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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/28/2021 10:54 AM

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Senator Bradley moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) is added to section 501.177,
Florida Statutes, as created by HB 969, 2021 Regular Session, to
read:

501.177 Enforcement; Attorney General; preemption.—

(6) (a) All information received by the department pursuant
to a notification of a violation under this act, or received by
the department pursuant to an investigation by the department or



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12 a law enforcement agency of a violation of this act, is
13 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
14 of the State Constitution until such time as the investigation
15 is completed or ceases to be active. This exemption shall be
16 construed in conformity with s. 119.071(2)(c).

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

20 1. In the furtherance of official duties and
21 responsibilities;

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

29 3. To another governmental entity in the furtherance of its
30 official duties and responsibilities.

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

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

38 2. Personal information.

39 3. A computer forensic report.

40 4. Information that would otherwise reveal weaknesses in a



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41 controller's, processor's, or person's data security.

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

44 (d) For purposes of this subsection, the term "proprietary
45 information":

46 1. Means information that:

47 a. Is owned or controlled by the controller, processor, or
48 person.

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

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

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

59 2. Includes:

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

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

64 (e) This subsection is subject to the Open Government
65 Sunset Review Act in accordance with s. 119.15 and shall stand
66 repealed on October 2, 2028, unless reviewed and saved from
67 repeal through reenactment by the Legislature.

68 Section 2. The Legislature finds that it is a public
69 necessity that all information received by the Department of



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70 Legal Affairs pursuant to a notification of a violation of this
71 act, or received by the department pursuant to an investigation
72 by the department or a law enforcement agency of a violation of
73 this act, be made confidential and exempt from s. 119.07(1),
74 Florida Statutes, and s. 24(a), Article I of the State
75 Constitution for the following reasons:

76 (1) A notification of a violation of this act may result in
77 an investigation of such violation. The premature release of
78 such information could frustrate or thwart the investigation and
79 impair the ability of the department to effectively and
80 efficiently administer its duties pursuant to s. 501.177,
81 Florida Statutes. In addition, release of such information
82 before completion of an active investigation could jeopardize
83 the ongoing investigation.

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

90 (3) An investigation of a violation of this act is likely
91 to result in the gathering of sensitive personal information,
92 including social security numbers, identification numbers, and
93 personal financial information. Such information could be used
94 for the purpose of identity theft. In addition, release of such
95 information could subject possible victims of data privacy
96 violations to further harm.

97 (4) Notices received by the department and information
98 received during an investigation of a violation of this act are



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99 likely to contain proprietary information, including trade
100 secrets, about the security of the system. The release of the
101 proprietary information could result in the identification of
102 the system's vulnerabilities, which could ultimately lead to the
103 improper access of personal information. In addition, a trade
104 secret derives independent, economic value, actual or potential,
105 from being generally unknown to, and not readily ascertainable
106 by, other persons who might obtain economic value from its
107 disclosure or use. Allowing public access to proprietary
108 information, including a trade secret, through a public records
109 request could destroy the value of the proprietary information
110 and cause a financial loss to the controller, processor, or
111 person submitting the information. Release of such information
112 could weaken the position of the entity supplying the
113 proprietary information in the marketplace.

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

118
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete everything before the enacting clause
122 and insert:

123 A bill to be entitled
124 An act relating to public records; amending s.
125 501.177, F.S.; providing an exemption from public
126 records requirements for information relating to
127 investigations by the Department of Legal Affairs and



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128 law enforcement agencies of certain data privacy
129 violations; providing that certain information may be
130 disclosed by the department during active
131 investigations for specified purposes; defining the
132 term "proprietary information"; providing for future
133 legislative review and repeal of the exemption;
134 providing a statement of public necessity; providing a
135 contingent effective date.