A bill to be entitled

An act relating to public records; amending s. 287.137, F.S; providing a public records exemption for certain investigations by the Attorney General or a law enforcement agency into violations of certain social media actions; providing that confidential and exempt information may be disclosed under specified conditions; requiring certain information to remain confidential and exempt after an investigation is complete or ceases to be active; defining the term "proprietary information"; providing for future legislative review and repeal of the exemptions; amending s. 501.2041, F.S; providing a public records exemption for certain investigations by the Department of Legal Affairs or a law enforcement agency into violations of certain social media actions; providing that confidential and exempt information may be disclosed under specified conditions; requiring certain information to remain confidential and exempt after an investigation is complete or ceases to be active; providing for future legislative review and repeal of the exemptions; defining the term "proprietary information"; providing a statement of public necessity; providing a contingent effective date.

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 ____,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

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

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

2. Personal information.

3. A computer forensic report.

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

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

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

1. Is owned or controlled by the business.

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

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

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

5. Includes:

a. Trade secrets as defined in s. 688.002.

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

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (8) is added to section 501.2041, Florida Statutes, as created by HB ____, 2021 Regular Session, to read:

501.2041 Unlawful acts and practices by social media platforms.—

(8)(a) All information received by the department pursuant to an investigation by the department 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 department:

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

2. To another governmental entity in performance of its

official duties and responsibilities.

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

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

2. Personal information.

3. A computer forensic report.

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

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

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

1. Is owned or controlled by the business.

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

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

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

same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

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

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

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

(1) A notification of a violation of s. 501.172, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the Department of Legal Affairs and the Attorney General to effectively and efficiently administer ss. 287.137 and 501.2041, Florida

Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

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

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

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

including trade secrets, through a public records request could destroy the value of the proprietary information and cause a financial loss to the business submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

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