

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 551.229, F.S.; providing definitions; providing an
 4 exemption from public records requirements for
 5 confidential and proprietary business information and
 6 trade secrets received by the Department of Gaming
 7 Control; providing an exemption from public records
 8 requirements for information held that would reveal
 9 investigation techniques and procedures used by the
 10 department; providing an exception to the exemption
 11 for other governmental entities having oversight or
 12 regulatory or law enforcement authority; providing for
 13 future legislative review and repeal of the
 14 exemptions; providing a statement of public necessity;
 15 providing a contingent effective date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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 19 Section 1. Section 551.229, Florida Statutes, is created
 20 to read:

21 551.229 Public records exemptions.—

22 (1) (a) As used in this section, the term "proprietary
 23 business information" means information, regardless of form or
 24 characteristics, that is owned or controlled by an applicant for
 25 a license or a licensee under this part and that:

26 1. Is intended to be and is treated by the applicant or

27 licensee as private in that the disclosure of the information
28 would cause harm to the business operations of the applicant or
29 licensee and in that the information has not been disclosed
30 unless disclosed pursuant to a statutory requirement, an order
31 of a court or administrative body, or a private agreement that
32 provides that the information will not be released to the
33 public;

34 2. Is not otherwise readily ascertainable or publicly
35 available by proper means to other persons from another source
36 in the same configuration as requested by the department; and

37 3. Includes:

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

39 b. Information relating to business plans and competitive
40 interests, the disclosure of which would impair the competitive
41 business of the provider of the information.

42 c. Internal auditing controls and reports of internal
43 auditors.

44 d. Reports of external auditors for privately held
45 companies.

46 (b) Proprietary business information contained in the
47 following items held by the department are confidential and
48 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
49 Constitution:

50 1. Information obtained during the destination resort
51 license application process pursuant to this part.

52 2. Information obtained during department audits,

53 examinations, investigations, or enforcement actions pursuant to
54 this part.

55 (2) (a) As used in the section, the term "investigation
56 techniques and procedures" means methods, processes, and
57 guidelines used to evaluate regulatory compliance and to collect
58 and analyze data, records, and testimony for the purpose of
59 documenting violations of this part and the rules adopted under
60 this part, including such confidential examination techniques
61 and procedures developed by other regulators or law enforcement
62 and shared in a joint investigation.

63 (b) As used in the section, the term "investigation
64 information" means all information and data obtained and
65 produced pursuant to investigations by the department, including
66 all information and data developed by other regulators or law
67 enforcement and shared in a joint investigation.

68 (c) Information held by the department that would reveal
69 investigation techniques and procedures and investigation
70 information are confidential and exempt from s. 119.07(1) and s.
71 24(a), Art. I of the State Constitution.

72 (3) The department may disclose information made
73 confidential and exempt under this section:

74 (a) If the applicant or licensee to which it pertains
75 gives prior written consent;

76 (b) Pursuant to a court order;

77 (c) To a law enforcement agency in the furtherance of the
78 agency's official duties and responsibilities;

79 (d) To the appropriate law enforcement or prosecutorial
80 agency for the purpose of reporting any suspected criminal
81 activity; or

82 (e) Pursuant to a legislative subpoena. A legislative body
83 or committee that receives records or information pursuant to
84 such a subpoena must maintain the confidential status of such
85 records or information, except in a case involving the
86 investigation of charges against a public official subject to
87 impeachment or removal, in which case records or information
88 shall only be disclosed to the extent necessary as determined by
89 such legislative body or committee.

90 (4) This section is subject to the Open Government Sunset
91 Review Act in accordance with s. 119.15 and shall stand repealed
92 on October 2, 2020, unless reviewed and saved from repeal
93 through reenactment by the Legislature.

94 Section 2. (1) The Legislature finds that it is a public
95 necessity that information relating to proprietary confidential
96 business information under part II of chapter 551, Florida
97 Statutes, be made confidential and exempt from s. 119.07(1),
98 Florida Statutes, and s. 24(a), Article I of the State
99 Constitution. The disclosure of such information could injure an
100 applicant or licensee in the marketplace by providing its
101 competitors with detailed insight into the business plans,
102 management systems, operational protocols, competitive
103 interests, and financial status of the applicant or licensee,
104 thereby diminishing the advantage that the applicant or licensee

105 maintains over competitors that do not possess such information.
106 Proprietary business information derives actual and potential
107 independent economic value from not being generally known to,
108 and not being readily ascertainable by proper means by, other
109 persons who can derive economic value from its disclosure or
110 use. The Department of Gaming Control, in performing its duties
111 and responsibilities, may need to obtain proprietary business
112 information from applicants and licensees. Without an exemption
113 from public records requirements for proprietary business
114 information provided to the Department of Gaming Control, such
115 information becomes public when received and must be divulged
116 upon request. Divulgence of proprietary business information
117 under the public records law would destroy the value of that
118 property to the proprietor, causing financial loss. Without this
119 exemption, the best qualified applicants might refrain from
120 applying for licenses or operating as licensees. Part II of
121 chapter 551, Florida Statutes, provides for a competitive
122 process for the award of a destination resort license. The
123 selection of the best qualified applicant for a license is
124 critical for the state to ensure that the state receives the
125 most economic benefits and greatest amount of tax revenues in
126 granting a resort license. Therefore, the Legislature declares
127 that any proprietary business information is confidential and
128 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
129 Article I of the State Constitution.

130 (2) (a) The Legislature also finds that it is a public

131 necessity that information that would reveal investigation
132 techniques or procedures used by the Department of Gaming
133 Control pursuant to part II of chapter 551, Florida Statutes, be
134 made confidential and exempt from s. 119.07(1), Florida
135 Statutes, and s. 24(a), Article I of the State Constitution.
136 This exemption is necessary to ensure the Department of Gaming
137 Control's ability to effectively and efficiently enforce
138 compliance with part II of chapter 551, Florida Statutes, which
139 would be significantly impaired without the exemption.

140 (b) Investigations are an essential component of gaming
141 regulation. The mere existence of an investigation program
142 fosters regulatory compliance and deters fraud and abuse by
143 industry participants. Investigations often detect violations in
144 their early stages. Early detection allows corrective action to
145 be taken before significant harm can be done to the state. Due
146 to the importance of such investigations, state regulators
147 devote extensive resources to devising effective investigation
148 techniques and procedures.

149 (c) Allowing access to information revealing investigation
150 techniques or procedures would undermine the investigation
151 process and facilitate evasion of the law. Any advance notice of
152 the areas of inquiry to be explored during an examination might
153 prompt a person to conceal evidence of deficiencies or fabricate
154 evidence of compliance. Without the exemption, the Department of
155 Gaming Control's ability to uncover misconduct and evaluate
156 policies and procedures through the investigation process would

157 | be significantly impaired.

158 | (d) Without such an exemption, the Department of Gaming
159 | Control's ability to participate in joint investigations with
160 | other regulators or law enforcement would be impaired as release
161 | of this information relating to investigations by other
162 | regulators or law enforcement would compromise the integrity of
163 | such joint investigations. The Department of Gaming Control also
164 | would not be able to accept or use confidential examination
165 | techniques and procedures developed by other regulators or law
166 | enforcement. Thus, the absence of an exemption would create a
167 | situation that would reduce the Department of Gaming Control's
168 | ability to leverage its limited resources. Therefore, the
169 | Legislature declares that any investigation techniques and
170 | procedures and investigation information are confidential and
171 | exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
172 | Article I of the State Constitution.

173 | Section 3. This act shall take effect on the same date
174 | that HB 1233 or similar legislation takes effect, if such
175 | legislation is adopted in the same legislative session or an
176 | extension thereof and becomes law.