

By the Committee on Banking and Insurance; and Senator Sullivan

311-1999-00

1 A bill to be entitled
2 An act relating to public records; amending s.
3 288.99, F.S.; providing exemptions from public
4 records requirements for information obtained
5 from a certified capital company during
6 investigation or review by the Department of
7 Banking and Finance, certain reports related
8 thereto, and certain personal information
9 relating to investigative personnel, customers,
10 complainants, and others; providing a privilege
11 against civil liability; providing for release
12 to certain entities; providing for future
13 review and repeal; providing a finding of
14 public necessity; providing an effective date.

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

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18 Section 1. Subsections (15) and (16) are added to
19 section 288.99, Florida Statutes, to read:

20 288.99 Certified Capital Company Act.--

21 (15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW
22 INFORMATION.--Except as otherwise provided by this section,
23 any information relating to an investigation or department
24 review of a certified capital company, including any consumer
25 complaint, is confidential and exempt from the provisions of
26 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
27 until the investigation or review is complete or ceases to be
28 active. Such information shall remain confidential and exempt
29 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
30 the State Constitution after the investigation or review is
31 complete or ceases to be active if the information is

1 submitted to any law enforcement or administrative agency for
2 further investigation and shall remain confidential and exempt
3 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
4 the State Constitution until that agency's investigation is
5 complete or ceases to be active. For purposes of this
6 subsection, an investigation or review shall be considered
7 "active" so long as the department, a law enforcement agency,
8 or an administrative agency is proceeding with reasonable
9 dispatch and has a reasonable good-faith belief that the
10 investigation may lead to the filing of an administrative,
11 civil, or criminal proceeding. This section shall not be
12 construed to prohibit disclosure of information that is
13 required by law to be filed with the department and that, but
14 for the investigation, would otherwise be subject to s.
15 119.07(1).

16 (b) Except as necessary to enforce the provisions of
17 this chapter, a consumer complaint or information relating to
18 an investigation or review shall remain confidential and
19 exempt from s. 119.07(1) after an investigation or review is
20 complete or ceases to be active to the extent that disclosure
21 would:

22 1. Reveal a trade secret as defined in s. 688.002 or
23 s. 812.081.

24 2. Jeopardize the integrity of another active
25 investigation or review.

26 3. Disclose the identity of a confidential source or
27 investigative techniques or procedures.

28 (c) Nothing in this section shall be construed to
29 prohibit the department from providing information to any law
30 enforcement or administrative agency. Any law enforcement or
31 administrative agency receiving confidential information in

1 connection with its official duties shall maintain the
2 confidentiality of the information so long as it would
3 otherwise be confidential.

4 (d) In the event department personnel are or have been
5 involved in an investigation or review of such nature as to
6 endanger their lives or physical safety or that of their
7 families, the home addresses, telephone numbers, places of
8 employment, and photographs of such personnel, together with
9 the home addresses, telephone numbers, photographs, and places
10 of employment of spouses and children of such personnel and
11 the names and locations of schools and day care facilities
12 attended by the children of such personnel are confidential
13 and exempt from s. 119.07(1).

14 (e) All information obtained by the department from
15 any person which is made available to the department only on a
16 confidential or similarly restricted basis shall be
17 confidential and exempt from s. 119.07(1). This exemption
18 shall not be construed to prohibit disclosure of information
19 that is specifically required by law to be filed with the
20 department or that is otherwise subject to s. 119.07(1).

21 (f) If information subject to this subsection is
22 offered in evidence in any administrative, civil, or criminal
23 proceeding, the presiding officer may, in his or her
24 discretion, prevent the disclosure of information that would
25 be confidential pursuant to paragraph (b).

26 (g) A privilege against civil liability is granted to
27 a person with regard to information or evidence furnished to
28 the department, unless such person acts in bad faith or with
29 malice in providing such information or evidence.

30 (h) This subsection is subject to the Open Government
31 Sunset Review Act of 1995 in accordance with s. 119.15, and

1 shall stand repealed on October 2, 2005, unless reviewed and
2 saved from repeal through reenactment by the Legislature.

3 (16) The social security number of any customer of a
4 certified capital company, complainant, or person associated
5 with a certified capital company or qualified business is
6 exempt from s. 119.07(1). This subsection is subject to the
7 Open Government Sunset Review Act of 1995 in accordance with
8 s. 119.15, and shall stand repealed on October 2, 2005, unless
9 reviewed and saved from repeal through reenactment by the
10 Legislature.

11 Section 2. The Legislature finds that the people of
12 Florida will benefit from the operation of certified capital
13 companies in this state by virtue of potential job creation, a
14 potentially expanded tax base, and overall economic
15 improvement resulting from investment of certified capital in
16 emerging small businesses in Florida. The Legislature further
17 finds that it is a public necessity to exempt from public
18 records requirements certain information obtained during an
19 investigation or annual review of a certified capital company,
20 and certain personal information related to customers of a
21 certified capital company, complainants, or persons associated
22 with a certified capital company or qualified business. These
23 exemptions are essential to protect the integrity of contract
24 negotiations inherent to this industry, which include complex
25 financial transactions and negotiations between certified
26 capital companies and insurance companies that invest capital
27 in the certified capital companies, and to protect the privacy
28 of customers of a certified capital company, complainants, or
29 persons associated with a certified capital company or
30 qualified business. If information collected during
31 investigations or reviews of certified capital companies is

1 not protected, critical proprietary information regarding
2 investment contracts and the structuring of investments in
3 certified capital companies will be revealed. Disclosure of
4 this information would place those certified capital companies
5 at a competitive disadvantage in all states in which the
6 companies currently operate or intend to operate.
7 Consequently, companies whose records are not otherwise open
8 to public inspection may refrain from seeking certification as
9 certified capital companies in Florida, or expanding their
10 current presence in Florida. As a result, Florida would lose a
11 significant source of venture capital for small early-stage
12 businesses, economic growth resulting from the establishment
13 of new businesses funded by certified capital, tax revenue
14 generated by new jobs and businesses, and employment
15 opportunities for the people of this state. In addition,
16 required disclosure of personal information concerning
17 customers of a certified capital company, complainants, or
18 persons associated with a certified capital company or
19 qualified business would have a negative impact on growth of
20 the certified capital company industry in Florida by
21 unnecessarily exposing those individuals to an invasive
22 scrutiny of personal information. Accordingly, the harm that
23 would result from requiring public disclosure of proprietary
24 information of the certified capital companies or personal
25 information concerning customers of a certified capital
26 company, complainants, or persons associated with a certified
27 capital company or qualified business far outweighs any public
28 benefit derived from the release of such information. The
29 Legislature also finds that it is a public necessity to exempt
30 information that is made available to the department only on a
31 confidential basis. Maintaining the confidentiality of such

1 information protects the concerns of the persons regarding
2 privacy, trade secrets, physical safety, or other such
3 reasons. The public benefit of maintaining the confidentiality
4 outweighs the public benefit derived from the release of such
5 information, since such information would otherwise not be
6 available to the department to carry out its regulatory or
7 investigatory duties. Furthermore, the Legislature finds that
8 the exemption of the personal information relating to
9 investigatory personnel and their families from public records
10 requirements is a public necessity because release of this
11 information would jeopardize the safety and welfare of
12 departmental investigatory personnel and their families. The
13 release of this personal information would not benefit the
14 public or aid it in monitoring the effective and efficient
15 operation of government. The exemption of this personal
16 information would minimize the possibility that those persons
17 under investigation might use the information to threaten,
18 intimidate, harass, or cause physical harm or other injury to
19 these persons or members of their families.

20 Section 3. This act shall take effect upon becoming a
21 law.

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23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
25 Senate Bill 1872

26 Clarifies that the privilege against civil liability is
27 granted to persons with regard to information of evidence
28 furnished to the Department of Banking and Finance, unless
29 such persons act in bad faith.
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