

By Senator Thrasher

6-01656B-13

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1 A bill to be entitled
2 An act relating to public records; amending s. 68.083,
3 F.S.; providing an exemption from public records
4 requirements for the complaint and information held by
5 the Department of Legal Affairs pursuant to an
6 investigation of a violation of s. 68.082, F.S.,
7 relating to false claims against the state; providing
8 for future legislative review and repeal of the
9 exemption under the Open Government Sunset Review Act;
10 providing for specified disclosure; specifying
11 duration of the exemption; specifying conditions that
12 constitute an active investigation; providing a
13 statement of public necessity; providing a contingent
14 effective date.

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

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18 Section 1. Subsection (8) is added to section 68.083,
19 Florida Statutes, to read:

20 68.083 Civil actions for false claims.—

21 (8) (a) Except as otherwise provided in this subsection, the
22 complaint and information held by the department pursuant to an
23 investigation of a violation of s. 68.082 is confidential and
24 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution. This paragraph is subject to the Open Government
26 Sunset Review Act in accordance with s. 119.15 and shall stand
27 repealed on October 2, 2018, unless reviewed and saved from
28 repeal through reenactment by the Legislature.

29 (b) Information made confidential and exempt under

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30 paragraph (a) may be disclosed by the department to a law
31 enforcement agency or another administrative agency in the
32 performance of its official duties and responsibilities.

33 (c) Information made confidential and exempt under
34 paragraph (a) is no longer confidential and exempt once the
35 investigation is completed or ceases to be active unless
36 disclosure of the information would:

37 1. Jeopardize the integrity of another active
38 investigation;

39 2. Reveal investigative techniques or procedures; or

40 3. Reveal trade secrets as defined in s. 688.002.

41 (d) For purposes of this subsection, an investigation is
42 considered active if the investigation is proceeding with
43 reasonable dispatch and the department has a reasonable, good
44 faith belief that the investigation could lead to the filing of
45 an administrative, civil, or criminal proceeding.

46 Section 2. The Legislature finds that it is a public
47 necessity that the complaint and information held by the
48 Department of Legal Affairs pursuant to an investigation of a
49 violation of s. 68.082, Florida Statutes, relating to false
50 claims against the state, be held confidential and exempt from
51 public records requirements. Because a false claims
52 investigation conducted by the Department of Legal Affairs may
53 lead to the filing of an administrative or civil proceeding, the
54 premature release of the complaint and information held by the
55 department could frustrate or thwart the investigation and
56 impair the ability of the department to effectively and
57 efficiently administer its duties under the Florida False Claims
58 Act, ss. 68.081-68.092, Florida Statutes. This exemption also

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59 protects the reputation of the named defendant in the event the
60 allegations of the qui tam complaint ultimately prove to be
61 unfounded. Without this exemption, a plaintiff can subject a
62 defendant to serious fraud allegations in the name of the State
63 of Florida merely by filing a qui tam complaint. Additionally,
64 given the department's subpoena powers for all qui tam
65 investigations, this exemption, which mirrors the existing
66 statutory exemption in s. 409.913(12), Florida Statutes, for
67 information obtained during investigations of Medicaid claims,
68 is especially appropriate. Therefore, the Legislature finds that
69 it is a public necessity that the complaint and information held
70 by the Department of Legal Affairs pursuant to an investigation
71 of a violation of s. 68.082, Florida Statutes, relating to false
72 claims against the state, be held confidential and exempt from
73 public records requirements.

74 Section 3. This act shall take effect on the same date that
75 SB ____ or similar legislation takes effect if such legislation
76 is adopted in the same legislative session, or an extension
77 thereof, and becomes law.