

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 information received by the Attorney General pursuant
5 to an investigation by the Attorney General or a law
6 enforcement agency into certain social media platform
7 activities; authorizing release of confidential and
8 exempt information in certain instances; requiring
9 certain information to remain confidential and exempt
10 after an investigation is completed or ceases to be
11 active; defining the term "proprietary business
12 information"; providing for future legislative review
13 and repeal of the exemption; amending s. 501.2041,
14 F.S.; providing a public records exemption for
15 information received by the Department of Legal
16 Affairs pursuant to an investigation by the department
17 or a law enforcement agency into violations by certain
18 social media platforms; authorizing release of
19 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 HB 7013, 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 subsection (3) (d) pursuant to an investigation by the
 38 Attorney General or a law enforcement agency, is confidential
 39 and 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
 59 business's 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
 65 business as private because disclosure would harm the business
 66 or its 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.

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 HB 7013, 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
88 pursuant to an investigation by the department or a law
89 enforcement agency of a violation of this section, is
90 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
91 of the State Constitution, until such time as the investigation
92 is completed or ceases to be active. This exemption shall be
93 construed in conformity with 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's 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
 116 business as private because disclosure would harm the business
 117 or its 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.
- 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
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) The Legislature finds that it is a public necessity to

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

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

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

176 the proprietary business information in the 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's data security. The release of this information could
181 result in the identification of vulnerabilities in the
182 business's cybersecurity system and be used to harm the business
183 and the business's clients. For this reason, a computer forensic
184 report and information that could reveal weaknesses in a
185 business's data security should remain confidential and exempt
186 once an 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 Department of Legal Affairs pursuant to an investigation by
190 the Attorney General, the Department of Legal Affairs, or a law
191 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 HB
197 7013 or similar legislation takes effect, if such legislation is
198 adopted in the same legislative session or an extension thereof
199 and becomes law.