

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 (13) is added to section 501.173,  
 15 Florida Statutes, as created by CS/CS/CS/HB 969, 2021 Regular  
 16 Session, to read:

17           501.173 Consumer data privacy.—

18           (13) 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 person.

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

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 person.

58 2. Is intended to be private and is treated by the  
59 controller, processor, or person as private because disclosure  
60 would harm the controller, processor, or person or its business  
61 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 person 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) The Legislature finds that it is a public necessity to  
95 continue to protect from public disclosure all information to  
96 which another public record exemption applies once an  
97 investigation is completed or ceases to be active. Release of  
98 such information by the department would undo the specific  
99 statutory exemption protecting that information.

100 (3) An investigation of a violation of s. 501.173, Florida

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

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

122 (5) Information received by the department may contain a  
123 computer forensic report or information that could reveal  
124 weaknesses in the data security of a controller, processor, or  
125 person. The release of this information could result in the

126 | identification of vulnerabilities in the cybersecurity system of  
127 | the controller, processor, or person and be used to harm the  
128 | controller, processor, or person and clients.

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

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