

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

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

Section 1. Subsection (8) is added to section 287.137, Florida Statutes, as created by HB 7013, 2021 Regular Session, to read:

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

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

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

- 1. In the performance its official duties and responsibilities; or
- 2. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or once an investigation ceases to be active, the following information

51 received by the Attorney General shall remain confidential and
52 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
53 Constitution:

54 1. All information to which another public records
55 exemption applies.

56 2. Personal information.

57 3. A computer forensic report.

58 4. Information that would otherwise reveal weaknesses in a
59 business's data security.

60 5. Information that would otherwise disclose a business's
61 proprietary information.

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

64 1. Is owned or controlled by the business.

65 2. Is intended to be private and is treated by the
66 business as private because disclosure would harm the business
67 or its business operations.

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

71 4. Is not publicly available or otherwise readily
72 ascertainable through proper means from another source in the
73 same configuration as received by the Attorney General.

74 5. Includes:

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

76 b. Competitive interests, the disclosure of which would
 77 impair the competitive business of the business that is the
 78 subject of the information.

79 (e) This subsection is subject to the Open Government
 80 Sunset Review Act in accordance with s. 119.15 and shall stand
 81 repealed on October 2, 2026, unless reviewed and saved from
 82 repeal through reenactment by the Legislature.

83 Section 2. Subsection (10) is added to section 501.2041,
 84 Florida Statutes, as created by HB 7013, 2021 Regular Session,
 85 to read:

86 501.2041 Unlawful acts and practices by social media
 87 platforms.—

88 (10) (a) All information received by the department
 89 pursuant to an investigation by the department or a law
 90 enforcement agency, is confidential and exempt from s. 119.07(1)
 91 and s. 24(a), Art. I of the State Constitution, until such time
 92 as the investigation is completed or ceases to be active. This
 93 exemption shall be construed in conformity with s.
 94 119.071(2)(c).

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

98 1. In the performance of its official duties and
 99 responsibilities; or

100 2. To another governmental entity in performance of its

101 official duties and responsibilities.

102 (c) Once an investigation is completed or once an
 103 investigation ceases to be active, the following information
 104 received by the department shall remain confidential and exempt
 105 from s. 119.07(1) and s. 24(a), Art. I of the State
 106 Constitution:

107 1. All information to which another public records
 108 exemption applies.

109 2. Personal information.

110 3. A computer forensic report.

111 4. Information that would otherwise reveal weaknesses in a
 112 business's data security.

113 5. Information that would otherwise disclose a business's
 114 proprietary information.

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

117 1. Is owned or controlled by the business.

118 2. Is intended to be private and is treated by the
 119 business as private because disclosure would harm the business
 120 or its business operations.

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

124 4. Is not publicly available or otherwise readily
 125 ascertainable through proper means from another source in the

126 same configuration as received by the department.

127 5. Includes:

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

129 b. Competitive interests, the disclosure of which would
 130 impair the competitive business of the business that is the
 131 subject of the information.

132 (e) This subsection is subject to the Open Government
 133 Sunset Review Act in accordance with s. 119.15 and shall stand
 134 repealed on October 2, 2026, unless reviewed and saved from
 135 repeal through reenactment by the Legislature.

136 Section 3. The Legislature finds that it is a public
 137 necessity that all information received by the Department of
 138 Legal Affairs and the Attorney General pursuant to a
 139 notification of a violation of ss. 287.137 and 501.2041, Florida
 140 Statutes, or received by the Department of Legal Affairs and the
 141 Attorney General pursuant to an investigation by the Department
 142 of Legal Affairs or a law enforcement agency, be made
 143 confidential and exempt from s. 119.07(1), Florida Statutes and
 144 s. 24(a), Article I of the State Constitution for the following
 145 reasons:

146 (1) A notification of a violation of s. 501.172, Florida
 147 Statutes, may result in an investigation of such violation. The
 148 premature release of such information could frustrate or thwart
 149 the investigation and impair the ability of the Department of
 150 Legal Affairs and the Attorney General to effectively and

151 efficiently administer ss. 287.137 and 501.2041, Florida
152 Statutes. In addition, release of such information before
153 completion of an active investigation could jeopardize the
154 ongoing investigation.

155 (2) The Legislature finds that it is a public necessity to
156 continue to protect from public disclosure all information to
157 which another public record exemption applies once an
158 investigation is completed or ceases to be active. Release of
159 such information by the Department of Legal Affairs and the
160 Attorney General would undo the specific statutory exemption
161 protecting that information.

162 (3) An investigation of social media platform activities
163 is likely to result in the gathering of sensitive personal
164 information, including social security numbers, identification
165 numbers, and personal financial information. Such information
166 could be used for the purpose of identity theft.

167 (4) Information received by the Department of Legal
168 Affairs and the Attorney General and information that may
169 contain proprietary information, including trade secrets, about
170 the security of the breached system. The release of the
171 proprietary information could result in the identification of
172 vulnerabilities. In addition, a trade secret derives
173 independent, economic value, actual or potential, from being
174 generally unknown to, and not readily ascertainable by, other
175 persons who might obtain economic value from its disclosure or

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176 | use. Allowing public access to proprietary information,
177 | including trade secrets, through a public records request could
178 | destroy the value of the proprietary information and cause a
179 | financial loss to the business submitting the information.
180 | Release of such information could give business competitors an
181 | unfair advantage and weaken the position of the entity supplying
182 | the proprietary information in the marketplace.

183 | Section 4. This act shall take effect July 1, 2021, if HB
184 | 7013 or similar legislation takes effect, if such legislation is
185 | adopted in the same legislative session or an extension thereof
186 | and becomes law.