

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 501.173, F.S.; providing an exemption from public
 4 records requirements for information relating to
 5 investigations by the Department of Legal Affairs and
 6 law enforcement agencies of certain data privacy
 7 violations; providing for future legislative review
 8 and repeal of the exemption; providing a statement of
 9 public necessity; providing a contingent effective
 10 date.

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

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14 Section 1. Subsection (14) is added to section 501.173,
 15 Florida Statutes, as created by HB 969, 2021 Regular Session, to
 16 read:

17 501.173 Consumer data privacy.-

18 (14) PUBLIC RECORDS EXEMPTION.-

19 (a) All information received by the department pursuant to
 20 a notification of a security breach or a violation under this
 21 section, or received by the department pursuant to an
 22 investigation by the department or a law enforcement agency, is
 23 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 24 of the State Constitution, until such time as the investigation
 25 is completed or ceases to be active. This exemption shall be

26 construed in conformity with s. 119.071(2) (c).

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

30 1. In the furtherance of official duties and
31 responsibilities;

32 2. For print, publication, or broadcast if the department
33 determines that such release would assist in notifying the
34 public or locating or identifying a person that the department
35 believes to be a victim of a data breach or improper use or
36 disposal of customer records, except that information made
37 confidential and exempt by paragraph (c) may not be released
38 pursuant to this subparagraph; or

39 3. To another governmental entity in the furtherance of
40 its official duties and responsibilities.

41 (c) Upon completion of an investigation or once an
42 investigation ceases to be active, the following information
43 received by the department shall remain confidential and exempt
44 from s. 119.07(1) and s. 24(a), Art. I of the State
45 Constitution:

46 1. All information to which another public records
47 exemption applies.

48 2. Personal information.

49 3. A computer forensic report.

50 4. Information that would otherwise reveal weaknesses in a

51 business's data security.

52 5. Information that would disclose a business's
53 proprietary information.

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

56 1. Is owned or controlled by the business.

57 2. Is intended to be private and is treated by the
58 business as private because disclosure would harm the business
59 or its business operations.

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

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

66 5. Includes:

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

68 b. Competitive interests, the disclosure of which would
69 impair the competitive business of the business who is the
70 subject of the information.

71 (e) This subsection is subject to the Open Government
72 Sunset Review Act in accordance with s. 119.15 and shall stand
73 repealed on October 2, 2027, unless reviewed and saved from
74 repeal through reenactment by the Legislature.

75 Section 2. The Legislature finds that it is a public

76 necessity that all information received by the Department of
77 Legal Affairs pursuant to a notification of a violation of s.
78 501.173, Florida Statutes, or received by the department
79 pursuant to an investigation by the department or a law
80 enforcement agency, be made confidential and exempt from s.
81 119.07(1), Florida Statutes, and s. 24(a), Article I of the
82 State Constitution for the following reasons:

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

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

97 (3) An investigation of a data privacy violation is likely
98 to result in the gathering of sensitive personal information,
99 including social security numbers, identification numbers, and
100 personal financial information. Such information could be used

101 for the purpose of identity theft. In addition, release of such
102 information could subject possible victims of data privacy
103 violations to further harm.

104 (4) Notices received by the department and information
105 received during an investigation of a data breach are likely to
106 contain proprietary information, including trade secrets, about
107 the security of the breached system. The release of the
108 proprietary information could result in the identification of
109 vulnerabilities. In addition, a trade secret derives
110 independent, economic value, actual, or potential, from being
111 generally unknown to, and not readily ascertainable by, other
112 persons who might obtain economic value from its disclosure or
113 use. Allowing public access to proprietary information,
114 including a trade secret, through a public records request could
115 destroy the value of the proprietary information and cause a
116 financial loss to the business submitting the information.
117 Release of such information could give business competitors an
118 unfair advantage and weaken the position of the entity supplying
119 the proprietary information in the marketplace.

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