

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.

11  
 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 9, 2022 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

51 the data security of a controller, processor, or third party.

52 5. Information that would disclose the proprietary  
53 information of a controller, processor, or third party.

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

56 1. Is owned or controlled by the controller, processor, or  
57 third party.

58 2. Is intended to be private and is treated by the  
59 controller, processor, or third party as private because  
60 disclosure would harm the controller, processor, or third party  
61 or its business operations.

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

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

68 5. Includes:

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

70 b. Competitive interests, the disclosure of which would  
71 impair the competitive advantage of the controller, processor,  
72 or third party who is the subject of the information.

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75 repealed on October 2, 2027, unless reviewed and saved from

76 repeal through reenactment by the Legislature.

77       Section 2. The Legislature finds that it is a public  
78 necessity that all information received by the Department of  
79 Legal Affairs pursuant to a notification of a violation of s.  
80 501.173, Florida Statutes, or received by the department  
81 pursuant to an investigation by the department or a law  
82 enforcement agency of a violation of s. 501.173, Florida  
83 Statutes, be made confidential and exempt from s. 119.07(1),  
84 Florida Statutes, and s. 24(a), Article I of the State  
85 Constitution for the following reasons:

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

94       (2) Release of information to which another public record  
95 exemption applies once an investigation is completed or ceases  
96 to be active would undo the specific statutory exemption  
97 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 controller, processor, or third party submitting the  
117 information. Release of such information could give business  
118 competitors an unfair advantage and weaken the position of the  
119 entity supplying the proprietary information 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 the data security of a controller, processor, or  
123 third party. The release of this information could result in the  
124 identification of vulnerabilities in the cybersecurity system of  
125 the controller, processor, or third party and be used to harm

CS/HB 1565

2022

126 | the controller, processor, or third party and clients.

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

135 |       Section 3. This act shall take effect on the same date  
136 | that HB 9 or similar legislation takes effect, if such  
137 | legislation is adopted in the same legislative session or an  
138 | extension thereof and becomes a law.