

## Committee Substitute for House Bill No. 439

An act relating to public records; amending s. 288.99, F.S.; providing exemptions from public records requirements for information relating to an investigation or review by the Department of Banking and Finance of a certified capital company, including consumer complaints, for certain personal information relating to department investigative personnel and their families, and for information obtained by the department on a confidential basis; providing a privilege against civil liability; providing an exemption from public records requirements for social security numbers of customers of a certified capital company, complainants, or persons associated with a certified capital company or qualified business; providing for future review and repeal; providing a finding of public necessity; providing an effective date.

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

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

288.99 Certified Capital Company Act.—

(15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW INFORMATION.—Except as otherwise provided by this section, any information relating to an investigation or department review of a certified capital company, including any consumer complaint, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or review is complete or ceases to be active. Such information shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the investigation or review is complete or ceases to be active if the information is submitted to any law enforcement or administrative agency for further investigation, and shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until that agency's investigation is complete or ceases to be active. For purposes of this subsection, an investigation or review shall be considered "active" so long as the department, a law enforcement agency, or an administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the department and which, but for the investigation, would otherwise be subject to s. 119.07(1).

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

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

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

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

(c) Nothing in this section shall be construed to prohibit the department from providing information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving confidential information in connection with its official duties shall maintain the confidentiality of the information so long as it would otherwise be confidential.

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

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

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

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

(h) This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

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

Section 2. The Legislature finds that the citizens of Florida will benefit from the operation of certified capital companies in this state by virtue of potential job creation, a potentially expanded tax base, and overall economic

improvement resulting from investment of certified capital in emerging small businesses in Florida. The Legislature further finds that it is a public necessity to exempt from public records requirements certain information obtained during an investigation or annual review of a certified capital company, and certain personal information related to customers of a certified capital company, complainants, or persons associated with a certified capital company or qualified business. These exemptions are essential to protect the integrity of contract negotiations inherent to this industry, which include complex financial transactions and negotiations between certified capital companies and insurance companies which invest capital in the certified capital companies, and to protect the privacy of customers of a certified capital company, complainants, or persons associated with a certified capital company or qualified business. If information collected during investigations or reviews of certified capital companies is not protected, critical proprietary information regarding investment contracts and the structuring of investments in certified capital companies will be revealed. Disclosure of this information would place those certified capital companies at a competitive disadvantage in all states in which the companies currently operate or intend to operate. Consequently, companies whose records are not otherwise open to public inspection may refrain from seeking certification as certified capital companies in Florida, or expanding their current presence in Florida. As a result, Florida would lose a significant source of venture capital for small early-stage businesses, economic growth resulting from the establishment of new businesses funded by certified capital, tax revenue generated by new jobs and businesses, and employment opportunities for the citizens of this state. In addition, required disclosure of personal information of customers of a certified capital company, complainants, or persons associated with a certified capital company or qualified business would have a negative impact on growth of the certified capital company industry in Florida by unnecessarily exposing those individuals to an invasive scrutiny of personal information. Accordingly, the harm that would result from requiring public disclosure of proprietary information of the certified capital companies or personal information of customers of a certified capital company, complainants, or persons associated with a certified capital company or qualified business far outweighs any public benefit derived from the release of such information. The Legislature also finds that it is a public necessity to exempt information which is only made available to the department on a confidential basis. Maintaining the confidentiality of such information protects the concerns of the persons regarding privacy, trade secrets, physical safety, or other such reason. The public benefit of maintaining the confidentiality outweighs the public benefit derived from release of such information, since such information would otherwise not be available to the department to carry out its regulatory or investigatory duties. Furthermore, the Legislature finds that the exemption of the personal information relating to investigatory personnel and their families from public records requirements is a public necessity because release of this information would jeopardize the safety and welfare of departmental investigatory personnel and their families. The release of this personal information would not benefit the public or aid it in monitoring the effective and efficient operation of government. The exemption of this personal information would minimize the possibility that those persons under investigation

might use the information to threaten, intimidate, harass, or cause physical harm or other injury to these persons or members of their family.

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

Approved by the Governor June 16, 2000.

Filed in Office Secretary of State June 16, 2000.