

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.

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

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 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.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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, except that information made confidential and
 38 | exempt by paragraph (c) may not be released pursuant to this
 39 | subparagraph; or

40 | 3. To another governmental entity in the furtherance of
 41 | its official duties and responsibilities.

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

47 | 1. All information to which another public records
 48 | exemption applies.

49 | 2. Personal information.

50 | 3. A computer forensic report.

51 | 4. Information that would otherwise reveal weaknesses in a
 52 | covered entity's data security.

53 5. Information that would disclose a covered entity's
54 proprietary business information.

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

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

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

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

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

67 5. Includes:

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

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

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74 repealed on October 2, 2019, unless reviewed and saved from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

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

79 501.171, Florida Statutes, or received by the department
80 pursuant to an investigation by the department or a law
81 enforcement agency, be made confidential and exempt from s.
82 119.07(1), Florida Statutes, and s. 24(a), Article I of the
83 State Constitution for the following reasons:

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

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

101 (3) An investigation of a data breach or improper disposal
102 of customer records is likely to result in the gathering of
103 sensitive personal information, including social security
104 numbers, identification numbers, and personal financial and

105 health information. Such information could be used for the
106 purpose of identity theft. In addition, release of such
107 information could subject possible victims of the data breach or
108 improper disposal of customer records to further financial harm.
109 Furthermore, matters of personal health are traditionally
110 private and confidential concerns between the patient and the
111 health care provider. The private and confidential nature of
112 personal health matters pervades both the public and private
113 health care sectors.

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

125 (5) Notices received by the Department of Legal Affairs
126 and information received during an investigation of a data
127 breach are likely to contain proprietary business information,
128 including trade secrets, about the security of the breached
129 system. The release of the proprietary business information
130 could result in the identification of vulnerabilities and

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

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