

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative McFarland offered the following:

3
4 **Amendment**

5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (13) is added to section 501.173,
7 Florida Statutes, as created by HB 969, 2021 Regular Session, to
8 read:

9 501.173 Consumer data privacy.—

10 (13) PUBLIC RECORDS EXEMPTION.—

11 (a) All information received by the department pursuant to
12 a notification of a violation under this section, or received by
13 the department pursuant to an investigation by the department or
14 a law enforcement agency of a violation of this section, is
15 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
16 of the State Constitution, until such time as the investigation

144373 - h971-strike.docx

Published On: 4/13/2021 4:58:50 PM

Amendment No. 1

17 is completed or ceases to be active. This exemption shall be
18 construed in conformity with s. 119.071(2)(c).

19 (b) During an active investigation, information made
20 confidential and exempt pursuant to paragraph (a) may be
21 disclosed by the department:

22 1. In the furtherance of its official duties and
23 responsibilities;

24 2. For print, publication, or broadcast if the department
25 determines that such release would assist in notifying the
26 public or locating or identifying a person that the department
27 believes to be a victim of a data breach or improper use or
28 disposal of customer records, except that information made
29 confidential and exempt by paragraph (c) may not be released
30 pursuant to this subparagraph; or

31 3. To another governmental entity in the furtherance of
32 its official duties and responsibilities.

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

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

40 2. Personal information.

41 3. A computer forensic report.

144373 - h971-strike.docx

Published On: 4/13/2021 4:58:50 PM

Amendment No. 1

42 4. Information that would otherwise reveal weaknesses in a
43 controller's, processor's, or person's data security.

44 5. Information that would disclose a controller's,
45 processor's, or person's proprietary information.

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

48 1. Is owned or controlled by the controller, processor, or
49 person.

50 2. Is intended to be private and is treated by the
51 controller, processor, or person as private because disclosure
52 would harm the controller, processor, or person or its business
53 operations.

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

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

60 5. Includes:

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

62 b. Competitive interests, the disclosure of which would
63 impair the competitive advantage of the controller, processor,
64 or person who is the subject of the information.

65 (e) This subsection is subject to the Open Government
66 Sunset Review Act in accordance with s. 119.15 and shall stand

Amendment No. 1

67 repealed on October 2, 2027, unless reviewed and saved from
68 repeal through reenactment by the Legislature.

69 Section 2. The Legislature finds that it is a public
70 necessity that all information received by the Department of
71 Legal Affairs pursuant to a notification of a violation of s.
72 501.173, Florida Statutes, or received by the department
73 pursuant to an investigation by the department or a law
74 enforcement agency of a violation of s. 501.173, Florida
75 Statutes, be made confidential and exempt from s. 119.07(1),
76 Florida Statutes, and s. 24(a), Article I of the State
77 Constitution for the following reasons:

78 (1) A notification of a violation of s. 501.173, Florida
79 Statutes, may result in an investigation of such violation. The
80 premature release of such information could frustrate or thwart
81 the investigation and impair the ability of the department to
82 effectively and efficiently administer s. 501.173, Florida
83 Statutes. In addition, release of such information before
84 completion of an active investigation could jeopardize the
85 ongoing investigation.

86 (2) The Legislature finds that it is a public necessity to
87 continue to protect from public disclosure all information to
88 which another public record exemption applies once an
89 investigation is completed or ceases to be active. Release of
90 such information by the department would undo the specific
91 statutory exemption protecting that information.

144373 - h971-strike.docx

Published On: 4/13/2021 4:58:50 PM

Amendment No. 1

92 (3) An investigation of a violation of s. 501.173, Florida
93 Statutes, is likely to result in the gathering of sensitive
94 personal information, including identification numbers, unique
95 identifiers, professional or employment-related information, and
96 personal financial information. Such information could be used
97 for the purpose of identity theft. The release of such
98 information could subject possible victims of data privacy
99 violations to further harm.

100 (4) Notices received by the department and information
101 received during an investigation of a violation of s. 501.173,
102 Florida Statutes, are likely to contain proprietary information.
103 Such information, including trade secrets, derives independent,
104 economic value, actual, or potential, from being generally
105 unknown to, and not readily ascertainable by, other persons who
106 might obtain economic value from its disclosure or use. Allowing
107 public access to proprietary information, including a trade
108 secret, through a public records request could destroy the value
109 of the proprietary information and cause a financial loss to the
110 controller, processor, or person submitting the information.
111 Release of such information could give business competitors an
112 unfair advantage and weaken the position of the entity supplying
113 the proprietary information in the marketplace.

114 (5) Information received by the department may contain a
115 computer forensic report or information that could reveal
116 weaknesses in a controller's, processor's, or person's data

144373 - h971-strike.docx

Published On: 4/13/2021 4:58:50 PM

Amendment No. 1

117 security. The release of this information could result in the
118 identification of vulnerabilities in the controller's,
119 processor's, or person's cybersecurity system and be used to
120 harm the controller, processor, or person and clients.

121 (6) The Legislature finds that the harm that may result
122 from the release of information received by the department
123 pursuant to a notification or investigation by the department or
124 a law enforcement agency of a violation of s. 501.173, Florida
125 Statutes, could impair the effective and efficient
126 administration of the investigation and thus, outweighs the
127 public benefit that may be derived from the disclosure of the
128 information.

129 Section 3. This act shall take effect on the same date
130 that HB 969 or similar legislation takes effect, if such
131 legislation is adopted in the same legislative session or an
132 extension thereof and becomes a law.