

## CHAPTER 2023-262

### Committee Substitute for Committee Substitute for Senate Bill No. 1648

An act relating to public records; amending ss. 501.1735 and 501.722, F.S.; providing exemptions from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsection (6) is added to section 501.1735, Florida Statutes, as created by SB 262 or similar legislation, 2023 Regular Session, to read:

501.1735 Protection of children in online spaces.—

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

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

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

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

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

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

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

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of an online platform.

5. Information that would disclose the proprietary information of an online platform.

(d) For purposes of this section, the term “proprietary information” means information that:

1. Is owned or controlled by the online platform.

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

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

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

5. Includes:

a. Trade secrets as defined in s. 688.002.

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

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

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1735, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1735, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s.

501.1735, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

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

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

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

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

(6) The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.1735, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. Section 501.722, Florida Statutes, is created and incorporated into part V of chapter 501, Florida Statutes, as created by SB 262 or similar legislation, 2023 Regular Session, to read:

501.722 Public records exemption.—

(1) All information received by the department pursuant to a notification of a violation under this part, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this part, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of

the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(2) During an active investigation, information made confidential and exempt pursuant to subsection (1) may be disclosed by the department:

(a) In the furtherance of its official duties and responsibilities;

(b) For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by subsection (3) may not be released pursuant to this paragraph; or

(c) To another governmental entity in the furtherance of its official duties and responsibilities.

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

(a) All information to which another public records exemption applies.

(b) Personal information.

(c) A computer forensic report.

(d) Information that would otherwise reveal weaknesses in the data security of a controller, processor, or third party.

(e) Information that would disclose the proprietary information of a controller, processor, or third party.

(4) For purposes of this section, the term “proprietary information” means information that:

(a) Is owned or controlled by the controller, processor, or third party.

(b) Is intended to be private and is treated by the controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations.

(c) Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

(d) Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

(e) Includes:

1. Trade secrets as defined in s. 688.002.

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

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

Section 4. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of part V of chapter 501, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that part, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of part V of chapter 501, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer part V of chapter 501, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

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

(3) An investigation of a violation of part V of chapter 501, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of part V of chapter 501, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and

cause a financial loss to the controller, processor, or third party. Release of such information could give business competitors an unfair advantage.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a controller, processor, or third party. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the controller, processor, or third party and be used to harm the controller, processor, or third party and clients.

(6) The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of part V of chapter 501, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 5. This act shall take effect on the same date that SB 262 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Approved by the Governor June 19, 2023.

Filed in Office Secretary of State June 19, 2023.