

1 A bill to be entitled
2 An act relating to public records; creating an exemption
3 for proprietary confidential business information;
4 providing definitions; providing a statement of public
5 necessity; repealing s. 815.045; providing for review and
6 repeal under the open government sunset review act;
7 providing an effective date.
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9 Be It Enacted by the Legislature of the State of Florida:
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11 Section 1. Paragraph (h) is added to subsection (1) of
12 section 119.071, Florida Statutes, to read:

13 119.071 General exemptions from inspection or copying of
14 public records.--

15 (1) AGENCY ADMINISTRATION.--

16 (h)1. As used in this paragraph, the term:

17 a. "Proprietor" means an any self-employed individual,
18 proprietorship, corporation, partnership, limited partnership,
19 firm, enterprise, franchise, association, trust, or business
20 entity, whether fictitiously named or not, authorized to or doing
21 business in this state, including the respective authorized
22 officers, employees, agents, or successors in interest, which
23 control or own the proprietary confidential business information
24 provided to an agency.

25 b. "Proprietary confidential business information" means
26 information that has been designated by the proprietor when
27 provided to an agency as information that is owned or controlled
28 by the proprietor requesting confidentiality under this section;
29 is intended to be and is treated by that proprietor as private,
30 is not readily ascertainable or publicly available from any other

31 source, and the disclosure of which would cause harm to the
32 business operations of the proprietor; has not been intentionally
33 disclosed by the proprietor unless pursuant to a private
34 agreement that provides that the information will not be released
35 to the public except as required by law or legal process, or
36 pursuant to law or an order of a court or administrative ~~hearing~~
37 ~~officer~~; and that is information concerning:

38 1. Business plans;

39 2. Internal auditing controls and reports of internal auditors;

40 3. Reports of external auditors for privately held companies; or

41 4. Trade secrets as defined in s. 688.002.

42 2. Proprietary confidential business information held by an
43 agency is confidential and exempt from s. 119.07(1) and s. 24(a),
44 Art. I of the State Constitution. This exemption applies to
45 proprietary confidential business information held by an agency
46 before, on, or after July 1, 2009.

47 3. Notwithstanding the provisions of subparagraph 2., a
48 request to inspect or copy a record under s. 119.07(1) which
49 contains proprietary confidential business information shall be
50 granted if the proprietor of the information fails, within a
51 reasonable period of time after the request is received by the
52 agency, to verify the following to that agency through a written
53 declaration in the manner provided by s. 92.525:

54 a. That the requested record contains proprietary
55 confidential business information and the specific location of
56 such information within the record;

57 b. If the proprietary confidential business information is
58 a trade secret, a verification that it is a trade secret as
59 defined in s. 688.002;

60 c. That the proprietary confidential business information
61 is intended to be and is treated by the proprietor as private, is
62 the subject of efforts of the proprietor to maintain its privacy,
63 and is not readily ascertainable or publicly available from any
64 other source; and

65 d. That the disclosure of the proprietary confidential
66 business information to the public would harm the business
67 operations of the proprietor.

68 4. Any person may petition a court of competent
69 jurisdiction for an order for the public release of those
70 portions of any record made confidential and exempt by
71 subparagraph 2. Any action under this subparagraph for
72 information held by a state agency must be brought in Leon
73 County, Florida, and the petition or other initial pleading shall
74 be served on the custodial agency and, if determinable upon
75 diligent inquiry, on the proprietor of the information sought to
76 be released. In any order for the public release of a record
77 under this subparagraph, the court shall make a finding that the
78 record or portion thereof is not a trade secret as defined in s.
79 688.002, that a compelling public interest is served by the
80 release of the record or portions thereof which exceed the public
81 necessity for maintaining the confidentiality of such record, and
82 that the release of the record will not cause damage to or
83 adversely affect the interests of the proprietor of the released
84 information, other private persons or business entities, or the
85 agency.

86 5. This paragraph does not supersede any other applicable
87 public records exemptions existing prior to July 1, 2009, or
88 created thereafter.

89 6. This paragraph is subject to the Open Government Sunset
90 Review Act in accordance with s. 119.15 and shall stand repealed
91 on October 2, 2014, unless reviewed and saved from repeal through
92 reenactment by the Legislature.

93 Section 2. The Legislature finds that it is a public
94 necessity that proprietary confidential business information,
95 including trade secrets, be made confidential and exempt from
96 Art. I, s. 24 of the State Constitution and s. 119.071(1), F.S.

97 Section 3. Section 815.045, Florida Statutes, is repealed.

98 Section 4. This act shall take effect July 1, 2009.