

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1526

INTRODUCER: Judiciary Committee and Senator Thrasher

SUBJECT: Public Records/Department of Legal Affairs

DATE: April 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1526 provides the public records exemptions for CS/SB 1524, which establishes the Florida Information Protection Act of 2014. The Act requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs and affected individuals when a security breach occurs and personal information held in electronic form is illegally accessed.

The bill provides that certain information reported to the Department of Legal Affairs relating to security breaches or received pursuant to investigations is confidential and exempt from public inspection pursuant to statute and the State Constitution. The bill also provides for future review and repeal in accordance with the Open Government Sunset Review Act and contains a statement of public necessity as required by law.

II. Present Situation:

Public Records - Access

The state's public records laws, which guarantee access to government records, are contained in both the State Constitution and Florida Statutes.

State Constitution

The State Constitution, in article I, section 24, guarantees every person the right to inspect or copy any public record of:

- The legislative, executive, and judicial branches;
- Each agency or department of those branches;
- Counties, municipalities, and districts; and
- Each constitutional officer, board, and commission, or entity created pursuant to law or the Constitution.¹

The Legislature is authorized, however, to exempt records by general law from that provision if the law:

- States with specificity the public necessity that justifies the exemption; and
- Is no broader than necessary to accomplish the stated purpose of the law.

The legislation proposing the exemption requires a two-thirds vote of each chamber for passage.²

State Statute

Section 119.07(1), F.S., requires every person who has custody of a public record to permit the record to be inspected and copied by any person desiring to do so at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records.³

Public Records - Requirements

An exemption from the disclosure requirements must serve an identifiable public purpose and be no broader than necessary to meet the public purpose it serves.⁴ An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program that would be significantly impaired without the exemption;
- Protects sensitive personal information that would be defamatory or cause unwarranted damage to a person's reputation or would jeopardize the person's safety if released; however, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature such as trade secrets.

Florida Information Protection Act of 2014 – CS/SB 1524

CS/SB 1524 creates the Florida Information Protection Act.⁵ The bill⁶ requires that certain commercial and governmental entities provide notice to the Department of Legal Affairs and affected individuals when a breach of security occurs involving the access of personal information.

A breach of security is defined as an unauthorized access of data in electronic form containing personal information. Personal information includes a person's name in combination with: a

¹ FLA. CONST. art. I, s. 24(a).

² FLA. CONST. art. I, s. 24(c).

³ Section 119.07(1)(a), F.S.

⁴ Section 119.15(5)(b), F.S.

⁵ Much of the information in CS/SB 1524 is currently contained in s. 817.5681, F.S., which is repealed in that bill.

⁶ See the Bill Analysis and Fiscal Impact Statement of CS/SB 1524 by the Commerce and Tourism Committee for more detailed information about the bill.

social security number; a driver license or identification card number, passport number, military identification number or other similar number issued on a government document used to verify identity; a financial account number or credit or debit card number in combination with a security or access code or password necessary to gain access to a person's financial account; certain medical information; or a person's health insurance policy number or subscriber identification number or similar identifier identification. Personal information also includes a username or e-mail address in combination with a password or security question and answer that permits access to an online account.

III. Effect of Proposed Changes:

Confidential and Exempt Information

Under the bill, all information received by the Department of Legal Affairs pursuant to notification of a security breach or received by the department pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency is confidential and exempt from public records requirements until the investigation is completed or ceases to be active.

While an investigation is considered active, the Department of Legal Affairs may disclose confidential and exempt information:

- In furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the department determines that the release would assist in notifying the public or locating or identifying a person that the department believes to have been a victim of the breach or improper disposal of customer records; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

After the completion of an investigation or once the investigation is no longer active, the following information shall remain confidential and exempt from public record requirements:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's proprietary information.

Proprietary information means information that:

- Is owned or controlled by the covered entity.
- Is intended to be private and is treated by the covered entity as private because disclosure would harm the entity or its business operations.
- Has not been disclosed except as required by law or a private agreement that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.
- Includes trade secrets or competitive interests, which, if disclosed would impair the competitive business of the covered entity that is the subject of the information.

Open Government Sunset Review Act

The bill provides for repeal of the public records exemption on October 2, 2019, unless it is reviewed and saved from repeal through reenactment by the Legislature.

Statement of Public Necessity

The bill provides a statement of public necessity as required in the State Constitution. The statement provides reasons why information received by the department pursuant to a notification of a security breach or received by the department pursuant to an investigation by the department or a law enforcement agency should be made confidential and exempt. The general reasons are that:

- Premature release of the confidential and exempt information could jeopardize an investigation;
- Release of the confidential information that is also protected from release by a separate, existing public record exemption would render void the additional exemption;
- Publication of sensitive personal data information could result in identity theft, financial harm, or disclosure of personal health matters;
- Disclosure of a computer forensic report could reveal weaknesses in an entity's data security and make it vulnerable to future data breaches; and
- Release of proprietary information or trade secrets could result in financial loss to the business and provide competitors with an unfair advantage.

Contingent Effective Date

The bill contains a contingent effective date. It takes effect on the same date that CS/SB 1524, or similar legislation takes effect, if that legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a public records exemption that must be approved by a two-thirds vote of the membership of each house of the Legislature.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.171 of the Florida Statutes.

IX. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on April 1, 2014:**

The CS differs from the original bill by:

- Including a definition of proprietary information;
- Providing for future repeal of the public records exemption on October 2, 2019, if not reenacted by the Legislature; and
- Expanding the statement of public necessity to include additional reasons why the confidential and exempt information should be exempt from public access.

B. Amendments:

None.