

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.

15  
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27       repealed on October 2, 2018, unless reviewed and saved from  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.