

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative McFarland offered the following:

Amendment (with title amendment)

Between lines 13 and 14, insert:

Section 1. Subsection (6) is added to section 501.173, Florida Statutes, as created by SB 262 or similar legislation, 2023 Regular Session, to read:

501.173 Use of tracking technology; consumer consent.-

(6) PUBLIC RECORDS EXEMPTION.-

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is

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

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

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

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

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

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

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

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39 2. Personal information.

40 3. A computer forensic report.

41 4. Information that would otherwise reveal weaknesses in
42 the data security of a tracking entity.

43 5. Information that would disclose the proprietary
44 information of a tracking entity.

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

47 1. Is owned or controlled by the tracking entity.

48 2. Is intended to be private and is treated by the
49 tracking entity as private because disclosure would harm the
50 tracking entity or its business operations.

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

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

57 5. Includes:

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

59 b. Competitive interests, the disclosure of which would
60 impair the competitive advantage of the tracking entity who is
61 the subject of the information.

62 (e) This section is subject to the Open Government Sunset
63 Review Act in accordance with s. 119.15 and shall stand repealed

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64 on October 2, 2028, unless reviewed and saved from repeal
65 through reenactment by the Legislature.

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

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

83 (2) Release of information to which another public record
84 exemption applies once an investigation is completed or ceases
85 to be active would undo the specific statutory exemption
86 protecting that information.

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

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89 personal information, including identification numbers, unique
90 identifiers, professional or employment-related information, and
91 personal financial information. Such information could be used
92 for the purpose of identity theft. The release of such
93 information could subject possible victims of data privacy
94 violations to further harm.

95 (4) Notices received by the department and information
96 received during an investigation of a violation of s. 501.173,
97 Florida Statutes, are likely to contain proprietary information.
98 Such information, including trade secrets, derives independent,
99 economic value, actual or potential, from being generally
100 unknown to, and not readily ascertainable by, other persons who
101 might obtain economic value from its disclosure or use. Allowing
102 public access to proprietary information, including a trade
103 secret, through a public records request could destroy the value
104 of the proprietary information and cause a financial loss to the
105 tracking entity. Release of such information could give business
106 competitors an unfair advantage.

107 (5) Information received by the department may contain a
108 computer forensic report or information that could reveal
109 weaknesses in the data security of a tracking entity. The
110 release of this information could result in the identification
111 of vulnerabilities in the cybersecurity system of the tracking
112 entity and be used to harm the tracking entity and clients.

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113 (6) The harm that may result from the release of
114 information received by the department pursuant to a
115 notification or investigation by the department or a law
116 enforcement agency of a violation of s. 501.173, Florida
117 Statutes, could impair the effective and efficient
118 administration of the investigation and thus, outweighs the
119 public benefit that may be derived from the disclosure of the
120 information.

121 Section 3. Subsection (6) is added to 501.1735, Florida
122 Statutes, as created by SB 262 or similar legislation, 2023
123 Regular Session, to read:

124 501.1735 Protection of children in online spaces.-

125 (6) PUBLIC RECORDS EXEMPTION.-

126 (a) All information received by the department pursuant to
127 a notification of a violation under this section, or received by
128 the department pursuant to an investigation by the department or
129 a law enforcement agency of a violation of this section, is
130 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
131 of the State Constitution, until such time as the investigation
132 is completed or ceases to be active. This exemption shall be
133 construed in conformity with s. 119.071(2)(c).

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

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- 137 1. In the furtherance of its official duties and
138 responsibilities;
- 139 2. For print, publication, or broadcast if the department
140 determines that such release would assist in notifying the
141 public or locating or identifying a person that the department
142 believes to be a victim of a data breach or an improper use or
143 disposal of customer records, except that information made
144 confidential and exempt by paragraph (c) may not be released
145 pursuant to this subparagraph; or
- 146 3. To another governmental entity in the furtherance of
147 its official duties and responsibilities.
- 148 (c) Upon completion of an investigation or once an
149 investigation ceases to be active, the following information
150 received by the department shall remain confidential and exempt
151 from s. 119.07(1) and s. 24(a), Art. I of the State
152 Constitution:
- 153 1. All information to which another public records
154 exemption applies.
- 155 2. Personal information.
- 156 3. A computer forensic report.
- 157 4. Information that would otherwise reveal weaknesses in
158 the data security of an online platform.
- 159 5. Information that would disclose the proprietary
160 information of an online platform.

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161 (d) For purposes of this section, the term "proprietary
162 information" means information that:

163 1. Is owned or controlled by the online platform.

164 2. Is intended to be private and is treated by the online
165 platform as private because disclosure would harm the online
166 platform or its business operations.

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

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

173 5. Includes:

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

175 b. Competitive interests, the disclosure of which would
176 impair the competitive advantage of the online platform who is
177 the subject of the information.

178 (e) This section is subject to the Open Government Sunset
179 Review Act in accordance with s. 119.15 and shall stand repealed
180 on October 2, 2028, unless reviewed and saved from repeal
181 through reenactment by the Legislature.

182 Section 4. The Legislature finds that it is a public
183 necessity that all information received by the Department of
184 Legal Affairs pursuant to a notification of a violation of s.
185 501.1735, Florida Statutes, or received by the department

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186 pursuant to an investigation by the department or a law
187 enforcement agency of a violation of that section, be made
188 confidential and exempt from s. 119.07(1), Florida Statutes, and
189 s. 24(a), Article I of the State Constitution for the following
190 reasons:

191 (1) A notification of a violation of s. 501.1735, Florida
192 Statutes, may result in an investigation of such violation. The
193 premature release of such information could frustrate or thwart
194 the investigation and impair the ability of the department to
195 effectively and efficiently administer s. 501.1735, Florida
196 Statutes. In addition, release of such information before
197 completion of an active investigation could jeopardize the
198 ongoing investigation.

199 (2) Release of information to which another public record
200 exemption applies once an investigation is completed or ceases
201 to be active would undo the specific statutory exemption
202 protecting that information.

203 (3) An investigation of a violation of s. 501.1735,
204 Florida Statutes, is likely to result in the gathering of
205 sensitive personal information, including identification
206 numbers, unique identifiers, professional or employment-related
207 information, and personal financial information. Such
208 information could be used for the purpose of identity theft. The
209 release of such information could subject possible victims of
210 data privacy violations to further harm.

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211 (4) Notices received by the department and information
212 received during an investigation of a violation of s. 501.1735,
213 Florida Statutes, are likely to contain proprietary information.
214 Such information, including trade secrets, derives independent,
215 economic value, actual or potential, from being generally
216 unknown to, and not readily ascertainable by, other persons who
217 might obtain economic value from its disclosure or use. Allowing
218 public access to proprietary information, including a trade
219 secret, through a public records request could destroy the value
220 of the proprietary information and cause a financial loss to the
221 online platform. Release of such information could give business
222 competitors an unfair advantage.

223 (5) Information received by the department may contain a
224 computer forensic report or information that could reveal
225 weaknesses in the data security of an online platform. The
226 release of this information could result in the identification
227 of vulnerabilities in the cybersecurity system of the online
228 platform and be used to harm the online platform and clients.

229 (6) The harm that may result from the release of
230 information received by the department pursuant to a
231 notification or investigation by the department or a law
232 enforcement agency of a violation of s. 501.1735, Florida
233 Statutes, could impair the effective and efficient
234 administration of the investigation and thus, outweighs the

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235 public benefit that may be derived from the disclosure of the
236 information.

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239 **T I T L E A M E N D M E N T**

240 Remove lines 2-8 and insert:

241 An act relating to public records; amending ss.
242 501.173, 501.1735, and 501.722, F.S.; providing
243 exemptions from public records requirements for
244 information relating to investigations by the
245 Department of Legal Affairs and law enforcement
246 agencies of certain data privacy violations; providing
247 for future legislative review and repeal of the
248 exemptions; providing a statements of

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