

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee

3 Representative Metz offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

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

9 501.171 Security of confidential personal information.—

10 (11) PUBLIC RECORDS EXEMPTION.—

11 (a) All information received by the department pursuant to
 12 a notification required by this section, or received by the
 13 department pursuant to an investigation by the department or a
 14 law enforcement agency, is confidential and exempt from s.
 15 119.07(1) and s. 24(a), Art. I of the State Constitution, until
 16 such time as the investigation is completed or ceases to be

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17 active. This exemption shall be construed in conformity with s.
18 119.071(2)(c).

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

22 1. In the furtherance of its official duties and
23 responsibilities;

24 2. For print, publication, or broadcast if the department
25 determines that such release would assist in notifying the
26 public or locating or identifying a person that the department
27 believes to be a victim of a data breach or improper disposal of
28 customer records; or

29 3. To another governmental entity in the furtherance of
30 its official duties and responsibilities.

31 (c) Upon completion of an investigation or once an
32 investigation ceases to be active, the following information
33 received by the department shall remain confidential and exempt
34 from s. 119.07(1) and s. 24(a), Art. I of the State
35 Constitution:

36 1. All information to which another public records
37 exemption applies.

38 2. Personal information.

39 3. A computer forensic report.

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

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42 5. Information that would disclose a covered entity's
43 proprietary business information.

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

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

47 2. Is intended to be private and is treated by the covered
48 entity as private because disclosure would harm the covered
49 entity or its business operations.

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

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

56 5. Includes:

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

58 b. Competitive interests, the disclosure of which would
59 impair the competitive business of the covered entity who is the
60 subject of the information.

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

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

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68 501.171, Florida Statutes, or received by the department
69 pursuant to an investigation by the department or a law
70 enforcement agency, be made confidential and exempt from s.
71 119.07(1), Florida Statutes, and s. 24(a), Article I of the
72 State Constitution for the following reasons:

73 (1) A notification of a violation of s. 501.171, Florida
74 Statutes, is likely to result in an investigation of such
75 violation because a data breach is likely the result of criminal
76 activity that may lead to further criminal activity. The
77 premature release of such information could frustrate or thwart
78 the investigation and impair the ability of the Department of
79 Legal Affairs to effectively and efficiently administer s.
80 501.171, Florida Statutes. In addition, release of such
81 information before completion of an active investigation could
82 jeopardize the ongoing investigation.

83 (2) The Legislature finds that it is a public necessity to
84 continue to protect from public disclosure all information to
85 which another public record exemption applies once an
86 investigation is completed or ceases to be active. Release of
87 such information by the Department of Legal Affairs would undo
88 the specific statutory exemption protecting that information.

89 (3) An investigation of a data breach or improper disposal
90 of customer records is likely to result in the gathering of
91 sensitive personal information, including social security
92 numbers, identification numbers, and personal financial and
93 health information. Such information could be used for the

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94 purpose of identity theft. In addition, release of such
95 information could subject possible victims of the data breach or
96 improper disposal of customer records to further financial harm.
97 Furthermore, matters of personal health are traditionally
98 private and confidential concerns between the patient and the
99 health care provider. The private and confidential nature of
100 personal health matters pervades both the public and private
101 health care sectors.

102 (4) Release of a computer forensic report or other
103 information that would otherwise reveal weaknesses in a covered
104 entity's data security could compromise the future security of
105 that entity, or other entities, if such information were
106 available upon conclusion of an investigation or once an
107 investigation ceased to be active. The release of such report or
108 information could compromise the security of current entities
109 and make those entities susceptible to future data breaches.
110 Release of such report or information could result in the
111 identification of vulnerabilities and further breaches of that
112 system.

113 (5) Notices received by the Department of Legal Affairs
114 and information received during an investigation of a data
115 breach are likely to contain proprietary business information,
116 including trade secrets, about the security of the breached
117 system. The release of the proprietary information could result
118 in the identification of vulnerabilities and further breaches of
119 that system. In addition, a trade secret derives independent,

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120 economic value, actual or potential, from being generally
121 unknown to, and not readily ascertainable by, other persons who
122 might obtain economic value from its disclosure or use. Allowing
123 public access to proprietary business information, including a
124 trade secret, through a public records request could destroy the
125 value of the proprietary business information and cause a
126 financial loss to the covered entity submitting the information.
127 Release of such information could give business competitors an
128 unfair advantage and weaken the position of the entity supplying
129 the proprietary business information in the marketplace.

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

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137 **T I T L E A M E N D M E N T**

138 Remove everything before the enacting clause and insert:
139 An act relating to public records; amending s. 501.171, F.S.;
140 providing exemptions from public records requirements for
141 information received by the Department of Legal Affairs pursuant
142 to a notice of a data breach or pursuant to certain
143 investigations; authorizing disclosure under certain
144 circumstances; defining terms; providing for future review and
145 repeal of the exemption under the Open Government Sunset Review

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7087 (2014)

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146 Act; providing a statement of public necessity; providing a
147 contingent effective date.