

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-03693-21

20217074pb

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
4 for information received by the Attorney General
5 pursuant to an investigation by the Attorney General
6 or a law enforcement agency into certain social media
7 platform activities; authorizing release of
8 confidential and exempt information in certain
9 instances; requiring certain information to remain
10 confidential and exempt after an investigation is
11 completed or ceases to be active; defining the term
12 "proprietary business information"; providing for
13 future legislative review and repeal of the exemption;
14 amending s. 501.2041, F.S.; providing a public records
15 exemption for information received by the Department
16 of Legal Affairs pursuant to an investigation by the
17 department or a law enforcement agency into violations
18 by certain social media platforms; authorizing release
19 of confidential and exempt information in certain
20 instances; requiring certain information to remain
21 confidential and exempt after an investigation is
22 completed or ceases to be active; defining the term
23 "proprietary business information"; providing for
24 future legislative review and repeal of the exemption;
25 providing a statement of public necessity; providing a
26 contingent effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsection (8) is added to section 287.137,
31 Florida Statutes, as created by SB 7072, 2021 Regular Session,
32 to read:

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

36 (8) (a) All information received by the Attorney General
37 under paragraph (3) (d) pursuant to an investigation by the
38 Attorney General or a law enforcement agency is confidential and
39 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
40 Constitution until such time as the investigation is completed
41 or ceases to be active. This exemption shall be construed in
42 conformity with s. 119.071(2) (c).

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

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

48 2. To another governmental entity in performance of its
49 official duties and responsibilities.

50 (c) Once an investigation is completed or ceases to be
51 active, the following information received by the Attorney
52 General shall remain confidential and exempt from s. 119.07(1)
53 and s. 24(a), Art. I of the State Constitution:

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

56 2. Personal identifying information.

57 3. A computer forensic report.

58 4. Information that would otherwise reveal weaknesses in a

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59 business' data security.

60 5. Proprietary business information.

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

63 1. Is owned or controlled by the business;

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

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

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

73 5. Includes:

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

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

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

82 Section 2. Subsection (10) is added to section 501.2041,
83 Florida Statutes, as created by SB 7072, 2021 Regular Session,
84 to read:

85 501.2041 Unlawful acts and practices by social media
86 platforms.—

87 (10) (a) All information received by the department pursuant

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

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

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

99 2. To another governmental entity in performance of its
100 official duties and responsibilities.

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

105 1. All information to which another public records
106 exemption applies.

107 2. Personal identifying information.

108 3. A computer forensic report.

109 4. Information that would otherwise reveal weaknesses in a
110 business' data security.

111 5. Proprietary business information.

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

114 1. Is owned or controlled by the business;

115 2. Is intended to be private and is treated by the business
116 as private because disclosure would harm the business or its

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117 business operations;

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

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

124 5. Includes:

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

126 b. Competitive interests, the disclosure of which would
127 impair the competitive advantage of the business that is the
128 subject of the information.

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

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

141 (1) A notification of a violation of s. 501.172, Florida
142 Statutes, or antitrust laws may result in an investigation of
143 such violations. The premature release of such investigatory
144 information could frustrate or thwart the investigation and
145 impair the ability of the Attorney General and the Department of

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146 Legal Affairs to effectively and efficiently administer ss.
147 287.137 and 501.2041, Florida Statutes. In addition, release of
148 such information before completion of an active investigation
149 could jeopardize the ongoing investigation.

150 (2) To continue to protect from public disclosure all
151 information to which another public record exemption applies
152 once an investigation is completed or ceases to be active.
153 Release of such information by the Department of Legal Affairs
154 and the Attorney General would undo the specific statutory
155 exemption protecting that information.

156 (3) An investigation of social media platform activities is
157 likely to result in the gathering of personal identifying
158 information that could be used for the purpose of identity
159 theft. For this reason, personal identifying information should
160 remain confidential and exempt once an investigation is
161 completed or ceases to be active.

162 (4) Information received by the Attorney General and the
163 Department of Legal Affairs may contain proprietary business
164 information, including trade secrets. Through such information,
165 including trade secrets, a business derives independent,
166 economic value, actual or potential, from the information being
167 generally unknown to, and not readily ascertainable by, other
168 persons who might obtain economic value from its disclosure or
169 use. Allowing public access to proprietary business information,
170 including trade secrets, through a public records request could
171 destroy the value of the proprietary business information and
172 cause a financial loss to the business submitting the
173 information. Release of such information could give business
174 competitors an unfair advantage and weaken the position of the

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175 entity supplying the proprietary business information in the
176 marketplace.

177 (5) Information received by the Attorney General and the
178 Department of Legal Affairs may contain a computer forensic
179 report or information that could reveal weaknesses in a
180 business' data security. The release of this information could
181 result in the identification of vulnerabilities in the business'
182 cybersecurity system and be used to harm the business and the
183 business' clients. For this reason, a computer forensic report
184 and information that could reveal weaknesses in a business' data
185 security should remain confidential and exempt once an
186 investigation is completed or ceases to be active.

187 (6) The Legislature finds that the harm that may result
188 from the release of information received by the Attorney General
189 and the Department of Legal Affairs pursuant to an investigation
190 by the Attorney General, the Department of Legal Affairs, or a
191 law enforcement agency under ss. 287.137 and 501.2041, Florida
192 Statutes, could impair the effective and efficient
193 administration of these investigations and thus, outweighs the
194 public benefit that may be derived from the disclosure of the
195 information.

196 Section 4. This act shall take effect July 1, 2021, if SB
197 7072 or similar legislation takes effect, if such legislation is
198 adopted in the same legislative session or an extension thereof
199 and becomes a law.