

By Senator Burgess

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 287.137, F.S; providing a public records exemption for
4 certain information received in investigations by the
5 Attorney General or a law enforcement agency into
6 social media platform activities; providing that
7 confidential and exempt information may be disclosed
8 under specified conditions; requiring certain
9 information to remain confidential and exempt after an
10 investigation is complete or ceases to be active;
11 defining the term "proprietary information"; providing
12 for future legislative review and repeal of the
13 exemptions; amending s. 501.2041, F.S; providing a
14 public records exemption for certain information
15 received in investigations by the Department of Legal
16 Affairs or a law enforcement agency into violations by
17 certain social media platforms; providing that
18 confidential and exempt information may be disclosed
19 under specified conditions; requiring certain
20 information to remain confidential and exempt after an
21 investigation is complete or ceases to be active;
22 defining the term "proprietary information"; providing
23 for future legislative review and repeal of the
24 exemptions; providing a statement of public necessity;
25 providing a contingent effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Subsection (8) is added to section 287.137,

20-01981-21

20211914__

30 Florida Statutes, as created by SB 520, 2021 Regular Session, to
31 read:

32 287.137 Antitrust violations; denial or revocation of the
33 right to transact business with public entities; denial of
34 economic benefits.—

35 (8) (a) All information received by the Attorney General
36 pursuant to an investigation by the Attorney General or a law
37 enforcement agency is confidential and exempt from s. 119.07(1)
38 and s. 24(a), Art. I of the State Constitution until such time
39 as the investigation is completed or ceases to be active. This
40 exemption shall be construed in conformity with s.
41 119.071(2)(c).

42 (b) During an active investigation, information made
43 confidential and exempt pursuant to paragraph (a) may be
44 disclosed by the Attorney General:

45 1. In the performance his or her official duties and
46 responsibilities;

47 2. For print, publication, or broadcast, if the Attorney
48 General determines that the release would assist in notifying
49 the public or locating or identifying a person who the
50 department believes to be a victim of a data breach or an
51 improper disposal of customer records, except that information
52 made confidential and exempt pursuant to paragraph (c) may not
53 be released as authorized under this subparagraph; or

54 3. To another governmental entity in performance of its
55 official duties and responsibilities.

56 (c) Once an investigation is completed or once an
57 investigation ceases to be active, all of the following
58 information received by the Attorney General shall remain

20-01981-21

20211914__

59 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
60 of the State Constitution:

61 1. All information to which another public records
62 exemption applies.

63 2. Personal information.

64 3. A computer forensic report.

65 4. Information that would otherwise reveal weaknesses in a
66 business' data security.

67 5. Information that would otherwise disclose a business'
68 proprietary information.

69 (d) For purposes of this subsection, the term "proprietary
70 information" means information that:

71 1. Is owned or controlled by the business;

72 2. Is intended to be private and is treated by the business
73 as private because disclosure would harm the business or its
74 business operations;

75 3. Has not been disclosed except as required by law or a
76 private agreement that provides that the information will not be
77 released to the public;

78 4. Is not publicly available or otherwise readily
79 ascertainable through proper means from another source in the
80 same configuration as received by the department; and

81 5. Includes:

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

83 b. Competitive interests, the disclosure of which would
84 impair the competitive advantage of the business that is the
85 subject of the information.

86 (e) This subsection is subject to the Open Government
87 Sunset Review Act in accordance with s. 119.15 and shall stand

20-01981-21

20211914__

88 repealed on October 1, 2026, unless reviewed and saved from
89 repeal through reenactment by the Legislature.

90 Section 2. Subsection (8) is added to section 501.2041,
91 Florida Statutes, as created by SB 520, 2021 Regular Session, to
92 read:

93 501.2041 Unlawful acts and practices by social media
94 platforms.—

95 (8) (a) All information received by the department pursuant
96 to an investigation by the department or a law enforcement
97 agency is confidential and exempt from s. 119.07(1) and s.
98 24(a), Art. I of the State Constitution until such time as the
99 investigation is completed or ceases to be active. This
100 exemption shall be construed in conformity with s.
101 119.071(2) (c).

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

105 1. In the performance of its official duties and
106 responsibilities;

107 2. For print, publication, or broadcast if the department
108 determines that the release would assist in notifying the public
109 or locating or identifying a person who the department believes
110 to be a victim of a data breach or an improper disposal of
111 customer records, except that information made confidential and
112 exempt pursuant to paragraph (c) may not be released as
113 authorized under this subparagraph; or

114 3. To another governmental entity in performance of its
115 official duties and responsibilities.

116 (c) Upon completion of an investigation or once an

20-01981-21

20211914__

117 investigation ceases to be active, all of the following
118 information received by the department shall remain confidential
119 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
120 Constitution:

121 1. All information to which another public records
122 exemption applies.

123 2. Personal information.

124 3. A computer forensic report.

125 4. Information that would otherwise reveal weaknesses in a
126 business' data security.

127 5. Information that would otherwise disclose a business'
128 proprietary information.

129 (d) For purposes of this subsection, the term "proprietary
130 information" means information that:

131 1. Is owned or controlled by the business;

132 2. Is intended to be private and is treated by the business
133 as private because disclosure would harm the business or its
134 business operations;

135 3. Has not been disclosed except as required by law or a
136 private agreement that provides that the information will not be
137 released to the public;

138 4. Is not publicly available or otherwise readily
139 ascertainable through proper means from another source in the
140 same configuration as received by the department; and

141 5. Includes:

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

143 b. Competitive interests, the disclosure of which would
144 impair the competitive advantage of the business that is the
145 subject of the information.

20-01981-21

20211914__

146 (e) This subsection is subject to the Open Government
147 Sunset Review Act in accordance with s. 119.15 and shall stand
148 repealed on October 1, 2026, unless reviewed and saved from
149 repeal through reenactment by the Legislature.

150 Section 3. The Legislature finds that it is a public
151 necessity that all information received by the Department of
152 Legal Affairs and the Attorney General pursuant to a
153 notification of a violation of ss. 287.137 and 501.2041, Florida
154 Statutes, or received by the Department of Legal Affairs and the
155 Attorney General pursuant to an investigation by the department
156 or a law enforcement agency be made confidential and exempt from
157 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
158 State Constitution for the following reasons:

159 (1) A notification of a violation of s. 501.2041, Florida
160 Statutes, may result in an investigation of such violation. The
161 premature release of such information could frustrate or thwart
162 the investigation and impair the ability of the Department of
163 Legal Affairs and the Attorney General to effectively and
164 efficiently administer ss. 287.137 and 501.2041, Florida
165 Statutes. In addition, release of such information before
166 completion of an active investigation could jeopardize the
167 ongoing investigation.

168 (2) The Legislature finds that it is a public necessity to
169 continue to protect from public disclosure all information to
170 which another public record exemption applies once an
171 investigation is completed or ceases to be active. Release of
172 such information by the Department of Legal Affairs and the
173 Attorney General would undo the specific statutory exemption
174 protecting that information.

20-01981-21

20211914__

175 (3) An investigation of social media platform activities is
176 likely to result in the gathering of sensitive personal
177 information, including social security numbers, identification
178 numbers, and personal financial information. Such information
179 could be used for the purpose of identity theft.

180 (4) Information received by the Department of Legal Affairs
181 and the Attorney General and information received pursuant to an
182 investigation by the department or a law enforcement agency may
183 contain proprietary information, including trade secrets, about
184 the security of the breached system. The release of the
185 proprietary information could result in the identification of
186 vulnerabilities. In addition, a trade secret generates
187 independent, economic value, actual or potential, from being
188 generally unknown to, and not readily ascertainable by, other
189 persons who might obtain economic value from its disclosure or
190 use. Allowing public access to proprietary information,
191 including trade secrets, through a public records request could
192 destroy the value of the proprietary information and cause a
193 financial loss to the business submitting the information.
194 Release of such information could give business competitors an
195 unfair advantage and weaken the position in the marketplace of
196 the entity supplying the proprietary information.

197 Section 4. This act shall take effect July 1, 2021, if SB
198 520 or similar legislation takes effect, if such legislation is
199 adopted in the same legislative session or an extension thereof
200 and becomes a law.