

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           501.171, F.S.; providing an exemption from public  
 4           records requirements for information received by the  
 5           Department of Legal Affairs pursuant to a notice of a  
 6           data breach or pursuant to certain investigations;  
 7           authorizing disclosure under certain circumstances;  
 8           defining the term "proprietary business information";  
 9           providing for future legislative review and repeal of  
 10          the exemption; providing a statement of public  
 11          necessity; providing a contingent effective date.

12

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

14

15           Section 1. Subsection (11) is added to section 501.171,  
 16 Florida Statutes, as created by HB 7085, 2014 Regular Session,  
 17 to read:

18           501.171 Security of confidential personal information.—

19           (11) PUBLIC RECORDS EXEMPTION.—

20           (a) All information received by the department pursuant to  
 21 a notification required by this section, or received by the  
 22 department pursuant to an investigation by the department or a  
 23 law enforcement agency, is confidential and exempt from s.  
 24 119.07(1) and s. 24(a), Art. I of the State Constitution until  
 25 such time as the investigation is completed or ceases to be  
 26 active. This exemption shall be construed in conformity with s.

27 119.071(2)(c).

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

31 1. In the furtherance of its official duties and  
 32 responsibilities;

33 2. For print, publication, or broadcast if the department  
 34 determines that such release would assist in notifying the  
 35 public or locating or identifying a person that the department  
 36 believes to be a victim of a data breach or improper disposal of  
 37 customer records; or

38 3. To another governmental entity in the furtherance of  
 39 its official duties and responsibilities.

40 (c) Upon completion of an investigation or once an  
 41 investigation ceases to be active, the following information  
 42 received by the department shall remain confidential and exempt  
 43 from s. 119.07(1) and s. 24(a), Art. I of the State  
 44 Constitution:

45 1. All information to which another public records  
 46 exemption applies.

47 2. Personal information.

48 3. A computer forensic report.

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

51 5. Information that would disclose a covered entity's  
 52 proprietary business information.

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

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

56 2. Is intended to be private and is treated by the covered  
 57 entity as private because disclosure would harm the covered  
 58 entity or its business operations.

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

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

65 5. Includes:

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

67 b. Competitive interests, the disclosure of which would  
 68 impair the competitive business of the covered entity who is the  
 69 subject of the information.

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

74 Section 2. The Legislature finds that it is a public  
 75 necessity that all information received by the Department of  
 76 Legal Affairs pursuant to a notification of a violation of s.  
 77 501.171, Florida Statutes, or received by the department  
 78 pursuant to an investigation by the department or a law

79 enforcement agency, be made confidential and exempt from s.  
 80 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 81 State Constitution for the following reasons:

82 (1) A notification of a violation of s. 501.171, Florida  
 83 Statutes, is likely to result in an investigation of such  
 84 violation because a data breach is likely the result of criminal  
 85 activity that may lead to further criminal activity. The  
 86 premature release of such information could frustrate or thwart  
 87 the investigation and impair the ability of the Department of  
 88 Legal Affairs to effectively and efficiently administer s.  
 89 501.171, Florida Statutes. In addition, release of such  
 90 information before completion of an active investigation could  
 91 jeopardize the ongoing investigation.

92 (2) The Legislature finds that it is a public necessity to  
 93 continue to protect from public disclosure all information to  
 94 which another public record exemption applies once an  
 95 investigation is completed or ceases to be active. Release of  
 96 such information by the Department of Legal Affairs would  
 97 undermine the specific statutory exemption protecting that  
 98 information.

99 (3) An investigation of a data breach or improper disposal  
 100 of customer records is likely to result in the gathering of  
 101 sensitive personal information, including social security  
 102 numbers, identification numbers, and personal financial and  
 103 health information. Such information could be used for the  
 104 purpose of identity theft. In addition, release of such

105 information could subject possible victims of the data breach or  
106 improper disposal of customer records to further financial harm.  
107 Furthermore, matters of personal health are traditionally  
108 private and confidential concerns between the patient and the  
109 health care provider. The private and confidential nature of  
110 personal health matters pervades both the public and private  
111 health care sectors.

112 (4) Release of a computer forensic report or other  
113 information that would otherwise reveal weaknesses in a covered  
114 entity's data security could compromise the future security of  
115 that entity, or other entities, if such information were  
116 available upon conclusion of an investigation or once an  
117 investigation ceased to be active. The release of such report or  
118 information could compromise the security of current entities  
119 and make those entities susceptible to future data breaches.  
120 Release of such report or information could result in the  
121 identification of vulnerabilities and further breaches of that  
122 system.

123 (5) Notices received by the Department of Legal Affairs  
124 and information received during an investigation of a data  
125 breach are likely to contain proprietary business information,  
126 including trade secrets, about the security of the breached  
127 system. The release of the proprietary business information  
128 could result in the identification of vulnerabilities and  
129 further breaches of that system. In addition, a trade secret  
130 derives independent, economic value, actual or potential, from

131 being generally unknown to, and not readily ascertainable by,  
132 other persons who might obtain economic value from its  
133 disclosure or use. Allowing public access to proprietary  
134 business information, including a trade secret, through a public  
135 records request could destroy the value of the proprietary  
136 business information and cause a financial loss to the covered  
137 entity submitting the information. Release of such information  
138 could give business competitors an unfair advantage and weaken  
139 the position of the entity supplying the proprietary business  
140 information in the marketplace.

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