

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee  
 3 Representative Metz offered the following:  
 4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Subsection (11) is added to section 501.171, Florida  
 8 Statutes, as created by HB 7085, 2014 Regular Session, to read:

9 501.171 Security of confidential personal information.—

10 (11) PUBLIC RECORDS EXEMPTION.—

11 (a) All information received by the department pursuant to  
 12 a notification required by this section, or received by the  
 13 department pursuant to an investigation by the department or a  
 14 law enforcement agency, is confidential and exempt from s.  
 15 119.07(1) and s. 24(a), Art. I of the State Constitution, until  
 16 such time as the investigation is completed or ceases to be

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17 active. This exemption shall be construed in conformity with s.  
18 119.071(2)(c).

19 (b) During an active investigation, information made  
20 confidential and exempt pursuant to paragraph (a) may be  
21 disclosed by the department:

22 1. In the furtherance of its official duties and  
23 responsibilities;

24 2. For print, publication, or broadcast if the department  
25 determines that such release would assist in notifying the  
26 public or locating or identifying a person that the department  
27 believes to be a victim of a data breach or improper disposal of  
28 customer records; or

29 3. To another governmental entity in the furtherance of  
30 its official duties and responsibilities.

31 (c) Upon completion of an investigation or once an  
32 investigation ceases to be active, the following information  
33 received by the department shall remain confidential and exempt  
34 from s. 119.07(1) and s. 24(a), Art. I of the State  
35 Constitution:

36 1. All information to which another public records  
37 exemption applies.

38 2. Personal information.

39 3. A computer forensic report.

40 4. Information that would otherwise reveal weaknesses in a  
41 covered entity's data security.

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42 5. Information that would disclose a covered entity's  
43 proprietary business information.

44 (d) For purposes of this subsection, the term "proprietary  
45 business information" means information that:

46 1. Is owned or controlled by the covered entity.

47 2. Is intended to be private and is treated by the covered  
48 entity as private because disclosure would harm the covered  
49 entity or its business operations.

50 3. Has not been disclosed except as required by law or a  
51 private agreement that provides that the information will not be  
52 released to the public.

53 4. Is not publicly available or otherwise readily  
54 ascertainable through proper means from another source in the  
55 same configuration as received by the department.

56 5. Includes:

57 a. Trade secrets as defined in s. 688.002.

58 b. Competitive interests, the disclosure of which would  
59 impair the competitive business of the covered entity who is the  
60 subject of the information.

61 (e) This subsection is subject to the Open Government  
62 Sunset Review Act in accordance with s. 119.15 and shall stand  
63 repealed on October 2, 2019, unless reviewed and saved from  
64 repeal through reenactment by the Legislature.

65 Section 2. The Legislature finds that it is a public  
66 necessity that all information received by the Department of  
67 Legal Affairs pursuant to a notification of a violation of s.

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68 501.171, Florida Statutes, or received by the department  
69 pursuant to an investigation by the department or a law  
70 enforcement agency, be made confidential and exempt from s.  
71 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
72 State Constitution for the following reasons:

73 (1) A notification of a violation of s. 501.171, Florida  
74 Statutes, is likely to result in an investigation of such  
75 violation because a data breach is likely the result of criminal  
76 activity that may lead to further criminal activity. The  
77 premature release of such information could frustrate or thwart  
78 the investigation and impair the ability of the Department of  
79 Legal Affairs to effectively and efficiently administer s.  
80 501.171, Florida Statutes. In addition, release of such  
81 information before completion of an active investigation could  
82 jeopardize the ongoing investigation.

83 (2) The Legislature finds that it is a public necessity to  
84 continue to protect from public disclosure all information to  
85 which another public record exemption applies once an  
86 investigation is completed or ceases to be active. Release of  
87 such information by the Department of Legal Affairs would undo  
88 the specific statutory exemption protecting that information.

89 (3) An investigation of a data breach or improper disposal  
90 of customer records is likely to result in the gathering of  
91 sensitive personal information, including social security  
92 numbers, identification numbers, and personal financial and  
93 health information. Such information could be used for the

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94 purpose of identity theft. In addition, release of such  
95 information could subject possible victims of the data breach or  
96 improper disposal of customer records to further financial harm.  
97 Furthermore, matters of personal health are traditionally  
98 private and confidential concerns between the patient and the  
99 health care provider. The private and confidential nature of  
100 personal health matters pervades both the public and private  
101 health care sectors.

102 (4) Release of a computer forensic report or other  
103 information that would otherwise reveal weaknesses in a covered  
104 entity's data security could compromise the future security of  
105 that entity, or other entities, if such information were  
106 available upon conclusion of an investigation or once an  
107 investigation ceased to be active. The release of such report or  
108 information could compromise the security of current entities  
109 and make those entities susceptible to future data breaches.  
110 Release of such report or information could result in the  
111 identification of vulnerabilities and further breaches of that  
112 system.

113 (5) Notices received by the Department of Legal Affairs  
114 and information received during an investigation of a data  
115 breach are likely to contain proprietary business information,  
116 including trade secrets, about the security of the breached  
117 system. The release of the proprietary information could result  
118 in the identification of vulnerabilities and further breaches of  
119 that system. In addition, a trade secret derives independent,

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120 economic value, actual or potential, from being generally  
121 unknown to, and not readily ascertainable by, other persons who  
122 might obtain economic value from its disclosure or use. Allowing  
123 public access to proprietary business information, including a  
124 trade secret, through a public records request could destroy the  
125 value of the proprietary business information and cause a  
126 financial loss to the covered entity submitting the information.  
127 Release of such information could give business competitors an  
128 unfair advantage and weaken the position of the entity supplying  
129 the proprietary business information in the marketplace.

130 Section 3. This act shall take effect on the same date  
131 that HB 7085 or similar legislation takes effect, if such  
132 legislation is adopted in the same legislative session or an  
133 extension thereof and becomes a law.

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

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Remove everything before the enacting clause and insert:

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An act relating to public records; amending s. 501.171, F.S.;

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providing exemptions from public records requirements for

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information received by the Department of Legal Affairs pursuant

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to a notice of a data breach or pursuant to certain

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investigations; authorizing disclosure under certain

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circumstances; defining terms; providing for future review and

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repeal of the exemption under the Open Government Sunset Review

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Bill No. HB 7087 (2014)

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146 Act; providing a statement of public necessity; providing a  
147 contingent effective date.