firearms are routinely discharged is unclear. According to an Attorney General Opinion, the Legislature has indicated through statutorily codified intent language that a “sport shooting range,” is not merely any location where firearms are discharged; thus, a local government may not regulate the use of firearms anywhere simply by couching the regulation in terms of regulating a shooting range.¹³

Effect of the Bill

The bill amends s. 790.15, F.S., to provide that it is a first degree misdemeanor for a person to recreationally discharge a firearm outdoors in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. The bill specifies that “recreationally discharge” includes target shooting or celebratory shooting. The penalty does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm; or
- If, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.15, F.S., relating to discharging firearm in public or on residential property.

Section 2. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

¹⁰ The term “sport shooting and training range” means “any area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or any other type of sport or training shooting.” s. 790.33, F.S.

¹¹ s. 823.16(7), F.S.

¹² s. 823.16(1)(c), F.S.

¹³ 11-17 Fla. Op. Att’y Gen. 1 (2011).

The bill may have a positive jail bed impact, i.e., it may increase the need for jail beds, because it creates a misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits "recreational" discharges of a firearm. The modifying term "recreational" is undefined by the bill and, as such, if the law were challenged, a court may determine its meaning by reference to a dictionary.¹⁴ According to the online Merriam-Webster Dictionary, the term "recreational" means "done for enjoyment."¹⁵

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

¹⁴ *Rollins v. Pizzarelli*, 761 So.2d 294 (Fla. 2000).

¹⁵ Merriam-Webster Dictionary (September 10, 2015, 6:12 PM), <http://www.merriam-webster.com/dictionary/recreational>.

1 A bill to be entitled
 2 An act relating to the discharge of firearms on
 3 residential property; amending s. 790.15, F.S.;
 4 prohibiting the recreational discharge of a firearm in
 5 certain residential areas; providing criminal
 6 penalties; providing exceptions; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (4) is added to section 790.15,
 12 Florida Statutes, to read:

13 790.15 Discharging firearm in public or on residential
 14 property.-

15 (4) A person who recreationally discharges a firearm
 16 outdoors, including for target shooting or celebratory shooting,
 17 in an area that the person knows or reasonably should know is
 18 primarily residential in nature and that has a residential
 19 density of one or more dwelling units per acre commits a
 20 misdemeanor of the first degree, punishable as provided in s.
 21 775.082 or s. 775.083. This subsection does not apply:

22 (a) To a person lawfully defending life or property or
 23 performing official duties requiring the discharge of a firearm;
 24 or

25 (b) If, under the circumstances, the discharge does not
 26 pose a reasonably foreseeable risk to life, safety, or property.

HB 41

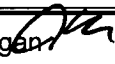

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27

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 55 Trade Secrets
SPONSOR(S): Pilon
TIED BILLS: HB 57 **IDEN./SIM. BILLS:** SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Keegan 	White 
2) Justice Appropriations Subcommittee			
3) Government Operations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill amends the definition of "trade secret" to mean "any scientific, technical, or commercial information, *including financial information,*" that otherwise qualifies as trade secret.

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the fiscal impact of this bill. However, during the 2015 Legislative Session, CJIC determined that CS/HB 91, which is substantively the same as this bill, would have a positive insignificant prison bed impact on the Department of Corrections.

This bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony¹ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret which is residing or existing internal or external to a computer, computer system, computer network, or electronic device.²
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing 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 a first degree misdemeanor³ for a designated employee, inspector, or collaborator of the Division of Plant Industry of the Department of Agriculture and Consumer Services 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;⁴ however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.⁵

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., as:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

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

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.⁶

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² 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.

³ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ ss. 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(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁵ ss. 721.071 and 812.035, F.S.

Effect of the Bill

The bill amends the definition of "trade secret" in s. 812.081(1)(c), F.S., to mean "any scientific, technical, or commercial information, *including financial information*, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof." As such, the criminal offenses described above will apply to a clarified list of trade secret information.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

Section 2. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, during the 2015 Legislative Session, CJIC determined that CS/HB 91, which is similar to this bill, would have a positive insignificant prison bed impact (i.e., an increase of 10 or fewer prison beds) on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

As noted above, s. 581.199, F.S., makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways. Because the bill clarifies the definition of "trade secret," it may increase the application of this offense, thereby creating a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill clarifies the definition of "trade secret" in s. 812.081, F.S., which is cross-referenced in numerous sections of statute. However, ss. 581.199, 721.071, 812.035, and 815.04, F.S., are not reenacted in this bill to incorporate the changes made to s. 812.081, F.S. Failing to reenact sections of statute that cross-reference s. 812.081, F.S., may lead to an outdated interpretation of such sections.⁷

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

⁷ See *Overstreet v. Blum*, 227 So.2d 197, 198 (Fla. 1969).

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; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 812.081, Florida Statutes, is amended
 11 to read:

12 812.081 Trade secrets; theft, embezzlement; unlawful
 13 copying; definitions; penalty.—

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

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

21 (b) "Representing" means completely or partially
 22 describing, depicting, embodying, containing, constituting,
 23 reflecting, or recording.

24 (c) "Trade secret" means the whole or any portion or phase
 25 of any formula, pattern, device, combination of devices, or
 26 compilation of information which is for use, or is used, in the

27 | operation of a business and which provides the business an
 28 | advantage, or an opportunity to obtain an advantage, over those
 29 | who do not know or use it. The term ~~"Trade secret"~~ includes any
 30 | scientific, technical, or commercial information, including
 31 | financial information, and includes any design, process,
 32 | procedure, list of suppliers, list of customers, business code,
 33 | or improvement thereof. Irrespective of novelty, invention,
 34 | patentability, the state of the prior art, and the level of
 35 | skill in the business, art, or field to which the subject matter
 36 | pertains, a trade secret is considered to be:

- 37 | 1. Secret;
- 38 | 2. Of value;
- 39 | 3. For use or in use by the business; and
- 40 | 4. Of advantage to the business, or providing an
 41 | opportunity to obtain an advantage, over those who do not know
 42 | or use it

43 |
 44 | when the owner thereof takes measures to prevent it from
 45 | becoming available to persons other than those selected by the
 46 | owner to have access thereto for limited purposes.

47 | (d) "Copy" means any facsimile, replica, photograph, or
 48 | other reproduction in whole or in part of an article and any
 49 | note, drawing, or sketch made of or from an article or part or
 50 | portion thereof.

51 | (2) Any person who, with intent to deprive or withhold
 52 | from the owner thereof the control of a trade secret, or with an

53 intent to appropriate a trade secret to his or her own use or to
54 the use of another, steals or embezzles an article representing
55 a trade secret or without authority makes or causes to be made a
56 copy of an article representing a trade secret commits ~~is guilty~~
57 ~~of~~ a felony of the third degree, punishable as provided in s.
58 775.082 or s. 775.083.

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

63 Section 2. This act shall take effect October 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Pilon offered the following:

Amendment (with title amendment)

Between lines 62 and 63, insert:

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

11 581.199 Confidential business information.—

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



Amendment No. 1

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

21 721.071 Trade secrets.—

22 (1) If a developer or any other person filing material
23 with the division pursuant to this chapter expects the division
24 to keep the material confidential on grounds that the material
25 constitutes a trade secret, as that term is defined in s.
26 812.081, the developer or other person shall file the material
27 together with an affidavit of confidentiality. "Filed material"
28 for purposes of this section shall mean material that is filed
29 with the division with the expectation that the material will be
30 kept confidential and that is accompanied by an affidavit of
31 confidentiality. Filed material that is trade secret information
32 includes, but is not limited to, service contracts relating to
33 the operation of reservation systems and those items and matters
34 described in s. 815.04(3).

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

40 812.035 Civil remedies; limitation on civil and criminal
41 actions.—



Amendment No. 1

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

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

48 (b) Imposing reasonable restrictions upon the future
49 activities or investments of any defendant, including, but not
50 limited to, prohibiting any defendant from engaging in the same
51 type of endeavor as the enterprise in which he or she was
52 engaged in violation of the provisions of ss. 812.012-812.037 or
53 s. 812.081.

54 (c) Ordering the dissolution or reorganization of any
55 enterprise.

56 (d) Ordering the suspension or revocation of any license,
57 permit, or prior approval granted to any enterprise by any
58 department or agency of the state.

59 (e) Ordering the forfeiture of the charter of a corporation
60 organized under the laws of the state or the revocation of a
61 certificate authorizing a foreign corporation to conduct
62 business within the state, upon finding that the board of
63 directors or a managerial agent acting on behalf of the
64 corporation, in conducting the affairs of the corporation, has
65 authorized or engaged in conduct in violation of ss. 812.012-
66 812.037 or s. 812.081 and that, for the prevention of future
67 criminal activity, the public interest requires the charter of



Amendment No. 1

68 the corporation forfeited and the corporation dissolved or the
69 certificate revoked.

70 (2) All property, real or personal, including money, used
71 in the course of, intended for use in the course of, derived
72 from, or realized through conduct in violation of a provision of
73 ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture
74 to the state. The state shall dispose of all forfeited property
75 as soon as commercially feasible. If property is not exercisable
76 or transferable for value by the state, it shall expire. All
77 forfeitures or dispositions under this section shall be made
78 with due provision for the rights of innocent persons.

79 (5) The Department of Legal Affairs, any state attorney, or
80 any state agency having jurisdiction over conduct in violation
81 of a provision of ss. 812.012-812.037 or s. 812.081 may
82 institute civil proceedings under this section. In any action
83 brought under this section, the circuit court shall proceed as
84 soon as practicable to the hearing and determination. Pending
85 final determination, the circuit court may at any time enter
86 such injunctions, prohibitions, or restraining orders, or take
87 such actions, including the acceptance of satisfactory
88 performance bonds, as the court may deem proper.

89 (7) The state, including any of its agencies,
90 instrumentalities, subdivisions, or municipalities, if it proves
91 by clear and convincing evidence that it has been injured in any
92 fashion by reason of any violation of the provisions of ss.
93 812.012-812.037 or s. 812.081, has a cause of action for



Amendment No. 1

94 threefold the actual damages sustained and, in any such action,
95 is entitled to minimum damages in the amount of \$200 and shall
96 also recover court costs and reasonable attorney's fees in the
97 trial and appellate courts. In no event shall punitive damages
98 be awarded under this section. The defendant shall be entitled
99 to recover reasonable attorney's fees and court costs in the
100 trial and appellate courts upon a finding that the claimant
101 raised a claim which was without substantial fact or legal
102 support.

103 (8) A final judgment or decree rendered in favor of the
104 state in any criminal proceeding under ss. 812.012-812.037 or s.
105 812.081 shall estop the defendant in any subsequent civil action
106 or proceeding as to all matters as to which such judgment or
107 decree would be an estoppel as between the parties.

108 (10) Notwithstanding any other provision of law, a criminal
109 or civil action or proceeding under ss. 812.012-812.037 or s.
110 812.081 may be commenced at any time within 5 years after the
111 cause of action accrues; however, in a criminal proceeding under
112 ss. 812.012-812.037 or s. 812.081, the period of limitation does
113 not run during any time when the defendant is continuously
114 absent from the state or is without a reasonably ascertainable
115 place of abode or work within the state, but in no case shall
116 this extend the period of limitation otherwise applicable by
117 more than 1 year. If a criminal prosecution or civil action or
118 other proceeding is brought, or intervened in, to punish,
119 prevent, or restrain any violation of the provisions of ss.



Amendment No. 1

120 812.012-812.037 or s. 812.081, the running of the period of
121 limitations prescribed by this section with respect to any cause
122 of action arising under subsection (6) or subsection (7) which
123 is based in whole or in part upon any matter complained of in
124 any such prosecution, action, or proceeding shall be suspended
125 during the pendency of such prosecution, action, or proceeding
126 and for 2 years following its termination.

127 (11) The application of one civil remedy under any
128 provision of ss. 812.012-812.037 or s. 812.081 shall not
129 preclude the application of any other remedy, civil or criminal,
130 under ss. 812.012-812.037 or s. 812.081 or any other section of
131 the Florida Statutes.

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

136 815.04 Offenses against intellectual property; public
137 records exemption.-

138 (4) A person who willfully, knowingly, and without
139 authorization discloses or takes data, programs, or supporting
140 documentation that is a trade secret as defined in s. 812.081 or
141 is confidential as provided by law residing or existing internal
142 or external to a computer, computer system, computer network, or
143 electronic device commits an offense against intellectual
144 property.

145



Amendment No. 1

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T I T L E A M E N D M E N T

Remove line 6 and insert:

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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 57 Public Records and Meetings/Trade Secrets

SPONSOR(S): Pilon

TIED BILLS: HB 55 **IDEN./SIM. BILLS:** SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Keegan <i>AK</i>	White <i>TW</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records. Many of these statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S.

HB 55, which is tied to this bill, expands the definition of the term "trade secret" contained in s. 812.081(1)(c), F.S., to include financial information.

This bill, which is linked to the passage of HB 55 or similar legislation, amends ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174(2), 381.83, 403.7046(2) and (3)(b), 403.73, 499.012(8)(g) and (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 601.10(8), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.04(6), and republishes 815.04(3) and (4), F.S., to incorporate the changes to the definition of "trade secret" made by HB 55. The sections provide public record exemptions for trade secret information. Thus, the bill amends those public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This bill is tied to HB 55, which clarifies the types of trade secret information that are exempt from public record disclosure. Together, the bills may have a positive fiscal impact on state and local government expenditures because they may require agencies to provide personnel training on the modified exemptions.

The bill will be effective on the same date HB 55 or similar legislation takes effect.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill amends public record exemptions for trade secret information; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:⁵

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Trade Secrets

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public record requirements. For example:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;⁸

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.

See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA

- Section 365.174(2), F.S., makes trade secret business information submitted to the E911 Board, the Technology Program within the Department of Management Services, and the Department of Revenue, confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- Section 499.931, F.S., makes trade secret information submitted to DBPR for medical gas permitting purposes confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8), F.S., makes any information held by the Department of Citrus (DOC) that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to DOC confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to DOC confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3) and (6), F.S., makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

The above-described statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S., which defines the term as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any *scientific, technical, or commercial information*, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;

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

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

House Bill 55

During the 2016 Legislative Session, HB 55, which is tied to this bill, amends the definition of “trade secret” contained in s. 812.081(1)(c), F.S., to include *financial information* that is contained or included in scientific, technical, or commercial information.

Effect of the Bill

The bill, which is linked to the passage of HB 55 or similar legislation, amends or publishes all of the above-described public record exemptions to incorporate the changes to the definition of “trade secret” in s. 812.081(1)(c), F.S., made by HB 55. Thus, the bill amends the public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071(1)(f), F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Amends s. 125.0104(9)(d), F.S., relating to tourist development tax; procedure for levying; authorized uses; referendum; enforcement.

Section 3. Amends s. 288.1226(8), F.S., relating to Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.

Section 4. Amends s. 331.326, F.S., relating to information relating to trade secrets confidential.

Section 5. Amends s. 365.174(2), F.S., relating to proprietary confidential business information.

Section 6. Amends s. 381.83, F.S., relating to trade secrets; confidentiality.

Section 7. Amends s. 403.7046(2) and (3)(b), F.S., relating to regulation of recovered materials.

Section 8. Amends s. 403.73, F.S., relating to trade secrets; confidentiality.

Section 9. Amends s. 499.012(8)(g) and (m), F.S., relating to permit application requirements.

Section 10. Amends s. 499.0121(7), F.S., relating to storage and handling of prescription drugs; recordkeeping.

Section 11. Amends s. 499.051(7), F.S., relating to inspections and investigations.

Section 12. Amends s. 499.931, F.S., relating to trade secret information.

Section 13. Amends s. 502.222, F.S., relating to information relating to trade secrets confidential.

Section 14. Amends s. 570.48(3), F.S., relating to Division of Fruit and Vegetables; powers and duties; records.

Section 15. Amends s. 573.123(2), F.S., relating to maintenance and production of records.

Section 16. Amends s. 601.10(8), F.S., relating to powers of the Department of Citrus.

Section 17. Amends s. 601.15(7)(d), F.S., relating to advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.

Section 18. Amends s. 601.152(8)(c), F.S., relating to special marketing orders.

Section 19. Amends s. 601.76, F.S., relating to manufacturer to furnish formula and other information.

Section 20. Publishes s. 815.04(3), (4), and amends subsection (6), F.S., relating to offenses against intellectual property; public records exemption.

Section 21. Provides a public necessity statement.

Section 22. Provides an effective date that is the same date as HB 55 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

This bill is tied to HB 55, which amends an existing category of trade secret information that is confidential or exempt from public record requirements. Together, the bills may have a minimal positive impact on state government expenditures because they may require agencies to provide personnel training on the amended exemptions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill is tied to HB 55, which amends an existing category of trade secret information that is confidential or exempt from public record requirements. Together, the bills may have a minimal positive impact on local government expenditures because they may require agencies to provide personnel training on expanded exemptions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill amends current public record exemptions for trade secret information; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill amends current public record exemptions for trade secret information; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill amends the definition of trade secrets that qualify for specified public record exemptions. The exemption does not appear to be in conflict with the constitutional requirement that the exemptions be no more broad than necessary to accomplish its purpose.

Content Restriction

Article I, section 24(c) of the Florida Constitution requires that a bill containing public record exemptions must *only* contain public record exemptions. The bill publishes s. 815.04(4), F.S., which creates a criminal prohibition rather than a public record exemption. Including this subsection within the bill may violate the constitutional requirement that the bill contain only public record exemptions.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 55, which is tied to this bill, clarifies the definition of "trade secret" in s. 812.081, F.S., which is cross-referenced in numerous sections of statute. Failing to reenact sections of statute that cross-reference s. 812.081, F.S., may lead to an outdated interpretation of such sections.⁹ This bill *publishes*, rather than *reenacts*, subsections (3) and (4) of s. 815.04, F.S., and therefore, may not properly incorporate the changes made to s. 812.081, F.S.

Section 365.174(3), F.S., cross-references s. 812.081, F.S., but is not reenacted in this bill to incorporate the changes made to s. 812.081, F.S. As noted above, failing to reenact sections of statute that cross-reference s. 812.081, F.S., may lead to an outdated interpretation of such sections.

⁹ See *Overstreet v. Blum*, 227 So.2d 197, 198 (Fla. 1969).

As noted under Constitutional Issues, including s. 815.04(4), F.S., in the bill may violate the constitutional requirement that the bill contain only public record exemptions. This subsection may be properly reenacted in HB 55 to incorporate the changes made by HB 55 to s. 812.081, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

27 Department of Agriculture and Consumer Services, trade
 28 secret information provided to the Department of
 29 Citrus, trade secret information of noncommodity
 30 advertising and promotional program participants held
 31 by the Department of Citrus, trade secret information
 32 of a person subject to a marketing order held by the
 33 Department of Citrus, a manufacturer's formula filed
 34 with the Department of Agriculture and Consumer
 35 Services, and specified data, programs, or supporting
 36 documentation held by an agency, respectively, to
 37 incorporate changes made to the definition of the term
 38 "trade secret" in s. 812.081, F.S., by HB 55;
 39 expanding a public meeting exemption for any meeting
 40 or portion of a meeting of Space Florida's board at
 41 which trade secrets are discussed to incorporate
 42 changes made to the definition of the term "trade
 43 secret" in s. 812.081, F.S., by HB 55; providing for
 44 future legislative review and repeal of the
 45 exemptions; providing a statement of public necessity;
 46 providing a contingent effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Paragraph (f) of subsection (1) of section
 51 119.071, Florida Statutes, is amended to read:

52 119.071 General exemptions from inspection or copying of

53 public records.—

54 (1) AGENCY ADMINISTRATION.—

55 (f) Data processing software obtained by an agency under a
 56 licensing agreement that prohibits its disclosure and which
 57 software is a trade secret, as defined in s. 812.081, and
 58 agency-produced data processing software that is sensitive are
 59 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 60 Constitution. The designation of agency-produced software as
 61 sensitive does ~~shall~~ not prohibit an agency head from sharing or
 62 exchanging such software with another public agency. This
 63 paragraph is subject to the Open Government Sunset Review Act in
 64 accordance with s. 119.15 and shall stand repealed on October 2,
 65 2021, unless reviewed and saved from repeal through reenactment
 66 by the Legislature.

67 Section 2. Paragraph (d) of subsection (9) of section
 68 125.0104, Florida Statutes, is amended to read:

69 125.0104 Tourist development tax; procedure for levying;
 70 authorized uses; referendum; enforcement.—

71 (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any
 72 other powers and duties provided for agencies created for the
 73 purpose of tourism promotion by a county levying the tourist
 74 development tax, such agencies are authorized and empowered to:

75 (d) Undertake marketing research and advertising research
 76 studies and provide reservations services and convention and
 77 meetings booking services consistent with the authorized uses of
 78 revenue as set forth in subsection (5).

79 1. Information given to a county tourism promotion agency
 80 which, if released, would reveal the identity of persons or
 81 entities who provide data or other information as a response to
 82 a sales promotion effort, an advertisement, or a research
 83 project or whose names, addresses, meeting or convention plan
 84 information or accommodations or other visitation needs become
 85 booking or reservation list data, is exempt from s. 119.07(1)
 86 and ~~from~~ s. 24(a), Art. I of the State Constitution.

87 2. The following information, when held by a county
 88 tourism promotion agency, is exempt from s. 119.07(1) and ~~from~~
 89 s. 24(a), Art. I of the State Constitution:

- 90 ~~a. A trade secret, as defined in s. 812.081.~~
- 91 a.b. Booking business records, as defined in s. 255.047.
- 92 b.e. Trade secrets and commercial or financial information
 93 gathered from a person and privileged or confidential, as
 94 defined and interpreted under 5 U.S.C. s. 552(b)(4), or any
 95 amendments thereto.

96 3. A trade secret, as defined in s. 812.081, held by a
 97 county tourism promotion agency is exempt from s. 119.07(1) and
 98 s. 24(a), Art. I of the State Constitution. This subparagraph is
 99 subject to the Open Government Sunset Review Act in accordance
 100 with s. 119.15 and shall stand repealed on October 2, 2021,
 101 unless reviewed and saved from repeal through reenactment by the
 102 Legislature.

103 Section 3. Subsection (8) of section 288.1226, Florida
 104 Statutes, is amended to read:

105 288.1226 Florida Tourism Industry Marketing Corporation;
 106 use of property; board of directors; duties; audit.-

107 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person
 108 who responds to a marketing project or advertising research
 109 project conducted by the corporation in the performance of its
 110 duties on behalf of Enterprise Florida, Inc., or trade secrets
 111 as defined by s. 812.081 obtained pursuant to such activities,
 112 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 113 Constitution. This subsection is subject to the Open Government
 114 Sunset Review Act in accordance with s. 119.15 and shall stand
 115 repealed on October 2, 2021, unless reviewed and saved from
 116 repeal through reenactment by the Legislature.

117 Section 4. Section 331.326, Florida Statutes, is amended
 118 to read:

119 331.326 Information relating to trade secrets
 120 confidential.—The records of Space Florida regarding matters
 121 encompassed by this act are public records subject to ~~the~~
 122 ~~provisions of~~ chapter 119. Any information held by Space Florida
 123 which is a trade secret, as defined in s. 812.081, including
 124 trade secrets of Space Florida, any spaceport user, or the space
 125 industry business, is confidential and exempt from ~~the~~
 126 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 127 Constitution and may not be disclosed. If Space Florida
 128 determines that any information requested by the public will
 129 reveal a trade secret, it shall, in writing, inform the person
 130 making the request of that determination. The determination is a

131 final order as defined in s. 120.52. Any meeting or portion of a
 132 meeting of Space Florida's board is exempt from ~~the provisions~~
 133 ~~of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution
 134 when the board is discussing trade secrets. Any public record
 135 generated during the closed portions of the meetings, such as
 136 minutes, tape recordings, and notes, is confidential and exempt
 137 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
 138 State Constitution. This section is subject to the Open
 139 Government Sunset Review Act in accordance with s. 119.15 and
 140 shall stand repealed on October 2, 2021, unless reviewed and
 141 saved from repeal through reenactment by the Legislature.

142 Section 5. Subsection (2) of section 365.174, Florida
 143 Statutes, is amended to read:

144 365.174 Proprietary confidential business information.—

145 (2) (a) All proprietary confidential business information
 146 submitted by a provider to the Department of Revenue, as an
 147 agent of the board, is confidential and exempt from s. 119.07(1)
 148 and s. 24(a), Art. I of the State Constitution.

149 (b) The Department of Revenue may provide information
 150 relative to s. 365.172(9) to the Secretary of Management
 151 Services, or his or her authorized agent, or to the E911 Board
 152 established in s. 365.172(5) for use in the conduct of the
 153 official business of the Department of Management Services or
 154 the E911 Board.

155 (c) This subsection is subject to the Open Government
 156 Sunset Review Act in accordance with s. 119.15 and shall stand

157 repealed on October 2, 2021 ~~2019~~, unless reviewed and saved from
 158 repeal through reenactment by the Legislature.

159 Section 6. Section 381.83, Florida Statutes, is amended to
 160 read:

161 381.83 Trade secrets; confidentiality.-

162 (1) Records, reports, or information obtained from any
 163 person under this chapter, unless otherwise provided by law,
 164 shall be available to the public, except upon a showing
 165 satisfactory to the department by the person from whom the
 166 records, reports, or information is obtained that such records,
 167 reports, or information, or a particular part thereof, contains
 168 trade secrets as defined in s. 812.081 ~~812.081(1)(c)~~. Such trade
 169 secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the~~
 170 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 171 Constitution. The person submitting such trade secret
 172 information to the department must request that it be kept
 173 confidential and must inform the department of the basis for the
 174 claim of trade secret. The department shall, subject to notice
 175 and opportunity for hearing, determine whether the information,
 176 or portions thereof, claimed to be a trade secret is or is not a
 177 trade secret. Such trade secrets may be disclosed, however, to
 178 authorized representatives of the department or, pursuant to
 179 request, to other governmental entities in order for them to
 180 properly perform their duties, or when relevant in any
 181 proceeding under this chapter. Authorized representatives and
 182 other governmental entities receiving such trade secret

183 information shall retain its confidentiality. Those involved in
 184 any proceeding under this chapter, including a hearing officer
 185 or judge or justice, shall retain the confidentiality of any
 186 trade secret information revealed at such proceeding.

187 (2) This section is subject to the Open Government Sunset
 188 Review Act in accordance with s. 119.15 and shall stand repealed
 189 on October 2, 2021, unless reviewed and saved from repeal
 190 through reenactment by the Legislature.

191 Section 7. Subsection (2) and paragraph (b) of subsection
 192 (3) of section 403.7046, Florida Statutes, are amended to read:
 193 403.7046 Regulation of recovered materials.—

194 (2) Information reported pursuant to ~~the requirements of~~
 195 this section or any rule adopted pursuant to this section which,
 196 if disclosed, would reveal a trade secret, as defined in s.
 197 812.081 ~~812.081(1)(c)~~, is confidential and exempt from ~~the~~
 198 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 199 Constitution. For reporting or information purposes, however,
 200 the department may provide this information in such form that
 201 the names of the persons reporting such information and the
 202 specific information reported are not revealed. This subsection
 203 is subject to the Open Government Sunset Review Act in
 204 accordance with s. 119.15 and shall stand repealed on October 2,
 205 2021, unless reviewed and saved from repeal through reenactment
 206 by the Legislature.

207 (3) Except as otherwise provided in this section or
 208 pursuant to a special act in effect on or before January 1,

209 | 1993, a local government may not require a commercial
 210 | establishment that generates source-separated recovered
 211 | materials to sell or otherwise convey its recovered materials to
 212 | the local government or to a facility designated by the local
 213 | government, nor may the local government restrict such a
 214 | generator's right to sell or otherwise convey such recovered
 215 | materials to any properly certified recovered materials dealer
 216 | who has satisfied the requirements of this section. A local
 217 | government may not enact any ordinance that prevents such a
 218 | dealer from entering into a contract with a commercial
 219 | establishment to purchase, collect, transport, process, or
 220 | receive source-separated recovered materials.

221 | (b)1. Before engaging in business within the jurisdiction
 222 | of the local government, a recovered materials dealer must
 223 | provide the local government with a copy of the certification
 224 | provided for in this section. In addition, the local government
 225 | may establish a registration process whereby a recovered
 226 | materials dealer must register with the local government before
 227 | engaging in business within the jurisdiction of the local
 228 | government. Such registration process is limited to requiring
 229 | the dealer to register its name, including the owner or operator
 230 | of the dealer, and, if the dealer is a business entity, its
 231 | general or limited partners, its corporate officers and
 232 | directors, its permanent place of business, evidence of its
 233 | certification under this section, and a certification that the
 234 | recovered materials will be processed at a recovered materials

235 processing facility satisfying the requirements of this section.
 236 The local government may not use the information provided in the
 237 registration application to compete unfairly with the recovered
 238 materials dealer until 90 days after receipt of the application.
 239 All counties, and municipalities whose population exceeds 35,000
 240 according to the population estimates determined pursuant to s.
 241 186.901, may establish a reporting process that ~~which~~ shall be
 242 limited to the regulations, reporting format, and reporting
 243 frequency established by the department pursuant to this
 244 section, which shall, at a minimum, include requiring the dealer
 245 to identify the types and approximate amount of recovered
 246 materials collected, recycled, or reused during the reporting
 247 period; the approximate percentage of recovered materials
 248 reused, stored, or delivered to a recovered materials processing
 249 facility or disposed of in a solid waste disposal facility; and
 250 the locations where any recovered materials were disposed of as
 251 solid waste. ~~Information reported under this subsection which,~~
 252 ~~if disclosed, would reveal a trade secret, as defined in s.~~
 253 ~~812.081(1)(c), is confidential and exempt from the provisions of~~
 254 ~~s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The
 255 local government may charge the dealer a registration fee
 256 commensurate with and no greater than the cost incurred by the
 257 local government in operating its registration program.
 258 Registration program costs are limited to those costs associated
 259 with the activities described in this subparagraph ~~paragraph~~.
 260 Any reporting or registration process established by a local

261 government with regard to recovered materials shall be governed
 262 by ~~the provisions of~~ this section and department rules adopted
 263 pursuant thereto.

264 2. Information reported under this subsection which, if
 265 disclosed, would reveal a trade secret, as defined in s.
 266 812.081, is confidential and exempt from s. 119.07(1) and s.
 267 24(a), Art. I of the State Constitution. This subparagraph is
 268 subject to the Open Government Sunset Review Act in accordance
 269 with s. 119.15 and shall stand repealed on October 2, 2021,
 270 unless reviewed and saved from repeal through reenactment by the
 271 Legislature.

272 Section 8. Section 403.73, Florida Statutes, is amended to
 273 read:

274 403.73 Trade secrets; confidentiality.—

275 (1) Records, reports, or information obtained from any
 276 person under this part, unless otherwise provided by law, shall
 277 be available to the public, except upon a showing satisfactory
 278 to the department by the person from whom the records, reports,
 279 or information is obtained that such records, reports, or
 280 information, or a particular part thereof, contains trade
 281 secrets as defined in s. 812.081 ~~812.081(1)(c)~~. Such trade
 282 secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the~~
 283 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 284 Constitution. The person submitting such trade secret
 285 information to the department must request that it be kept
 286 confidential and must inform the department of the basis for the

287 claim of trade secret. The department shall, subject to notice
 288 and opportunity for hearing, determine whether the information,
 289 or portions thereof, claimed to be a trade secret is or is not a
 290 trade secret. Such trade secrets may be disclosed, however, to
 291 authorized representatives of the department or, pursuant to
 292 request, to other governmental entities in order for them to
 293 properly perform their duties, or when relevant in any
 294 proceeding under this part. Authorized representatives and other
 295 governmental entities receiving such trade secret information
 296 shall retain its confidentiality. Those involved in any
 297 proceeding under this part, including an administrative law
 298 judge, a hearing officer, or a judge or justice, shall retain
 299 the confidentiality of any trade secret information revealed at
 300 such proceeding.

301 (2) This section is subject to the Open Government Sunset
 302 Review Act in accordance with s. 119.15 and shall stand repealed
 303 on October 2, 2021, unless reviewed and saved from repeal
 304 through reenactment by the Legislature.

305 Section 9. Paragraphs (g) and (m) of subsection (8) of
 306 section 499.012, Florida Statutes, are amended to read:

307 499.012 Permit application requirements.—

308 (8) An application for a permit or to renew a permit for a
 309 prescription drug wholesale distributor or an out-of-state
 310 prescription drug wholesale distributor submitted to the
 311 department must include:

312 (g)1. For an application for a new permit, the estimated

313 annual dollar volume of prescription drug sales of the
 314 applicant, the estimated annual percentage of the applicant's
 315 total company sales that are prescription drugs, the applicant's
 316 estimated annual total dollar volume of purchases of
 317 prescription drugs, and the applicant's estimated annual total
 318 dollar volume of prescription drug purchases directly from
 319 manufacturers.

320 2. For an application to renew a permit, the total dollar
 321 volume of prescription drug sales in the previous year, the
 322 total dollar volume of prescription drug sales made in the
 323 previous 6 months, the percentage of total company sales that
 324 were prescription drugs in the previous year, the total dollar
 325 volume of purchases of prescription drugs in the previous year,
 326 and the total dollar volume of prescription drug purchases
 327 directly from manufacturers in the previous year.

328 3. Such portions of the information required pursuant to
 329 this paragraph which are a trade secret, as defined in s.
 330 812.081, shall be maintained by the department as trade secret
 331 information is required to be maintained under s. 499.051. This
 332 subparagraph is subject to the Open Government Sunset Review Act
 333 in accordance with s. 119.15 and shall stand repealed on October
 334 2, 2021, unless reviewed and saved from repeal through
 335 reenactment by the Legislature.

336 (m) For an applicant that is a secondary wholesale
 337 distributor, each of the following:

338 1. A personal background information statement containing

339 the background information and fingerprints required pursuant to
 340 subsection (9) for each person named in the applicant's response
 341 to paragraphs (k) and (l) and for each affiliated party of the
 342 applicant.

343 2. If any of the five largest shareholders of the
 344 corporation seeking the permit is a corporation, the name,
 345 address, and title of each corporate officer and director of
 346 each such corporation; the name and address of such corporation;
 347 the name of such corporation's resident agent, such
 348 corporation's resident agent's address, and such corporation's
 349 state of its incorporation; and the name and address of each
 350 shareholder of such corporation that owns 5 percent or more of
 351 the stock of such corporation.

352 3.a. The name and address of all financial institutions in
 353 which the applicant has an account that ~~which~~ is used to pay for
 354 the operation of the establishment or to pay for drugs purchased
 355 for the establishment, together with the names of all persons
 356 who ~~that~~ are authorized signatories on such accounts.

357 b. The portions of the information required pursuant to
 358 this subparagraph which are a trade secret, as defined in s.
 359 812.081, shall be maintained by the department as trade secret
 360 information is required to be maintained under s. 499.051. This
 361 sub-subparagraph is subject to the Open Government Sunset Review
 362 Act in accordance with s. 119.15 and shall stand repealed on
 363 October 2, 2021, unless reviewed and saved from repeal through
 364 reenactment by the Legislature.

365 4. The sources of all funds and the amounts of such funds
 366 used to purchase or finance purchases of prescription drugs or
 367 to finance the premises on which the establishment is to be
 368 located.

369 5. If any of the funds identified in subparagraph 4. were
 370 borrowed, copies of all promissory notes or loans used to obtain
 371 such funds.

372 Section 10. Subsection (7) of section 499.0121, Florida
 373 Statutes, is amended to read:

374 499.0121 Storage and handling of prescription drugs;
 375 recordkeeping.—The department shall adopt rules to implement
 376 this section as necessary to protect the public health, safety,
 377 and welfare. Such rules shall include, but not be limited to,
 378 requirements for the storage and handling of prescription drugs
 379 and for the establishment and maintenance of prescription drug
 380 distribution records.

381 (7) PRESCRIPTION DRUG PURCHASE LIST.—

382 (a) Each wholesale distributor, except for a manufacturer,
 383 shall annually provide the department with a written list of all
 384 wholesale distributors and manufacturers from whom the wholesale
 385 distributor purchases prescription drugs. A wholesale
 386 distributor, except a manufacturer, shall notify the department
 387 not later than 10 days after any change to either list.

388 (b) Such portions of the information required pursuant to
 389 this subsection which are a trade secret, as defined in s.
 390 812.081, shall be maintained by the department as trade secret

391 information is required to be maintained under s. 499.051. This
 392 paragraph is subject to the Open Government Sunset Review Act in
 393 accordance with s. 119.15 and shall stand repealed on October 2,
 394 2021, unless reviewed and saved from repeal through reenactment
 395 by the Legislature.

396 Section 11. Subsection (7) of section 499.051, Florida
 397 Statutes, is amended to read:

398 499.051 Inspections and investigations.—

399 (7)(a) The complaint and all information obtained pursuant
 400 to the investigation by the department are confidential and
 401 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 402 Constitution until the investigation and the enforcement action
 403 are completed.

404 (b) Information that constitutes a ~~However,~~ trade secret,
 405 as defined in s. 812.081, information contained in the complaint
 406 and all information obtained by the department pursuant to the
 407 investigation therein as defined by s. 812.081(1)(c) shall
 408 remain confidential and exempt from ~~the provisions of~~ s.
 409 119.07(1) and s. 24(a), Art. I of the State Constitution, as
 410 long as the information is retained by the department. This
 411 paragraph is subject to the Open Government Sunset Review Act in
 412 accordance with s. 119.15 and shall stand repealed on October 2,
 413 2021, unless reviewed and saved from repeal through reenactment
 414 by the Legislature.

415 (c) This subsection does not prohibit the department from
 416 using such information for regulatory or enforcement proceedings

417 under this chapter or from providing such information to any law
 418 enforcement agency or any other regulatory agency. However, the
 419 receiving agency shall keep such records confidential and exempt
 420 as provided in this subsection. In addition, this subsection is
 421 not intended to prevent compliance with ~~the provisions of s.~~
 422 499.01212, and the pedigree papers required in that section are
 423 ~~shall~~ not be deemed a trade secret.

424 Section 12. Section 499.931, Florida Statutes, is amended
 425 to read:

426 499.931 Trade secret information.—Information required to
 427 be submitted under this part which is a trade secret as defined
 428 in s. 812.081 ~~812.081(1)(c)~~ and designated as a trade secret by
 429 an applicant or permit holder must be maintained as required
 430 under s. 499.051. This section is subject to the Open Government
 431 Sunset Review Act in accordance with s. 119.15 and shall stand
 432 repealed on October 2, 2021, unless reviewed and saved from
 433 repeal through reenactment by the Legislature.

434 Section 13. Section 502.222, Florida Statutes, is amended
 435 to read:

436 502.222 Information relating to trade secrets
 437 confidential.—The records of the department regarding matters
 438 encompassed by this chapter are public records, subject to ~~the~~
 439 ~~provisions of~~ chapter 119, except that any information that
 440 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of
 441 a dairy industry business is confidential and exempt from ~~the~~
 442 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State

443 Constitution. If the department determines that any information
 444 requested by the public will reveal a trade secret, it shall, in
 445 writing, inform the person making the request of that
 446 determination. The determination is a final order as defined in
 447 s. 120.52. This section is subject to the Open Government Sunset
 448 Review Act in accordance with s. 119.15 and shall stand repealed
 449 on October 2, 2021, unless reviewed and saved from repeal
 450 through reenactment by the Legislature.

451 Section 14. Subsection (3) of section 570.48, Florida
 452 Statutes, is amended to read:

453 570.48 Division of Fruit and Vegetables; powers and
 454 duties; records.—The duties of the Division of Fruit and
 455 Vegetables include, but are not limited to:

456 (3) Maintaining the records of the division. The records
 457 of the division are public records; however, trade secrets as
 458 defined in s. 812.081 are confidential and exempt from ~~the~~
 459 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 460 Constitution. This subsection is subject to the Open Government
 461 Sunset Review Act in accordance with s. 119.15 and shall stand
 462 repealed on October 2, 2021, unless reviewed and saved from
 463 repeal through reenactment by the Legislature. This section may
 464 ~~shall~~ not be construed to prohibit:

465 (a) A disclosure necessary to enforcement procedures.

466 (b) The department from releasing information to other
 467 governmental agencies. Other governmental agencies that receive
 468 confidential information from the department under this

469 subsection shall maintain the confidentiality of that
 470 information.

471 (c) The department or other agencies from compiling and
 472 publishing appropriate data regarding procedures, yield,
 473 recovery, quality, and related matters, provided such released
 474 data do not reveal by whom the activity to which the data relate
 475 was conducted.

476 Section 15. Subsection (2) of section 573.123, Florida
 477 Statutes, is amended to read:

478 573.123 Maintenance and production of records.—

479 (2) Information that, if disclosed, would reveal a trade
 480 secret, as defined in s. 812.081, of any person subject to a
 481 marketing order is confidential and exempt from ~~the provisions~~
 482 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
 483 and may ~~shall~~ not be disclosed except to an attorney who
 484 provides legal advice to the division about enforcing a
 485 marketing market order or by court order. A person who receives
 486 confidential information under this subsection shall maintain
 487 the confidentiality of that information. This subsection is
 488 subject to the Open Government Sunset Review Act in accordance
 489 with s. 119.15 and shall stand repealed on October 2, 2021,
 490 unless reviewed and saved from repeal through reenactment by the
 491 Legislature.

492 Section 16. Subsection (8) of section 601.10, Florida
 493 Statutes, is amended to read:

494 601.10 Powers of the Department of Citrus.—The department

495 shall have and shall exercise such general and specific powers
 496 as are delegated to it by this chapter and other statutes of the
 497 state, which powers shall include, but are not limited to, the
 498 following:

499 (8) (a) To prepare and disseminate information of
 500 importance to citrus growers, handlers, shippers, processors,
 501 and industry-related and interested persons and organizations
 502 relating to department activities and the production, handling,
 503 shipping, processing, and marketing of citrus fruit and
 504 processed citrus products. ~~Any information that constitutes a~~
 505 ~~trade secret as defined in s. 812.081(1)(c) is confidential and~~
 506 ~~exempt from s. 119.07(1) and shall not be disclosed.~~ For
 507 referendum and other notice and informational purposes, the
 508 department may prepare and maintain, from the best available
 509 sources, a citrus grower mailing list. Such list shall be a
 510 public record available as other public records, but is it shall
 511 ~~not be~~ subject to the purging provisions of s. 283.55.

512 (b) Any information provided to the department which
 513 constitutes a trade secret as defined in s. 812.081 is
 514 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 515 of the State Constitution. This paragraph is subject to the Open
 516 Government Sunset Review Act in accordance with s. 119.15 and
 517 shall stand repealed on October 2, 2021, unless reviewed and
 518 saved from repeal through reenactment by the Legislature.

519 (c) ~~(b)~~ Any nonpublished reports or data related to studies
 520 or research conducted, caused to be conducted, or funded by the

521 department under s. 601.13 is confidential and exempt from s.
 522 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 523 paragraph is subject to the Open Government Sunset Review Act in
 524 accordance with s. 119.15 and shall stand repealed on October 2,
 525 2017, unless reviewed and saved from repeal through reenactment
 526 by the Legislature.

527 Section 17. Paragraph (d) of subsection (7) of section
 528 601.15, Florida Statutes, is amended to read:

529 601.15 Advertising campaign; methods of conducting;
 530 assessments; emergency reserve fund; citrus research.—

531 (7) All assessments levied and collected under this
 532 chapter shall be paid into the State Treasury on or before the
 533 15th day of each month. Such moneys shall be accounted for in a
 534 special fund to be designated as the Florida Citrus Advertising
 535 Trust Fund, and all moneys in such fund are appropriated to the
 536 department for the following purposes:

537 (d)1. The pro rata portion of moneys allocated to each
 538 type of citrus product in noncommodity programs shall be used by
 539 the department to encourage substantial increases in the
 540 effectiveness, frequency, and volume of noncommodity
 541 advertising, merchandising, publicity, and sales promotion of
 542 such citrus products through rebates and incentive payments to
 543 handlers and trade customers for these activities. The
 544 department shall adopt rules providing for the use of such
 545 moneys. The rules shall establish alternate incentive programs,
 546 including at least one incentive program for product sold under

547 advertised brands, one incentive program for product sold under
 548 private label brands, and one incentive program for product sold
 549 in bulk. For each incentive program, the rules shall establish
 550 eligibility and performance requirements and shall provide
 551 appropriate limitations on amounts payable to a handler or trade
 552 customer for a particular season. Such limitations may relate to
 553 the amount of citrus assessments levied and collected on the
 554 citrus product handled by such handler or trade customer during
 555 a 12-month representative period.

556 2. The department may require from participants in
 557 noncommodity advertising and promotional programs commercial
 558 information necessary to determine eligibility for and
 559 performance in such programs. Any information ~~so~~ required which
 560 ~~that~~ constitutes a "trade secret" as defined in s. 812.081 is
 561 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 562 of the State Constitution. This subparagraph is subject to the
 563 Open Government Sunset Review Act in accordance with s. 119.15
 564 and shall stand repealed on October 2, 2021, unless reviewed and
 565 saved from repeal through reenactment by the Legislature.

566 Section 18. Paragraph (c) of subsection (8) of section
 567 601.152, Florida Statutes, is amended to read:

568 601.152 Special marketing orders.—

569 (8)

570 (c)1. Every handler shall, at such times as the department
 571 may require, file with the department a return, not under oath,
 572 on forms to be prescribed and furnished by the department,

573 certified as true and correct, stating the quantity of the type,
 574 variety, and form of citrus fruit or citrus product specified in
 575 the marketing order first handled in the primary channels of
 576 trade in the state by such handler during the period of time
 577 specified in the marketing order. Such returns shall contain any
 578 further information deemed by the department to be reasonably
 579 necessary to properly administer or enforce this section or any
 580 marketing order implemented under this section.

581 2. Information that, if disclosed, would reveal a trade
 582 secret, as defined in s. 812.081, of any person subject to a
 583 marketing order is confidential and exempt from s. 119.07(1) and
 584 s. 24(a), Art. I of the State Constitution. This subparagraph is
 585 subject to the Open Government Sunset Review Act in accordance
 586 with s. 119.15 and shall stand repealed on October 2, 2021,
 587 unless reviewed and saved from repeal through reenactment by the
 588 Legislature.

589 Section 19. Section 601.76, Florida Statutes, is amended
 590 to read:

591 601.76 Manufacturer to furnish formula and other
 592 information.—Any formula required to be filed with the
 593 Department of Agriculture shall be deemed a trade secret as
 594 defined in s. 812.081, is confidential and exempt from s.
 595 119.07(1) and s. 24(a), Art. I of the State Constitution, and
 596 shall only be divulged to the Department of Agriculture or to
 597 its duly authorized representatives or upon court order ~~orders~~
 598 ~~of a court of competent jurisdiction~~ when necessary in the

599 enforcement of this law. A person who receives such a formula
 600 from the Department of Agriculture under this section shall
 601 maintain the confidentiality of the formula. This section is
 602 subject to the Open Government Sunset Review Act in accordance
 603 with s. 119.15 and shall stand repealed on October 2, 2021,
 604 unless reviewed and saved from repeal through reenactment by the
 605 Legislature.

606 Section 20. Subsection (6) of section 815.04, Florida
 607 Statutes, is amended, and subsections (3) and (4) of that
 608 section are published, to read:

609 815.04 Offenses against intellectual property; public
 610 records exemption.-

611 (3) Data, programs, or supporting documentation that is a
 612 trade secret as defined in s. 812.081, that is held by an agency
 613 as defined in chapter 119, and that resides or exists internal
 614 or external to a computer, computer system, computer network, or
 615 electronic device is confidential and exempt from the provisions
 616 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

617 (4) A person who willfully, knowingly, and without
 618 authorization discloses or takes data, programs, or supporting
 619 documentation that is a trade secret as defined in s. 812.081 or
 620 is confidential as provided by law residing or existing internal
 621 or external to a computer, computer system, computer network, or
 622 electronic device commits an offense against intellectual
 623 property.

624 (6) Subsections (3) and (4) are subject to the Open

625 Government Sunset Review Act in accordance with s. 119.15~~7~~ and
 626 shall stand repealed on October 2, 2021 ~~2019~~, unless reviewed
 627 and saved from repeal through reenactment by the Legislature.

628 Section 21. The Legislature finds that it is a public
 629 necessity that financial information comprising a trade secret
 630 as defined in s. 812.081, Florida Statutes, be made exempt or
 631 confidential and exempt from s. 119.07(1), Florida Statutes, and
 632 s. 24(a), Article I of the State Constitution. The Legislature
 633 also finds that it is a public necessity that any portion of a
 634 meeting in which a trade secret as defined in s. 812.081,
 635 Florida Statutes, is discussed be made exempt from s. 286.011,
 636 Florida Statutes, and s. 24(b), Article I of the State
 637 Constitution. The Legislature recognizes that in many instances,
 638 businesses are required to provide financial information for
 639 regulatory or other purposes to public entities and that
 640 disclosure of such information to competitors of those
 641 businesses would be detrimental to the businesses. The
 642 Legislature's intent is to protect trade secret information of a
 643 confidential nature that includes, but is not limited to, a
 644 formula, a pattern, a device, a combination of devices, or a
 645 compilation of information used to protect or further a business
 646 advantage over those who do not know or use the information, the
 647 disclosure of which would injure the affected business in the
 648 marketplace. Therefore, the Legislature finds that the need to
 649 protect trade secret financial information is sufficiently
 650 compelling to override this state's public policy of open

651 | government and that the protection of such information cannot be
652 | accomplished without these exemptions.

653 | Section 22. This act shall take effect on the same date
654 | that HB 55 or similar legislation relating to trade secrets
655 | takes effect, if such legislation is adopted in the same
656 | legislative session or an extension thereof and becomes a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Pilon offered the following:

Amendment (with title amendment)

6 Remove lines 142-158 and insert:

7 Section 5. Section 365.174, Florida Statutes, is amended
8 to read:

9 365.174 Proprietary confidential business information.—

10 (1)(a) All proprietary confidential business information
11 submitted by a provider to the board or the office is
12 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
13 of the State Constitution.

14 (b) Statistical abstracts of information collected by the
15 board or the office may be released or published, but only in a
16 manner that does not identify or allow identification of



Amendment No. 1

17 subscribers or their service numbers or of revenues attributable
18 to any provider.

19 (2) (a) All proprietary confidential business information
20 submitted by a provider to the Department of Revenue, as an
21 agent of the board, is confidential and exempt from s. 119.07(1)
22 and s. 24(a), Art. I of the State Constitution.

23 (b) The Department of Revenue may provide information
24 relative to s. 365.172(9) to the Secretary of Management
25 Services, or his or her authorized agent, or to the E911 Board
26 established in s. 365.172(5) for use in the conduct of the
27 official business of the Department of Management Services or
28 the E911 Board.

29 ~~(c) This subsection is subject to the Open Government
30 Sunset Review Act in accordance with s. 119.15 and shall stand
31 repealed on October 2, 2019, unless reviewed and saved from
32 repeal through reenactment by the Legislature.~~

33 (3) As used in this section, the term "proprietary
34 confidential business information" means customer lists,
35 customer numbers, individual or aggregate customer data by
36 location, usage and capacity data, network facilities used to
37 serve subscribers, technology descriptions, technical
38 information, or trade secrets, including trade secrets as
39 defined in s. 812.081, and the actual or developmental costs of
40 E911 systems that are developed, produced, or received
41 internally by a provider or by a provider's employees,
42 directors, officers, or agents.



Amendment No. 1

43 (4) This section is subject to the Open Government Sunset
44 Review Act in accordance with s. 119.15 and shall stand repealed
45 on October 2, 2021, unless reviewed and saved from repeal
46 through reenactment by the Legislature.

47

48

49

T I T L E A M E N D M E N T

50

Remove line 14 and insert:

51

E911 Board, Technology Program within the Department of

52

Management Services, and the Department of Revenue, trade secret

53

information held



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee
 3 Representative Pilon offered the following:

Amendment (with title amendment)

Remove lines 606-624 and insert:

7 Section 20. For the purpose of incorporating the amendment
 8 made by HB 55 to section 812.081, Florida Statutes, in a
 9 reference thereto, subsection (3) of section 815.04, Florida
 10 Statutes, is reenacted, and subsection (6) of that section is
 11 amended, to read:

12 815.04 Offenses against intellectual property; public
 13 records exemption.-

14 (3) Data, programs, or supporting documentation that is a
 15 trade secret as defined in s. 812.081, that is held by an agency
 16 as defined in chapter 119, and that resides or exists internal
 17 or external to a computer, computer system, computer network, or



Amendment No. 2

18 | electronic device is confidential and exempt from the provisions
19 | of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

20 | (6) Subsection ~~Subsections~~ (3) and ~~(4)~~ are is subject to
21 | the Open

22 |
23 | -----

T I T L E A M E N D M E N T

Remove lines 6-43 and insert:

26 | 601.15, 601.152, and 601.76, F.S.; expanding public records
27 | exemptions for certain data processing software obtained by an
28 | agency, certain information held by a county tourism promotion
29 | agency, information related to trade secrets held by the Florida
30 | Tourism Industry Marketing Corporation, information related to
31 | trade secrets held by Space Florida, proprietary confidential
32 | business information submitted to the Department of Revenue,
33 | trade secret information held by the Department of Health, trade
34 | secret information reported or submitted to the Department of
35 | Environmental Protection, trade secret information contained in
36 | a complaint and any investigatory documents held by the
37 | Department of Business and Professional Regulation, trade secret
38 | information of a dairy industry business held by the Department
39 | of Agriculture and Consumer Services, trade secret information
40 | held by the Division of Fruits and Vegetables of the Department
41 | of Agriculture and Consumer Services, trade secret information
42 | of a person subject to a marketing order held by the Department
43 | of Agriculture and Consumer Services, trade secret information



Amendment No. 2

44 provided to the Department of Citrus, trade secret information
45 of noncommodity advertising and promotional program participants
46 held by the Department of Citrus, trade secret information of a
47 person subject to a marketing order held by the Department of
48 Citrus, and a manufacturer's formula filed with the Department
49 of Agriculture and Consumer Services, respectively, to
50 incorporate changes made to the definition of the term "trade
51 secret" in s. 812.081, F.S., by HB 55; expanding a public
52 meeting exemption for any meeting or portion of a meeting of
53 Space Florida's board at which trade secrets are discussed to
54 incorporate changes made to the definition of the term "trade
55 secret" in s. 812.081, F.S., by HB 55; reenacting and amending
56 s. 815.04, F.S., relating to specified data, programs, or
57 supporting documentation held by an agency, to incorporate
58 changes made to the definition of the term "trade secret" in s.
59 812.081, F.S., by HB 55; providing for

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4001 Licenses to Carry Concealed Weapons or Firearms

SPONSOR(S): Steube and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 68

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		White TW	White TW
2) Higher Education & Workforce Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 790.06(12)(a)13., F.S., prohibits persons who have valid concealed weapons or concealed firearms licenses from carrying a concealed weapon or firearm into any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes which does not fire a dart or projectile.

In the wake of several campus shootings, many states are considering legislation regarding whether to authorize concealed carry license holders to carry concealed weapons and firearms on college campuses. According to recent research, 19 states ban carrying a concealed weapon or firearm on a college campus. In 23 states, the decision to ban or allow concealed carry on campuses is made by each college or university individually. Eight states allow concealed carry on college campuses - Colorado, Idaho, Kansas, Mississippi, Oregon, Texas, Utah, and Wisconsin.

The bill repeals s. 790.06(12)(a)13., F.S., to authorize persons who have a valid concealed weapons or concealed firearms license to carry a concealed weapon or firearm into any college or university facility.

The bill may have an indeterminate fiscal impact. (Please see "FISCAL IMPACT ON STATE GOVERNMENT," *infra*.)

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Concealed Carry Licensure

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to issue licenses to carry concealed weapons or concealed firearms to qualified applicants. For purposes of the section, "concealed weapons or concealed firearms" are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but not a machine gun.¹

As August 31, 2015, there were 1,440,276 persons licensed to carry a concealed weapon or firearm in Florida.² The age profile of concealed carry license holders is as follows:

- 260,723 license holders between the ages of 21-35;
- 370,066 license holders between the ages of 36-50;
- 451,762 license holders between the ages of 51-65; and
- 357,725 license holders age 66 and up.³

In order to obtain a concealed carry license, a person must complete, under oath, and submit to DACS,⁴ an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with the criteria contained in ss. 790.06(2) and (3), F.S. (described below);
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal penalties; and
- A statement that the applicant desires a concealed weapon or firearm license as a means of lawful self-defense.⁵

The applicant must also submit the following to DACS:

- A nonrefundable license fee not to exceed \$70 (if the applicant has not previously been issued a statewide license) or \$60 (for renewal of a statewide license);
- A full set of fingerprints administered by a law enforcement agency, DACS, or an approved tax collector;
- Documented proof of completion of a firearms safety and training course; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days.⁶

Section 790.06(2), F.S., requires DACS to issue a concealed carry license if the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and

¹ s. 790.06(1), F.S.

² DACS, *Number of Licensees by Type as of August 31, 2015*,

<http://www.freshfromflorida.com/Divisions-Offices/Licensing/Concealed-Weapon-License/Statistical-Reports> (last visited on September 8, 2015).

³ DACS, *Concealed Weapon or Firearm License Holder Profile as of August 31, 2015*,

http://www.freshfromflorida.com/content/download/7500/118857/cw_holders.pdf (last visited on September 8, 2015).

⁴ Section 790.0625, F.S., authorizes DACS, at its discretion, to appoint tax collectors, as defined in s. 1(d) of Art. VIII of the State Constitution, to accept applications on behalf of the Division of Licensing of the DACS for concealed weapon or firearm licenses. Such appointments are for specified locations that will best serve the public interest and convenience in applying for these licenses.

⁵ s. 790.06(4), F.S.

⁶ s. 790.06(5), F.S.

Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It is presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm by completing a specified firearms safety and training course;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

DACS must deny an application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.⁷

DACS must revoke a concealed weapons or firearms license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.⁸

DACS must, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a concealed carry license or the processing of an application for such license if the licensee or applicant is:

⁷ s.790.06(3), F.S.

⁸ *Id.*

- Arrested or formally charged with a crime that would disqualify such person from having a license until final disposition of the case; or
- Is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.⁹

In addition, DACS is required to suspend or revoke a concealed license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of another state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of another state.¹⁰

Concealed carry licenses are valid for 7 years from the date of issuance. Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer. Failure to have proper documentation and display it upon demand is a noncriminal violation punishable by a penalty of \$25, payable to the clerk of the court.¹¹

Locations where Concealed Carry by Licensees is Prohibited

Section 790.06(12)(a), F.S., specifies that a concealed carry license does not authorize a person to carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;
2. Any police, sheriff, or highway patrol station;
3. Any detention facility, prison, or jail;
4. Any courthouse;
5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
6. Any polling place;
7. Any meeting of the governing body of a county, public school district, municipality, or special district;
8. Any meeting of the Legislature or a committee thereof;
9. Any school, college, or professional athletic event not related to firearms;
10. Any elementary or secondary school facility or administration building;
11. Any career center;
12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

⁹ *Id.*

¹⁰ s. 790.06(10), F.S.

¹¹ s. 790.06(1), F.S.

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
15. Any place where the carrying of firearms is prohibited by federal law.

Any person who knowingly and willfully carries a concealed weapon or firearm into any of the above-listed locations commits a second degree misdemeanor.¹²

Possession on School Property

Section 790.115(2)(a), F.S., prohibits any person from possessing “any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter,” at a school-sponsored event or on the property of any school, school bus, or school bus stop, unless such possession is authorized in support of school-sanctioned activities or unless it is a firearm carried:

- To a firearms program, class, or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
- In a case to a career center having a firearms training range; or
- In a vehicle pursuant to s. 790.25(5), F.S., unless prohibited by a school district policy.¹³

“School” is defined to mean any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.¹⁴

For a violation of the prohibition, the subsection provides that it is:

- A second degree misdemeanor¹⁵ for a person to store or leave a loaded firearm within the easy reach of a minor who obtains the firearm and commits a violation of the prohibition, except under specified circumstances.¹⁶
- A third degree felony¹⁷ for a person to willfully and knowingly violate the prohibition by possessing any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), F.S., including a razor blade or box cutter.¹⁸
- A second degree felony¹⁹ for a person to willfully and knowingly discharge a firearm while in violation of the prohibition unless discharged for lawful defense or a lawful purpose.²⁰

With respect to concealed carry licensees, the subsection provides that:

The penalties of this subsection shall not apply to persons licensed under s. 790.06. Persons licensed under s. 790.06 shall be punished as provided in s. 790.06(12), except that a licenseholder who unlawfully discharges a weapon or firearm on school property as prohibited by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

¹² A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹³ s. 790.115(2)(a), F.S.

¹⁴ *Id.*

¹⁵ See Footnote 12.

¹⁶ s. 790.115(2)(c)2., F.S.

¹⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁸ s. 790.115(2)(b) and (c)1., F.S.

¹⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

²⁰ s. 790.115(2)(d), F.S.

As indicated above, s. 790.06(12), F.S., in relevant part, currently penalizes the carrying of a concealed weapon or firearm by a licensee into any college or university facility, except under specified circumstances, as a second degree misdemeanor.²¹

Concealed Carry on College and University Campuses

In the wake of several campus shootings, many states are considering legislation regarding whether to permit concealed carry licensees to carry concealed weapons and firearms on college campuses. For some, these events point to a need to ease existing firearm regulations and allow concealed weapons and firearms on campuses. Others argue the solution is tightening restrictions to keep guns off campuses.²²

Recent research indicates that 19 states ban carrying a concealed weapon or firearm on a college campus.²³ In 23 states, the decision to ban or allow concealed carry on campuses is made by each college or university individually.²⁴ Eight states allow concealed carry on college campuses - Colorado, Idaho, Kansas, Mississippi, Oregon, Texas, Utah, and Wisconsin.²⁵

Effect of the Bill

The bill repeals s. 790.06(12)(a)13., F.S., to allow persons who a valid concealed carry license to carry a concealed weapon or firearm into any college or university facility.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

In its 2016 Legislative Bill Analysis, the Board of Governors states that implementation of this bill may result in an indeterminate increase in recurring and non-recurring administrative costs.

In its 2015 Legislative Bill Analysis for HB 4005 (2015), which is identical to the instant bill, the Department of Education states that the bill may have indeterminate fiscal impact on insurance premiums paid by colleges and universities.

²¹ See Footnote 12.

²² *Guns on Campus: Overview* National Conference of State Legislatures, February 23, 2015, <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx> (last visited on September 12, 2015); Texas Senate Bill 11, Enrolled (2015).

²³ California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, and Wyoming. *Id.*

²⁴ Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia. *Id.*

²⁵ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because the bill does not appear to require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to licenses to carry concealed weapons or firearms; amending s. 790.06, F.S.; deleting a provision prohibiting concealed carry licensees from openly carrying a handgun or carrying a concealed weapon or firearm into a college or university facility; providing an effective date.

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

Section 1. Paragraph (a) of subsection (12) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;
2. Any police, sheriff, or highway patrol station;
3. Any detention facility, prison, or jail;
4. Any courthouse;
5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
6. Any polling place;
7. Any meeting of the governing body of a county, public

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27 school district, municipality, or special district;
 28 8. Any meeting of the Legislature or a committee thereof;
 29 9. Any school, college, or professional athletic event not
 30 related to firearms;
 31 10. Any elementary or secondary school facility or
 32 administration building;
 33 11. Any career center;
 34 12. Any portion of an establishment licensed to dispense
 35 alcoholic beverages for consumption on the premises, which
 36 portion of the establishment is primarily devoted to such
 37 purpose;
 38 ~~13. Any college or university facility unless the licensee~~
 39 ~~is a registered student, employee, or faculty member of such~~
 40 ~~college or university and the weapon is a stun gun or nonlethal~~
 41 ~~electric weapon or device designed solely for defensive purposes~~
 42 ~~and the weapon does not fire a dart or projectile;~~
 43 13.14. The inside of the passenger terminal and sterile
 44 area of any airport, provided that no person shall be prohibited
 45 from carrying any legal firearm into the terminal, which firearm
 46 is encased for shipment for purposes of checking such firearm as
 47 baggage to be lawfully transported on any aircraft; or
 48 14.15. Any place where the carrying of firearms is
 49 prohibited by federal law.
 50 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4003 Repeal of a Prohibition on Cohabitation
SPONSOR(S): Rehwinkel Vasilinda and Stark
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		White	White
2) Judiciary Committee			

SUMMARY ANALYSIS

Florida's cohabitation law, s. 798.02, F.S., was created in 1868, and makes it a second degree misdemeanor if any:

- Man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together; or
- Man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior.

In recent years, states such as Arizona, Idaho, Maine, New Mexico, North Dakota, Virginia, and West Virginia, have repealed their cohabitation laws. In 2006, North Carolina's cohabitation law was found unconstitutional as violating one's substantive due process rights.

The bill repeals the portion of s. 798.02, F.S., which makes it a second degree misdemeanor for any man and woman, not being married to each other, to lewdly and lasciviously associate and cohabit together.

The bill may have a negative jail bed impact, i.e., it may decrease the need for jail beds.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida is one of only three states that criminalize cohabitation.¹ Section 798.02, F.S., created in 1868,² makes it a second degree misdemeanor³ if any:

- Man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together; or
- Man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior.⁴

While rarely used in the criminal context, cohabitation laws have been used as a rationale to sanction people in a civil context. For example, in 1979, the Florida Department of Business and Professional Regulation suspended a company's liquor license after finding that six of the company's agents, servants or employees violated s. 798.02, F.S.⁵ In 1999, North Carolina officials refused to grant victim's compensation to an unmarried victim of domestic violence because she was cohabiting with her boyfriend, and was therefore a criminal.⁶ In 2001, authorities in Virginia cited that state's cohabitation law to revoke a professional license of the owner of a day care center.⁷

In recent years, states such as Arizona, Idaho, Maine, New Mexico, North Dakota, Virginia, and West Virginia, have repealed their cohabitation laws.⁸

In addition, North Carolina's cohabitation law⁹ was found unconstitutional as violating an individual's substantive due process rights.¹⁰ In its ruling, the North Carolina court relied on *Lawrence v. Texas*,¹¹ which held that a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Writing for the United States Supreme Court, Justice Kennedy said "Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home."¹² Justice Kennedy also stated that the following quote by Justice Stevens' in an earlier case should be controlling:

[I]ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty'

¹ The other states with cohabitation laws are Michigan (s. 750.335, M.C.L.A.) and Mississippi (s. 97-29-1, M.C.A.).

² Laws 1868, chapter 1637, subsection 8, section 6.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁴ The statute was last amended in 1971 by ch. 71-136, L.O.F., which made the offense a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S., in lieu of punishment "by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding three hundred dollars."

⁵ *G & B of Jacksonville, Inc. v. State, Dept. of Business Regulation, Division of Beverage*, 371 So. 2d 139 (Fla. 1st DCA 1979). Section 561.29, F.S., gives the Division authority to suspend a beverage license if the Division finds sufficient cause that a licensee or its agents, officers, servants or employees, on the licensed premises, while in the scope of employment, have violated any law of this State.

⁶ *Family denied compensation because victim lived with killer*, April 1, 1999, http://lubbockonline.com/stories/040199/nat_040199068.shtml (last visited on September 11, 2015).

⁷ *Antiquated, unconstitutional law held up day care license for nearly a year*, March 19, 2002, <http://acluva.org/1746/social-services-reinstates-license-for-day-care-operator-accused-of-violating-virginia-cohabitation-law/> (last visited on September 11, 2015).

⁸ E-mail from Rochelle Finzel, Group Director of the National Conference of State Legislatures, dated February 14, 2014 (on file with the Criminal Justice Subcommittee).

⁹ s. 14-184, N.C.G.S.

¹⁰ *Hobbs v. Smith*, No. 05-CVS 267, 2006 WL 3103008 (N.S. Super. 2006).

¹¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹² *Id.* at 562.

protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.¹³

Effect of the Bill

The bill repeals the portion of s. 798.02, F.S., which makes it a second degree misdemeanor for any man and woman, not being married to each other, to lewdly and lasciviously associate and cohabit together.

B. SECTION DIRECTORY:

Section 1. Amends s. 798.02, F.S., relating to lewd and lascivious behavior.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact, i.e., it may decrease the need for jail beds, because it repeals an offense punishable as a second degree misdemeanor.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

¹³*Id.* at 578 (citing *Bowers v. Hardwick*, 478 U.S. 186 (1986)).

2. Other:

As discussed above, a North Carolina court, relying on *Lawrence v. Texas*, recently found North Carolina's cohabitation law unconstitutional as violating one's substantive due process rights. It could be argued that Florida's cohabitation statute is also unconstitutional on the same grounds.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

HB 4003

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A bill to be entitled
An act relating to the repeal of a prohibition on
cohabitation; amending s. 798.02, F.S.; deleting
provisions prohibiting cohabitation by unmarried men
and women; providing an effective date.

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

Section 1. Section 798.02, Florida Statutes, is amended to
read:

798.02 Lewd and lascivious behavior. ~~If any man and woman,~~
~~not being married to each other, lewdly and lasciviously~~
~~associate and cohabit together, or~~ If any man or woman, married
or unmarried, engages in open and gross lewdness and lascivious
behavior, they shall be guilty of a misdemeanor of the second
degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect upon becoming a law.