

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 violation under this section, or received by
 21 the department pursuant to an investigation by the department or
 22 a law enforcement agency of a violation of this section, 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 its 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 advantage 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 of a violation of s. 501.173, Florida
81 Statutes, be made confidential and exempt from s. 119.07(1),
82 Florida Statutes, and s. 24(a), Article I of the State
83 Constitution for the following reasons:

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

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

98 (3) An investigation of a violation of s. 501.173, Florida
99 Statutes, is likely to result in the gathering of sensitive

100 personal information, including identification numbers, unique
101 identifiers, professional or employment-related information, and
102 personal financial information. Such information could be used
103 for the purpose of identity theft. The release of such
104 information could subject possible victims of data privacy
105 violations to further harm.

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

120 (5) Information received by the department may contain a
121 computer forensic report or information that could reveal
122 weaknesses in a business's data security. The release of this
123 information could result in the identification of

124 | vulnerabilities in the business's cybersecurity system and be
125 | used to harm the business and the business's clients.

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

134 | Section 3. This act shall take effect on the same date
135 | that HB 969 or similar legislation takes effect, if such
136 | legislation is adopted in the same legislative session or an
137 | extension thereof and becomes a law.