



Insurance & Banking Subcommittee

**Thursday, January 11, 2024
2:00 PM - 5:00 PM
Morris Hall (17 HOB)**

Meeting Packet



The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

Paul Renner
Speaker

Wyman Duggan
Chair

Meeting Agenda

Thursday, January 11, 2024

2:00 pm – 5:00 pm

Morris Hall (17 HOB)

- I. Call to Order
- II. Roll Call
- III. Welcome and Opening Remarks
- IV. Consideration of the following bill(s):
 - HB 85 Pub. Rec./State Banks and State Trust Companies by Barnaby
 - HB 311 Securities and Securities Transactions by Barnaby
 - HB 611 Public Deposits by Botana
 - HB 817 Authorized Agents of Tax Collectors by Duggan
- V. Closing Remarks
- VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 85 Pub. Rec./State Banks and State Trust Companies

SPONSOR(S): Barnaby

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herrera	Lloyd
2) Ethics, Elections & Open Government Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. To apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with the OFR. The application includes information such as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements. Additionally, each proposed executive officer, director, and controlling shareholder must complete and submit detailed biographical and financial information, including, but not limited to, names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth. The OFR utilizes this information to ascertain whether the proposed directors and executives have the kind of experience, ability, standing, and reputation that indicates a reasonable promise of successful operation.

While some existing public record exemptions may apply to certain records received by the OFR pursuant to an application to organize a new bank, current Florida law does not provide any public record exemptions specifically directed at such records. On the federal level, several exemptions exist to protect this information from disclosure. Presently, with the exception of some material for which the applicant may claim trade secret status, the majority of information contained within such an application is subject to public inspection and copying.

The bill creates a public records exemption for certain information received by the OFR in an application for authority to organize a new state bank or new trust company. This information includes:

- Personal financial information;
- A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution;
- The personal identifying information of a shareholder, subscriber, proposed officer, or proposed director if such information is marked as confidential when submitted to the office. For the purposes of this exemption, personal identifying information includes a person's name, home address, e-mail address, telephone number, relative, household member, work experience, professional licensing or educational background, and photograph; and
- The proposed institution's business plan and any attached supporting documentation, if marked confidential when submitted to the office.

The bill provides for repeal of the exemption on October 2, 2029, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill provides an effective date of July 1, 2024.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption² from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.³

The Florida Statutes also address the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.⁴ Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁷

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁸

Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.⁹ The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.¹⁰ The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally

¹ Art. I, s. 24(a), FLA. CONST.

² A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

³ Art. I, s. 24(c), FLA. CONST.

⁴ See s. 119.01, F.S.

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ *Id.*

⁸ Section 119.15(3), F.S.

⁹ S. 20.121(3)(a)2., F.S.

¹⁰ Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of June 30, 2022, the Division of Financial Institutions regulates 200 financial institutions:¹¹

- 69 banks
- 66 credit unions
- 20 international bank offices
- 12 trust companies
- 26 family trust companies
- 11 qualified limited service affiliates

Regulation of Banks

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the state of Florida is the OFR, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).¹²
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.¹³ As such, the OCC is the primary federal regulator for national banks.¹⁴

Confidential Treatment of Applications to Charter a National Bank

The federal Freedom of Information Act (FOIA)¹⁵ sets forth the process for obtaining federal agency records, unless the records or any portion thereof are protected from disclosure by one of the FOIA's nine exemptions or by one of its three special law enforcement record exclusions. The OCC has set forth its policies regarding the availability of information under FOIA, as well as procedures for requesting information, within 12 CFR Part 4, Subpart B. Under the OCC's FOIA regulations, the following records, or portions thereof, are exempt from disclosure:¹⁶

- 1) A record that is specifically authorized, under criteria established by an executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that executive order;
- 2) A record relating solely to the internal personnel rules and practices of an agency;
- 3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. § 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. § 552(b)(3);
- 4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person;¹⁷

¹¹ Office of Financial Regulation, *Fast Facts* (2023 ed.), <https://fiofr.gov/sitePages/documents/FastFacts.pdf>.

¹² 12 U.S.C. § 1813(q).

¹³ 12 U.S.C. § 38.

¹⁴ 12 U.S.C. § 1813(q).

¹⁵ 5 U.S.C. § 552 *et. seq.*

¹⁶ 12 C.F.R. § 4.12(b).

¹⁷ Notice requirements regarding disclosure of confidential commercial information are contained in 12 C.F.R. § 4.16.

- 5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
- 6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- 7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:
 - i. Interfere with enforcement proceedings;
 - ii. Deprive a person of the right to a fair trial or an impartial adjudication;
 - iii. Constitute an unwarranted invasion of personal privacy;
 - iv. Disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;
 - v. Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
 - vi. Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or
 - vii. Endanger the life or physical safety of any individual;
- 8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and
- 9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

An applicant submitting information to the OCC may request that specific information be treated as confidential when the materials are submitted.¹⁸ If the OCC does not consider the information to be confidential, the OCC may include that information in the public file after providing notice to the submitter.¹⁹ In addition, the OCC may, at its own initiative, determine that certain information should be treated as confidential and withhold that information from the public file.²⁰ While a filing is pending with the OCC, the OCC licensing office may provide the *public* portion of a filing to any person who requests it.²¹ The public file consists of those portions of the filing, supporting data, and supplementary information that was submitted by the applicant and by interested persons and not afforded confidential treatment.²²

An applicant is encouraged to request confidential treatment for portions of a filing containing personally identifiable information (PII).²³ The term “PII” refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.²⁴ Examples of PII include an individual’s first name or first initial and last name, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics (for example, fingerprints), date or place of birth, mother’s maiden name, or medical data.²⁵

¹⁸ Office of the Comptroller of the Currency, *Comptroller’s Licensing Manual: General Policies and Procedures* (Apr. 2022) at 4, <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-general-policies-and-procedures.html> (last visited Nov. 16, 2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 6.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*

Each organizing group must disclose its proposed CEO to the OCC at the time the group files the charter application.²⁶ If the proposed CEO wants to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should:²⁷

- Include a request for confidential treatment with the materials submitted in the charter application;
- Provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption six of FOIA²⁸ or result in substantial competitive harm to the organizers or the proposed CEO under exemption four of FOIA;²⁹
- List in the application the criteria that were used in the selection process;
- Provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed; and
- Discuss the proposed terms of employment for the CEO, including compensation and benefits.

Formation of a De Novo (New) State-Chartered Bank or State-Chartered Bank Trust Company

In order to apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with the OFR on form OFR-U-1.³⁰ The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank or trust company is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.³¹ Additionally, each proposed executive officer, director, and major shareholder must complete and submit an Interagency Biographical and Financial Report, Form OFR-U-10.³² This form requires extensive personal identification information and personal financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth.

Within 21 days after receipt of an application, the OFR must file notice of the application in the Florida Administrative Register, and any person may request a hearing within 21 days after publication of the notice.³³ If a hearing is requested, the applicant must publish at its own expense a notice of the hearing in a newspaper of general circulation in the area affected by the application.³⁴

The OFR utilizes the information contained in the application in order to make an investigation of:³⁵

- 1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
- 2) The need for bank facilities or additional bank facilities, as the case may be, in the primary service area where the proposed bank is to be located.
- 3) The ability of the primary service area to support the proposed bank and all other existing bank facilities in the primary service area.

²⁶ Office of the Comptroller of the Currency, *Comptroller's Licensing Manual: Charters (Dec. 2021)* at 15-16, <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/charters.pdf> (last visited Nov. 16, 2023).

²⁷ *Id.*

²⁸ 12 C.F.R. § 4.12(b)(6).

²⁹ 12 C.F.R. § 4.12(b)(4).

³⁰ S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C. The form is available at <https://lofr.gov/sitePages/CommercialBanks.htm>.

³¹ *Id.*

³² *Id.*

³³ S. 120.80(3)(a)1., F.S.

³⁴ *Id.*

³⁵ S. 658.20(1), F.S.

After making such investigation, the OFR must approve an application if it finds the following:³⁶

- 1) Local conditions indicate reasonable promise of successful operation for the proposed state bank.
- 2) The proposed capitalization is adequate, but at least \$8 million.
- 3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
- 4) Regarding officers and directors:
 - a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
 - b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
 - c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than five years before the date of the application, the OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
 - d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.
- 5) The corporate name of the proposed state bank or trust company is approved by the OFR.
- 6) Provision has been made for suitable quarters at the location in the application.

Upon approval of an application, the OFR issues a bank charter or trust company that is public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to receive confidential and exempt treatment pursuant to s. 655.057(2) and (8), F.S.³⁷

Current Public Record Exemptions Related to Financial Institutions

Presently, s. 655.057, F.S., contains a number of public record exemptions for certain records relating to OFR's regulation of financial institutions:

- Subsection 655.057(1), F.S., makes confidential and exempt records and information relating to active investigations. The records remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(2), F.S., makes confidential and exempt reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any other state agency or federal agency responsible for the regulation or supervision of financial institutions. However, this exemption provides for the following release of such reports:
 - The reports may be released to specified persons such as the financial institution under examination (or its holding company) and certain proposed acquirers of a financial institution.

³⁶ s. 658.21, F.S.

³⁷ However, the name of a foreign national who proposes to own or control 10 percent or more of any class of a bank's voting securities, would become public pursuant to s. 120.80(3)(a)4., F.S.

- The reports must be released within one year after the appointment of a liquidator, receiver, or conservator to the financial institution, except that portions of the reports which identify specified individuals such as depositors and stockholders remain confidential and exempt.
- Subsection 655.057(3), F.S., makes confidential and exempt the OFR's informal enforcement actions to the extent that disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(4), F.S., makes confidential and exempt trade secrets, as defined in s. 688.002, F.S., which comply with s. 655.0591, F.S., and are held by the OFR in accordance with its statutory duties.
- Subsections 655.057(7) and (8), F.S., make confidential and exempt a list of stockholders or members of a financial institution.

Subsections 655.057(5) and (6), F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

While some of the above public record exemptions, or other public record exemptions provided in ch. 119, F.S., may apply to certain records received by the OFR pursuant to an application to organize a new bank or trust company, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade secret status pursuant to s. 655.0591, F.S., all of the information received by the OFR on form OFR-U-1 is subject to public inspection and copying. Additionally, significant portions of the information received by the OFR on form OFR-U-10 is subject to public inspection and copying, with only certain information, such as social security numbers, passport numbers, home county identification numbers, immigration file numbers, and certain financial disclosures being exempted from public records requirements.

Effect of the Bill:

The bill creates a public record exemption within s. 655.057, F.S., for certain information received by the OFR pursuant to an application for authority to organize a new state bank or new trust company. Specifically, the bill provides that, *except for those portions that are otherwise public record*, the following

information received by the OFR pursuant to an application for authority to organize a new state bank or new trust company under ch. 658, F.S., is confidential and exempt³⁸ from public record requirements:

- Personal financial information;
- A drivers license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution;
- The personal identifying information of a shareholder, subscriber, proposed officer, or proposed director if such information is marked as confidential when submitted to the office. For the purposes of this exemption, personal identifying information includes a person's name, home address, e-mail address, telephone number, relative, household member, work experience, professional licensing or educational background, and photograph; and
- The proposed institution's business plan and any attached supporting documentation, if marked confidential when submitted to the office.

These exemptions either expand, or create more specific exemptions for the subject records. For example, driver license numbers are confidential and exempt for several purposes,³⁹ but there is not an exemption for driver license numbers held by the OFR.

As previously stated, the exemption created in the bill only provides protection for records and information that are not otherwise public record. Upon approval of an application, the OFR issues a bank charter or state trust that is a public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to receive confidential and exempt treatment pursuant to s. 655.057(2) and (8), F.S.⁴⁰

The exemptions are subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

³⁸ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 85-62 (1985).

³⁹ Pursuant to section 97.0585(1), Florida Statutes, driver license numbers which are held by an agency and obtained for the purpose of voter registration are confidential and exempt. They are also made confidential and exempt if contained in a uniform traffic citation held by an agency. See section 316.650(11)(b)1., Florida Statutes.

⁴⁰ See *supra* note 34.

2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed public record exemption may encourage and attract the formation of new banks or trust companies as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not Applicable. This bill does not appear to affect county or municipal governments.
2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information received by the OFR pursuant to an application for authority to organize a new state bank. The purpose of the exemption is to protect sensitive personal, financial, and business information that the OFR receives in conjunction with its duties related to the review of applications for the organization or establishment of new state banks. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

26 2. A driver license or identification card number,
27 passport number, military identification number, or other
28 similar number issued on a government document used to verify
29 identity.

30 3. Books and records of a current or proposed financial
31 institution.

32 4. The personal identifying information of a shareholder,
33 subscriber, proposed officer, or proposed director of the
34 proposed state bank or proposed state trust company if such
35 information has been marked by the applicant as confidential
36 when submitted to the office. As used in this subparagraph, the
37 term "personal identifying information" means a person's name,
38 home address, e-mail address, telephone number, relative,
39 household member, work experience, professional licensing or
40 educational background, or photograph.

41 5. The proposed state bank's or proposed state trust
42 company's business plan and any attached supporting
43 documentation if the business plan or supporting documentation
44 has been marked by the applicant as confidential when submitted
45 to the office.

46 (b) This subsection is subject to the Open Government
47 Sunset Review Act in accordance with s. 119.15 and is repealed
48 on October 2, 2029, unless reviewed and saved from repeal
49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public

51 necessity that certain information received by the Office of
52 Financial Regulation in an application for authority to organize
53 a new state bank or new state trust company under chapter 658,
54 Florida Statutes, be made confidential and exempt from s.
55 119.07(1), Florida Statutes, and s. 24(a), Article I of the
56 State Constitution to the extent that the disclosure of such
57 information would reveal personal financial information; a
58 driver license or identification card number, passport number,
59 military identification number, or other similar number issued
60 on a government document used to verify identity; books and
61 records of a current or proposed financial institution; the
62 personal identifying information of a shareholder, subscriber,
63 proposed officer, or proposed director of the proposed state
64 bank or proposed state trust company if such information has
65 been marked by the applicant as confidential; or the proposed
66 state bank's or proposed state trust company's business plan and
67 any attached supporting documentation if the business plan or
68 supporting documentation has been marked by the applicant as
69 confidential. The office may receive sensitive personal,
70 financial, and business information in conjunction with its
71 duties related to the review of applications for the
72 organization or establishment of new state banks and new state
73 trust companies. An exemption from public records requirements
74 is necessary to ensure the office's ability to administer its
75 regulatory duties while preventing unwarranted damage to the

76 proposed state bank or proposed state trust company; to the
77 shareholders, subscribers, proposed officers, or proposed
78 directors of the proposed state bank or proposed state trust
79 company; or to other financial institutions in this state. The
80 release of information that could lead to the identification of
81 an individual involved in the potential organization or
82 establishment of a new state bank or new state trust company may
83 subject such individual to retribution and jeopardize his or her
84 current employment with, or participation in the affairs of,
85 another financial institution. Thus, the public availability of
86 such information has a chilling effect on the organization and
87 establishment of new state banks and new state trust companies.
88 Further, the public availability of the books and financial
89 records of a current or proposed financial institution in this
90 state presents an unnecessary risk of harm to the business
91 operations of such institution. Finally, the public availability
92 of a proposed state bank's or proposed state trust company's
93 business plan and supporting documentation may cause competitive
94 harm to such bank's or trust company's future business
95 operations and present an unfair competitive advantage for
96 existing financial institutions that are not required to release
97 such information.

98 Section 3. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 85 by Rep. Barnaby Insurance

AMENDMENT SUMMARY January 11, 2024

Amendment 1 by Rep. Barnaby (strike all): The amendment:

- Narrows the type of documents proposed to be confidential and exempt from public record to the only the business plan instead of the business plan and any attached or supporting documentation.
- Narrows the scope of personal identifying information that is proposed to be confidential and exempt from public record to only that of a proposed officer or proposed director who works for another financial institution. As filed, the bill would make confidential and exempt from public record the personal identifying information of a shareholder, subscriber, proposed officer, or proposed director.
- Eliminates the requirement that applicants designate certain information confidential when submitting their applications.
- Makes additional changes to conform the bill to its Senate companion.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Barnaby offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Present subsections (5) through (13) of section
 8 655.057, Florida Statutes, are redesignated as subsections (6)
 9 through (14), respectively, and a new subsection (5) is added to
 10 that section, to read:655.057 Records; limited restrictions
 11 upon public access.-

12 (5) (a) Except as otherwise provided in this section and
 13 except for those portions that are otherwise public record, the
 14 following information received by the office pursuant to an
 15 application for authority to organize a new state bank or new
 16 state trust company under chapter 658 is confidential and exempt

Amendment No. 1

17 from s. 119.07(1) and s. 24(a), Art. I of the State
18 Constitution:

19 1. Personal financial information.

20 2. A driver license number, a passport number, a military
21 identification number, or any other number or code issued on a
22 government document used to verify identity.

23 3. Books and records of a current or proposed financial
24 institution.

25 4. The proposed state bank's or proposed state trust
26 company's proposed business plan.

27 (b) The personal identifying information of a proposed
28 officer or proposed director who is currently employed by, or
29 actively participates in the affairs of, another financial
30 institution received by the office pursuant to an application
31 for authority to organize a new state bank or new state trust
32 company under chapter 658 is confidential and exempt from s.
33 119.07(1) and s. 24(a), Art. I of the State Constitution until
34 the application is approved and the charter is issued. As used
35 in this paragraph, the term "personal identifying information"
36 means names, home addresses, e-mail addresses, telephone
37 numbers, names of relatives, work experience, professional
38 licensing and educational backgrounds, and photographs.

39 (c) This subsection is subject to the Open Government
40 Sunset Review Act in accordance with s. 119.15 and is repealed

Amendment No. 1

41 October 2, 2029, unless reviewed and saved from repeal through
42 reenactment by the Legislature.

43 Section 2. The Legislature finds that it is a public necessity
44 that certain information received by the Office of Financial
45 Regulation pursuant to an application for authority to organize
46 a new state bank or new state trust company under chapter 658,
47 Florida Statutes, be made confidential and exempt from s.
48 119.07(1), Florida Statutes, and s. 24(a), Article I of the
49 State Constitution to the extent that disclosure would reveal
50 personal financial information; reveal a driver license number,
51 a passport number, a military identification number, or any
52 other number or code issued on a government document used to
53 verify identity; reveal books and records of a current or
54 proposed financial institution; or reveal a proposed state
55 bank's or proposed state trust company's business plan and any
56 attached supporting documentation. The Legislature further finds
57 that it is a public necessity that the personal identifying
58 information of a proposed officer or proposed director who is
59 currently employed by, or actively participates in the affairs
60 of, another financial institution be made confidential and
61 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
62 Article I of the State Constitution for the duration of the
63 application process, until the application is approved and a
64 charter is issued. The office may receive sensitive personal,
65 financial, and business information in conjunction with its

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Amendment No. 1

66 duties related to the review of applications for the
67 organization or establishment of new state banks and new state
68 trust companies. These exemptions from public records
69 requirements are necessary to ensure the office's ability to
70 administer its regulatory duties while preventing unwarranted
71 damage to the proposed state bank or proposed state trust
72 company, or certain proposed officers or proposed directors of
73 the proposed state bank or proposed state trust company, and
74 other financial institutions in this state. The release of
75 information that could lead to the identification of an
76 individual involved in the potential establishment of a new
77 state bank or new state trust company may subject such
78 individual to retribution and jeopardize his or her current
79 employment with, or participation in the affairs of, another
80 financial institution. Thus, the public availability of such
81 information has a chilling effect on the establishment of new
82 state banks and new state trust companies. Further, the public
83 availability of the books and financial records of a current or
84 proposed financial institution in this state presents an
85 unnecessary risk of harm to the business operations of such
86 institution. Finally, the public availability of a proposed
87 state bank's or proposed state trust company's business plan may
88 cause competitive harm to such bank's or trust company's future
89 business operations and presents an unfair competitive advantage

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Amendment No. 1

90 for existing financial institutions that are not required to
91 release such information.

92 Section 3. This act shall take effect July 1, 2024.

93 -----
94 -----

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

96 Remove everything before the enacting clause and insert:
97 An act relating to public records; amending s. 655.057, F.S.;
98 providing an exemption from public records requirements for
99 certain information received by the Office of Financial
100 Regulation relating to an application for authority to organize
101 a new state bank or new state trust company; providing an
102 exemption from public records requirements for certain
103 information received by the office relating to an application
104 for authority to organize a new state bank or new state trust
105 company until specified conditions are met; defining the term
106 "personal identifying information"; providing for future
107 legislative review and repeal of the exemptions; providing a
108 statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 311 Securities and Securities Transactions

SPONSOR(S): Barnaby

TIED BILLS: IDEN./SIM. BILLS: SB 532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Securities and Investor Protection Act (the Act) regulates securities issued, offered, and sold in the state of Florida. The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

The Act currently prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted. Additionally, all securities in Florida must be registered with the OFR unless they meet a statutory exemption or are federally covered (i.e., under the exclusive jurisdiction of the United States Securities Exchange Commission).

Revisions to the Act include:

- Amending the limited offering exemption and crowdfunding exemption;
- Adding an accredited investor exemption and a micro-offering exemption;
- Allowing for demo-day presentations in the pre-offering stage;
- Adding control person liability provisions;
- Expanding the current civil liability for aiders and abettors of a securities law violation;
- Eliminating the requirement for 5 years of annual reports and audited financial statements applicable to simplified securities offerings that use the Small Company Offering Registration;
- Reducing the number of clients of an investment adviser that triggers registration from 15 to 6 clients;
- Increasing the maximum civil and administrative penalties that can be assessed against a natural person in an action by the Attorney General from \$10,000 to \$20,000;
- Doubling maximum fines assessed in civil and administrative actions by the Attorney General for securities violations targeting seniors and vulnerable adults;
- Eliminating the requirement that an investor make searches and inquiries to ascertain the assets of a judgement debtor before the investor recovers from the Securities Guaranty Fund (Fund), and eliminating the requirement that the act for which recovery is sought occurred on or after January 1, 1979;
- Increasing the amount an eligible person may recover from the Fund from \$10,000 to \$15,000, adds an exception allowing recovery of up to \$25,000 if the person is a specified adult, and increasing the aggregate limit on claims from \$100,000 to \$250,000;
- Rewriting certain portions of the Act for clarification purposes; and
- Generally modernizing Florida’s securities laws in accordance with recent developments in federal securities laws and securities laws in other states.

The bill has no impact on local government and an insignificant positive impact on the private sector. It has an insignificant negative impact on state government expenses and an indeterminable positive impact on state government revenues.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

FLORIDA BAR BUSINESS LAW SECTION TASK FORCE

The Executive Council of the Business Law Section of The Florida Bar appointed a Task Force (BLS Task Force) in September of 2022 to consider amendments to ch. 517, F.S., the Florida Securities and Investor Protection Act (Act), which codifies Florida’s securities laws.¹ The BLS Task Force has worked closely with the Office of Financial Regulation (OFR), the agency which regulates Florida’s securities industry and determines compliance with the Act,² to reform the Act.³

OFR, with the BLS Task Force’s assistance, presented to the 2023 legislative session proposed amendments⁴ to the Act that were limited to administrative and clarification changes, as OFR was aware that the BLS Task Force was working on more substantive changes to the Act.⁵ The 2023 bill was enacted,⁶ and the BLS Task Force and OFR are now presenting their recommendations for substantive amendments to the Act with this bill.⁷ In summary, this bill is a joint effort of the BLS and OFR to bring Florida’s securities laws up to date with changes in federal securities laws and other states’ securities laws.⁸

Securities Regulation

Background

FEDERAL SECURITIES REGULATION

The federal Securities Exchange Act of 1934 (1934 Act) requires registration of securities market participants like broker-dealers and exchanges.⁹ Generally, any person acting as “broker” or “dealer” as defined in the 1934 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange.¹⁰

The 1934 Act broadly defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.¹¹ A

¹ The Florida Bar Business Law Section, *Report of the Chapter 517 Task Force: Recommendations and Analysis of Proposed Amendments to the Florida Securities and Investor Protection Act*, p. 2 (Nov. 2023).

² Office of Financial Regulation, *Division of Securities*, <https://flofr.gov/sitePages/DivisionOfSecurities.htm> (last visited Jan. 3, 2024).

³ The Florida Bar Business Law Section, *supra* note 1.

⁴ See 2023 Senate Bill 180, and 2023 House Bill 253.

⁵ The Florida Bar Business Law Section, *supra* note 1.

⁶ Ch. 2023-205, Laws of Fla.

⁷ The Florida Bar Business Law Section, *supra* note 1.

⁸ *Id.*

⁹ 15 U.S.C. §§ 78c(a)(4) and 78o. U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm#11> (last visited Jan. 3, 2024).

¹⁰ A “national securities exchange” is a securities exchange that has registered with the SEC under Section 6 of the 1934 Act. Examples of national securities exchanges registered with the SEC include the Nasdaq Stock Market, NYSE National Inc., and the New York Stock Exchange LLC. See U.S. Securities and Exchange Commission, *National Securities Exchanges*, <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml> (last visited Jan. 8, 2024).

¹¹ *Id.*

“dealer” is “any person engaged in the business of buying and selling securities for such person’s own account through a broker or otherwise.”¹²

Certain entities in the securities industry are often referred to as “broker-dealers” because such entities are considered “brokers” when executing trades on behalf of customers, but are “dealers” when executing trades for their own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

STATE SECURITIES REGULATION

State laws that protect the investing public from fraudulent sales practices and activities are known as “Blue Sky Laws.”¹³ Florida’s laws relating to the regulation of securities issued, offered, and sold in the State of Florida are codified under the Act.

OFR’s Division of Securities (Division) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act and Rule Chapter 69W, Florida Administrative Code.¹⁴ The Financial Services Commission, comprised of the Governor and Cabinet (the Commission), serves as OFR’s agency head for purposes of rulemaking and appoints OFR’s Commissioner, who serves as the agency head for purposes of final agency action for all areas within OFR’s regulatory authority.¹⁵

As of September 30, 2023, the Division had total registrants in the following areas:

- Dealers: 2,427
- Investment advisers: 8,359
- Branch offices: 11,702
- Associated Persons: 378,435¹⁶

Additionally, as of September 2023, OFR has five registered offerings and zero crowdfunding offerings.¹⁷

The Act prohibits dealers and associated persons from offering or selling securities in Florida unless registered with OFR or specifically exempted.¹⁸ Additionally, all securities in Florida must be registered with OFR unless they meet one of the exemptions under the Act,¹⁹ or are federally covered (i.e., under the exclusive jurisdiction of the SEC).²⁰

Failure to meet the precise requirements of these exemptions can subject the violator to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony.²¹ Civil remedies under the Act include rescission and damages.²²

¹² 15 U.S.C. § 78c(a)(5).

¹³ U.S. Securities and Exchange Commission, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm> (last visited Jan. 3, 2024).

¹⁴ Office of Financial Regulation, *Division of Securities*, <https://flofr.gov/sitePages/DivisionOfSecurities.htm> (last visited Jan. 3, 2024).

¹⁵ S. 20.121(3), F.S.

¹⁶ Office of Financial Regulation, Agency Analysis of 2024 House Bill 311, p. 2 (Nov. 1, 2023).

¹⁷ *Id.*

¹⁸ S. 517.12, F.S.

¹⁹ See ss. 517.051 or 517.061, F.S.

²⁰ S. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

²¹ S. 517.302(1), F.S.

²² S. 517.211, F.S.

Party Registration Requirements

The Act requires the following individuals or businesses to be registered with OFR before selling or offering to sell any securities in or from offices in this state, or selling securities to persons in this state from offices outside this state:²³

- Dealers, which is defined as any person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
 - The term does not include a licensed practicing attorney, bank authorized to do business in Florida, wholesaler selling exclusively to dealers, person buying and selling for the person's own account exclusively through a registered dealer or stock exchange, issuer, or natural person representing an issuer under certain conditions²⁴
- Investment advisers, which is defined as any person that receives compensation, directly or indirectly, and engages for all or part of the person's time, directly or indirectly, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.
 - The term contains similar exclusions as the exclusions for "dealers" in addition to a federal covered adviser, a person that does not hold itself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state, and a few other exclusions.²⁵
- Associated persons, which is defined by a party's relation to a dealer or to an investment adviser:
 - With respect to a dealer, an associated person is an individual who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting the purchase or sale of a security.
 - The term does not include a dealer or a partner, officer, or director of a dealer unless such person is specified in the group above. The term also does not include a dealer's employee whose function is only clerical or ministerial.
 - With respect to an investment adviser, an associated person is an individual, including, but not limited to, a partner, officer, director, or branch manager who is employed by or associated with, or is subject to the supervision or control of an investment adviser registered under the Act, and
 - Such person:
 - Makes recommendations or otherwise gives investment advice regarding securities;
 - Manages client accounts or portfolios;
 - Determines which recommendations regarding securities should be given;
 - Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services; or
 - Supervises employees who perform a function outlined above.
 - The term does not include an investment adviser or an employee whose function is only clerical or ministerial.²⁶

Effect of the Bill

The bill amends the following definitions:

- Accredited investor is amended to clarify the term is defined by rule of the Commission in accordance with SEC Rule 501, 17 C.F.R. s. 230.501, as amended.

²³ S. 517.12, F.S.

²⁴ S. 517.021(8), F.S.

²⁵ S. 517.021(14), F.S.

²⁶ S. 517.021(3), F.S.

- Boiler room is amended to mean an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, electronic mail, text messages, social media, chat rooms, or other electronic means.
- Dealer is restructured into subparagraphs for clarification.
- Federal covered adviser is amended to update cross-references.
- Investment adviser is amended as follows:
 - Reduces the threshold number of clients triggering registration from 15 clients to 6.
 - Deletes the exclusion applicable to a person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940.
 - Provides an exclusion for the U.S., a state, a political subdivision of a state, or an agency, authority, or instrumentality of one or more of the foregoing, or a business entity that is wholly owned by one or more of the foregoing, or an officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.²⁷

The bill adds the following definitions:

- Angel investor group²⁸ means a group of accredited investors²⁹ that holds regular meetings and has defined processes and procedures for making investment decisions, individually or among the membership of the group, and that is not an associated person, affiliate, or an agent of a dealer or investment adviser.
- Business entity³⁰ means a corporation, partnership, limited partnership, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Exempt Securities

Background

It is unlawful and a violation of the Act for any person to sell or offer to sell an unregistered security within Florida unless the security is exempt under s. 517.051, F.S., or such sale or offering is otherwise exempt from the registration requirements of the Act.³¹

The exempt securities provided in the Act are self-executing and do not require any filing with OFR prior to claiming an exemption.³² A person who claims entitlement to any of the exempt securities bears the burden of proving such entitlement in any proceeding brought under the Act.³³

²⁷ An example of this type of entity is the State Board of Administration of Florida (SBA), which is an asset management organization primarily responsible for investing state and local government assets. See Office of Program Policy Analysis and Government Accountability, *State Board of Administration of Florida*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4040> (last visited Jan. 8, 2024).

²⁸ This definition has been added for purposes of the newly created s. 517.0615, F.S., relating to solicitation of interest.

²⁹ An accredited investor is an individual or a business entity that is allowed to trade securities that may not be registered with financial authorities. They are entitled to this privileged access by satisfying at least one requirement regarding their income, net worth, asset size, governance status, or professional experience. The term is used by the SEC under Regulation D to refer to investors who are financially sophisticated and have a reduced need for the protection provided by regulatory disclosure filings.” Adam Hayes, *Accredited Investor Defined: Understand the Requirements*, <https://www.investopedia.com/terms/a/accreditedinvestor.asp> (last visited Jan. 8, 2024).

³⁰ This definition has been added to expand the scope of entities subject to the provisions of the Act.

³¹ S. 517.07, F.S.

³² S. 517.051(1), F.S.

³³ *Id.*

Effect of the Bill

Securities Issued by the U.S., a U.S. Territory, a State, etc.

Currently, a security issued or guaranteed by the U.S. or any territory or insular possession of the U.S., by the District of Columbia, or by any state of the U.S. or by any political subdivision or agency or other instrumentality thereof, is exempt from registration.³⁴

The bill clarifies that a person may not directly or indirectly offer or sell securities, other than general obligation bonds if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest (with respect to an obligation issued by the issuer or successor of the issuer; or with respect to an obligation guaranteed by the guarantor or successor of the guarantor), except by an offering circular containing a full and fair disclosure as prescribed by Commission rule.

Further, the bill provides that the foregoing does not apply to a security that is an industrial or commercial development bond, unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under s. 18(b)(1) of the Securities Act of 1933, as amended (1933 Act).

Securities Issued by and Representative of an Interest in Certain Institutions

Currently, a security that is issued or guaranteed by a national bank, a federally chartered savings and loan association, or a federally chartered savings bank; any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916; an international bank of which the U.S. is a member; or a corporation created and acting as an instrumentality of the U.S. government is exempt.³⁵

The bill removes this exemption in its entirety. In its place, the bill provides an exemption for a security that is issued by and represents, or will represent, an interest in or a direct obligation of, or that is guaranteed by:

- An international bank of which the U.S. is a member;
- A bank organized under the laws of the U.S.;
- A member bank of the Federal Reserve System; or
- A depository institution for which a substantial portion of the business consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the FDIC or the National Credit Union Share Insurance Fund.

Securities Issued by a Business Entity Owning a Railroad, Common Carrier, Etc.

Currently, a security issued or guaranteed, as to principal, interest, or dividend, by a corporation owning or operating a railroad, other common carrier, or any other public service utility (provided certain circumstances are met) is exempt from registration.³⁶ The bill replaces the term “corporation” with the term “business entity” to expand the scope of entities subject to the subsection.

Shares of a Residential Cooperative

The bill provides a new exemption for shares or other equity interests of a business entity which represent ownership, or entitle the holders of such shares or other equity interests to possession and occupancy, of specific apartment units in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes.³⁷

³⁴ S. 517.051(1), F.S.

³⁵ S. 517.051(3), F.S.

³⁶ S. 517.051(4), F.S.

³⁷ The residential cooperative exemption is currently a transaction exemption in s. 517.061(14), F.S. The bill moves the exemption to the section of the Act relating to exempt securities, rather than exempt transactions, for clarification purposes. See The Florida Bar Business Law Section, *supra* note 1, at p. 12-13.

Interest in a Not-for-Profit Membership Entity Operated as a Cooperative

The bill also establishes a new exemption for a member's or owner's interest in a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a state or in accordance with the applicable provisions of the IRC. However, the exemption only applies to a member's or owner's interest or like security sold or transferred to a bona fide member of the not-for-profit membership entity or a person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

Note, Draft, Bill of Exchange, or Banker's Acceptance Meeting Certain Requirements

Currently, a note, draft, bill of exchange, or banker's acceptance having a unit amount of \$25,000 or more which arises out of a transaction, or the proceeds of which have been used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited, is exempt.³⁸ This applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public (i.e., paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks).³⁹

The bill removes this exemption in its entirety, subjecting the type of security described therein to registration, unless exempted otherwise.

Securities Issued by an Entity Organized for Religious, Educational or Similar Purpose

Currently, a security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, is exempt from registration.⁴⁰

The bill replaces the term "corporation" with "business entity" to expand the scope of entities subject to the exemption. Additionally, the bill amends the reference to the Investment Company Act of 1940 to include the phrase "as amended" to incorporate by reference any amendments to the Act as of the effective date of the bill.

Exempt Transactions

Background

It is unlawful and a violation of the Act for any person to sell or offer to sell a security within Florida unless the security is exempt under the Act, or such sale or offering is otherwise exempt from the registration requirements of s. 517.061, F.S.⁴¹

³⁸ S. 517.051(8), F.S.

³⁹ *Id.*

⁴⁰ S. 517.051(9), F.S.

⁴¹ S. 517.071, F.S.

Current law provides over twenty transactions that are exempt from the registration requirements of the Act.⁴² Examples include:

- Securities issued in exchange for one or more outstanding securities, claims, or property interests at any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy;⁴³
- Certain isolated sales or offers for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of his or her own property for his or her own account;⁴⁴
- The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter, or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus;⁴⁵
- The distribution of the securities of an issuer exclusively among its own security holders, when no commission or other remuneration is paid or given in connection with the sale or distribution of such additional securities;⁴⁶
- The offer or sale of securities from one corporation to another corporation provided that the sale price of the securities is \$500,000 or more and the buyer and seller corporations each have assets of \$500,000 or more;⁴⁷ and
- The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.⁴⁸

These exemptions are self-executing and do not require any filing with OFR prior to claiming an exemption.⁴⁹ A person who claims entitlement to such an exemption bears the burden of proving such entitlement in any proceeding brought under the Act.⁵⁰

NASAA ACCREDITED INVESTOR EXEMPTION

The North American Securities Administrators Association (NASAA) is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators.⁵¹ Formed in 1919, NASAA is the “oldest international organization devoted to investor protection.”⁵² NASAA advocates on behalf of state securities agencies in the United States that are responsible for capital formation and investor protection.⁵³ NASAA also coordinates training and education seminars for securities agency staff⁵⁴ and creates model rules for implementation amongst its members.⁵⁵

On April 27, 1997, NASAA members voted to approve a “Model Accredited Investor Exemption,” which exempts the offer or sale of a security by an issuer from the security registration process in a transaction meeting certain requirements.⁵⁶ Specifically, the exemption limits the sale of securities to

⁴² S. 517.061, F.S.

⁴³ S. 517.061(1), F.S.

⁴⁴ S. 517.061(3), F.S.

⁴⁵ S. 517.061(4), F.S.

⁴⁶ S. 517.061(6), F.S.

⁴⁷ S. 517.061(7), F.S.

⁴⁸ S. 517.061(15), F.S.

⁴⁹ S. 517.061(1), F.S.

⁵⁰ *Id.*

⁵¹ NASAA, *Welcome to NASAA*, <https://www.nasaa.org/about-us/> (last visited Jan. 2, 2024).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See NASAA, *NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(B)(6)-CE)*, <https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf> (last visited Jan. 2, 2024).

⁵⁶ Office of Financial Regulation, *supra* note 16, at p. 17.

accredited investors and the issuer must not be subject to disqualification.⁵⁷ The exemption also requires that an issuer file a notice of transaction, a consent to service of process, and a copy of the general announcement with the regulatory authority within 15 days after the first sale in the state.⁵⁸ The majority of states have adopted this accredited investor exemption.⁵⁹

UNIFORM SECURITIES ACT

The Uniform Securities Act (USA) is a model act developed by the Uniform Law Commissioners.⁶⁰ The USA was first created in 1956 and was later amended in 1985 and again in 2002.⁶¹ Most states' securities laws are based, to some degree, on the three variations of the USA (i.e., most states have either adopted one of these variations or used one variation as the basis for their statutes).⁶²

Effect of the Bill

The bill reorganizes the portion of the Act relating to exempt transactions to group like transactions together and to generally modernize the type of transactions exempt thereunder in accordance with developments in federal securities laws and other states' securities laws.

Specifically, the bill adds an exemption for sales of securities effected through assignments for the benefit of creditors. The bill also creates a new exemption for a transaction involving a security issued in exchange, except in a case under Title 11 of the United States Code, for one or more bona fide outstanding securities, or property interests, or partly in such exchange and partly for cash, if the terms and conditions are approved by certain governmental entities after a hearing upon the fairness of such terms and conditions and at which all parties to the exchange have a right to appear.

The bill also:

- Expands the current exemption⁶³ related to a transaction involving the distribution of securities among an issuer's own security holders to include persons that at the date of the transaction are holders of options and all types of warrants;
- Replaces the terms "corporation, trust, or partnership" with the more expansive term "business entity" throughout for consistency;
- Requires, under the current exemption related to the offer or sale of securities from one corporation to another pursuant to a vote,⁶⁴ that the issuer is parties to the reorganization, and eliminates the requirement that the security holders consent to the sale of such securities;
- Expands the current exemption relating to employer-sponsored stock option plans⁶⁵ to include any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, and requires that the employee benefit plan be contained in a record established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees;
- Eliminates the requirement, under the exemption relating to the offer or sale of securities to a financial institution,⁶⁶ that the Commission define "institutional buyer," and removes the caveat on the exemption that the offers or sales of securities cannot be for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading the Act; and
- Removes the provision prohibiting the payment of a commission or compensation for the sale of the securities in certain circumstances under the exemption relating to the offer or sale, by or on behalf of an issuer, of its own securities, where there are no more than 35 purchasers.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ NASAA, *Uniform Securities Acts*, <https://www.nasaa.org/industry-resources/uniform-securities-acts/> (last visited Jan. 8, 2024).

⁶¹ *Id.*

⁶² *Id.*

⁶³ S. 517.061(6), F.S.

⁶⁴ S. 517.061(9), F.S.

⁶⁵ S. 517.061(15), F.S.

⁶⁶ S. 517.061(11)(a), F.S.

The bill also incorporates NASAA's model accredited investor exemption. Sales of securities may only be made to persons who are, or the issuer reasonably believes are, accredited investors. The exemption is not available to an issuer that is in the development stage and that has no specific business plan or purpose, or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or other entity or person.⁶⁷

Additionally, the bill:

- Adds a secured party⁶⁸ to those eligible to participate in exempt transactions related to liquidation of a debt secured by a security;
- Creates an exemption for nonissuer transactions with a covered adviser, managing investments in excess of \$100 million, acting in the exercise of discretionary authority in a signed record for the accounts of others; and
- Allows the Commission to recognize by rule clearinghouses able to clear option transactions for purposes of the exemption described above; requires that the underlying security is purchased or sold on a recognized security exchange registered under the 1934 Act and to eliminate the possibility that the underlying security instead be quoted on the National Association of Securities Dealers Automated Quotation System; and eliminates the prohibition against such sales being directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provision of the Act.⁶⁹

The bill also creates an exemption for certain transactions based on the USA. Nonissuer transactions in an outstanding security by or through a dealer registered or exempt from registration are exempt if two conditions are met. First, the issuer must be a reporting issuer in Canada or in a foreign jurisdiction designated by Commission rule and the issuer has been subject to continuous reporting requirements for not less than 180 days before the transaction; and second, the security is listed on The Toronto Stock Exchange, Inc. or on a foreign jurisdiction's securities exchange that has been designated by Commission rule, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. The bill provides that OFR may revoke any designation of a securities exchange if OFR finds that revocation is necessary or appropriate in the public interest and for the protection of investors.⁷⁰

Intrastate Crowdfunding

Background

Florida's intrastate crowdfunding exemption currently provides that an offer or sale of a security that is conducted in accordance with certain statutory requirements is an exempt transaction under the Act.⁷¹ However, this exemption may not be used in conjunction with any other exemption under the Act.⁷²

⁶⁷ *Id.* at 20.

⁶⁸ S. 517.061(2), F.S.

⁶⁹ *Id.* at 20-21.

⁷⁰ *Id.* at 21.

⁷¹ S. 517.0611(2), F.S.

⁷² *Id.*

The exemption requires that the offer or sale of securities be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the 1933 Act and SEC Rule 147.⁷³ Further, the exemption requires that an issuer:

- Be a for-profit business entity formed under the laws of the state, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state;
- Conduct transactions for the offering through a dealer or intermediary registered with OFR;
- Not be, either before or as a result of the offering, an investment company or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d);
- Not be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity;
- Not be subject to a disqualification established by the Commission or OFR or a disqualification described in s. 517.1611, F.S., or SEC Rule 506(d). Each director, officer, person occupying a similar status or performing a similar function, or person holding more than 20 percent of the shares of the issuer, is subject to this requirement;
- Execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount; and
- Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.⁷⁴

Under this exemption, an issuer must provide investors and the dealer or intermediary, along with a copy to OFR at the time that the notice is filed, and make available to potential investors through the dealer or intermediary, a disclosure statement containing material information about the issuer and the offering, which must include certain specified information.⁷⁵

The issuer must also provide OFR with a copy of the escrow agreement with a financial institution authorized to conduct business in this state.⁷⁶ All investor funds must be deposited in the escrow account.⁷⁷ The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.⁷⁸

Currently, offerings are limited to \$1 million, and offers or sales to a person owning 20% or more of the outstanding shares of any class or classes of securities or to an officer, director, partner, or trustee, or a person occupying a similar status, do not count toward this limitation.⁷⁹ Moreover, sales of securities to non-accredited investors in a 12-month period may not exceed:

- The greater of \$2,000 or 5% of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than \$100,000; or
- 10% of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or exceeds \$100,000.⁸⁰

⁷³ S. 517.0611(3), F.S.

⁷⁴ S. 517.0611(4), F.S.

⁷⁵ S. 517.0611(7), F.S.

⁷⁶ S. 517.0611(8), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ S. 517.0611(9), F.S.

⁸⁰ S. 517.0611(10), F.S.

OFR may summarily suspend a notice filing if the payment for the filing is dishonored by the financial institution upon which the funds are drawn or if the issuer made a material false statement in the issuer's notice-filing.⁸¹ A material false statement made in the issuer's notice-filing results in a final order by OFR revoking the notice-filing, issuing a fine and permanent bar to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer.⁸²

The Act also provides certain requirements for intermediaries,⁸³ as well as prohibited activities for intermediaries.⁸⁴

Effect of the Bill

The bill renames the "Florida Intrastate Crowdfunding Exemption" to "The Florida Limited Offering Exemption," allows the exemption to be used in conjunction with another exemption, and allows any for-profit business entity that is principally located in and gets its primary revenue within Florida, rather than only Florida corporations so located and funded, to use the exemption.

The bill:

- Allows issuers conducting an offering of \$2.5 million or less to conduct transactions without a dealer or intermediary registered with OFR, and requires that issuers conducting an offering of \$2.5 million or more use a dealer or intermediary;
- Increases the offering limit under this exemption from \$1 million to \$5 million;
- Adds managers, managing members, or general partners to the list of those persons that do not count toward the offering limitation; and
- Replaces the term "shares" with "equity interests."

The bill eliminates the requirement to execute an escrow agreement. It also requires that investor funds be deposited in an account in a federally insured financial institution and maintained in the account until the target offering amount has been reached, the offering has been terminated, or the offering has expired, and requires the issuer to refund all funds to investors within 10 business days if the target offering amount is not reached or the offering is terminated or expires.

The bill also:

- Eliminates a required attestation that the issuer, and certain other related persons are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit;
- Reduces the number of days in which an issuer must amend the notice it submitted to OFR from 30 days after any information becomes inaccurate to 10 business days after any material information becomes inaccurate;
- Allows the issuer to engage in general advertising and general solicitation of the offer to prospective investors, provided certain conditions are met; and
- Requires that the issuer provide the names of managers, managing members, and general partners and the ownership percentage of each person holding more than 20% of the issuer's equity interests.

It limits the amount of securities that can be sold by an issuer to an unaccredited investor to \$10,000, rather than an amount that is a computation based on personal income or net worth. This bill also eliminates a required annual report to investors and OFR.

The bill retains the current substantive disclosure obligations of issuers to prospective investors. However, because of the change in maximum offering amounts and universal revisions to include control persons of certain entities, the financial disclosure obligations have been revised for differing

⁸¹ S. 517.0611(12)(a), F.S.

⁸² S. 517.0611(12)(b), F.S.

⁸³ See S. 517.0611(13), F.S.

⁸⁴ See S. 517.0611(14), F.S.

offering amounts, clarified as to the required types of financial statements, and updated to conform with technical changes in federal securities laws.

Further, it allows a purchaser to void any sale made pursuant to this section by notifying the issuer that the purchaser expressly voids the purchase within 3 days after the first tender of consideration is made by such purchaser to the issuer. The purchaser's notice must be sent by email, certified mail, or overnight delivery service with proof of delivery.

Florida Invest Local Exemption

Effect of the Bill

The bill creates a new intrastate offering exemption. The offering is limited to \$500,000 and any one investor may not invest more than \$10,000 unless the investor is accredited, a specified employee, or a 10% or more shareholder. Under this exemption, an offer or sale of security by an issuer is exempt from the Act if the following conditions are met:

- An issuer must be a for-profit business entity registered with the Department of State with its principal place of business in this state.
- The issuer may not be, before or as a result of the offering:
 - An investment company;
 - Subject to the reporting requirements of the Securities and Exchange Act of 1934;
 - A business entity with an undefined business plan, that lacks a business plan, that lacks a stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity; or
 - Disqualified pursuant to s. 517.0616, F.S.
- Further, the transaction must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the 1933 Act and SEC Rule 147 or SEC Rule 147A.

An issuer may engage in general advertising and general solicitation. However, any general advertising or general announcement must state that the offer is limited and open only to residents of this state and is subject to the enforcement provisions of the Act.

A purchaser must receive, at least 3 business days before any binding commitment to purchase or consideration paid, a disclosure document that provides material information of the issuer, information which includes, but is not limited to, certain specified information under the exemption. All funds received from investors must be deposited into a bank or depository institution authorized to do business in this state and funds may not be withdrawn until the target offering amount has been received.⁸⁵

The issuer must file a notice of the offering and the disclosure document with OFR on a form prescribed by Commission rule no less than 5 business days before the offering commences. A purchaser may void any sale made pursuant to this section by notifying the issuer that the purchaser expressly voids the purchase within 3 days after the first tender of consideration is made by such purchaser to the issuer. The purchaser's notice must be sent by email, hand delivery, courier service, or other method with proof of delivery.

Demo Day Presentations and “Testing the Waters”

Background

On November 2, 2020, the SEC adopted amendments to facilitate capital formation and increase opportunities for investors by expanding access to capital for small and medium-sized businesses and

⁸⁵ *Id.* at p. 25.
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entrepreneurs across the United States.⁸⁶ The amendments affected various rules and requirements, including adding SEC Rule 148, relating to “demo day” communications and SEC Rule 241, relating to an issuer’s ability to “test the waters” to determine whether there is any interest in a contemplated offering.⁸⁷

SEC RULE 148

New SEC Rule 148⁸⁸ provides that certain “demo day” communications⁸⁹ will not be deemed a general solicitation or general advertising.⁹⁰ Under this rule, an issuer will not be deemed to have engaged in general solicitation if the communications are made in connection with an event sponsored by a college, university, or other institution of higher education, a state or local government or instrumentality thereof, a nonprofit organization, or an angel investor group. However, certain conditions must be satisfied, such as limits on the sponsor’s activities, a requirement that the advertising for the event not reference any specific offering of securities by the issuer, and limits on the information conveyed at the event regarding the offering of securities by or on behalf of the issuer.⁹¹

SEC RULE 241

New SEC Rule 241⁹² permits an issuer, or any person authorized to act on behalf of an issuer, to communicate orally or in writing to determine whether there is any interest in a contemplated exempt offering prior to deciding on the exemption it plans to use.⁹³ The new rule requires such generic “testing the waters” materials, also known as solicitations of interest, to state that:

- The issuer is considering an offering of securities exempt from registration under the 1933 Act, but has not determined a specific exemption from registration the issuer intends to rely on for the subsequent offer and sale of the securities;
- No money or other consideration is being solicited, and if sent in response, will not be accepted;
- No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and
- A person’s indication of interest involves no obligation or commitment of any kind.⁹⁴

The communication may include a means for a person to indicate interest in a potential offering and an issuer may require such indication to include the person’s name, address, telephone number, and email address.⁹⁵ SEC Rule 241 also requires that the generic solicitation materials be made publicly available as an exhibit to the offering materials filed with the SEC if a Regulation A⁹⁶ or Regulation Crowdfunding⁹⁷ offering is commenced within 30 days of the generic solicitation, and that an issuer provide purchasers with the materials if the issuer sells securities under Rule 506(b) within 30 days of the generic solicitation of interest to any purchaser that is not an accredited investor.⁹⁸

⁸⁶ U.S. Securities and Exchange Commission, *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, <https://www.sec.gov/corpin/facilitating-capital-formation-secg> (last visited Jan. 8, 2024).

⁸⁷ *Id.*

⁸⁸ 17 C.F.R. 230.148.

⁸⁹ For purposes of SEC Rule 148, “communications” mean communications made in connection with an event sponsored by a group or entity that invites issuers to present their businesses to potential investors with the aim of securing investment. See U.S. Securities and Exchange Commission, *supra* note 86.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 17 C.F.R. 230.241.

⁹³ U.S. Securities and Exchange Commission, *supra* note 86.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ SEC Regulation A establishes two tiers of offerings that are exempt from registration under the 1933 Act. See U.S. Securities and Exchange Commission, *supra* note 86.

⁹⁷ The SEC Regulation Crowdfunding provides an exemption from registration for certain securities offerings that solicit relatively small individual investments or contributions from a large number of investors. *Id.*

⁹⁸ U.S. Securities and Exchange Commission, *supra* note 86.

Effect of the Bill

The bill allows issuers to engage in solicitation of potential investors under specified limited conditions. In doing so, the bill adopts SEC Rule 148 that provides for issuer presentation at a specified form of a “demo day” meeting that is sponsored by one of the specified organizations. The bill also adopts SEC Rule 241, allowing issuers to “test the waters” before making any offering to determine whether the time, energy, and expense of a possible offering would be worthwhile. Both provisions allow a potential issuer to evaluate the viability of an offering and accordingly avoid unnecessary time and expense. All communications made under these provisions are subject to the anti-fraud provisions of the Act.⁹⁹

Registration Procedures

Background

All securities required by the Act to be registered before being sold in Florida and not entitled to registration by notification must be registered in the manner provided by Act.¹⁰⁰ OFR receives and reviews the applications for securities to be registered, and the Commission may prescribe forms on which such applications are to be submitted.¹⁰¹ Applications must be signed by the applicant, sworn to by any person having knowledge of the facts, and filed with OFR.¹⁰²

OFR may require the applicant to submit to the following information concerning the issuer and such other relevant information as OFR may need to ascertain whether such securities shall be registered under the Act:

- The names and addresses of:
 - All the directors, trustees, and officers, if the issuer is a corporation, association, or trust.
 - All the managers or managing members, if the issuer is a limited liability company.
 - All the partners, if the issuer is a partnership.
 - The issuer, if the issuer is a sole proprietorship or natural person.
- The location of the issuer’s principal business office and of its principal office in this state, if any.
- The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.
- A statement of the capitalization of the issuer.
- A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as OFR may permit at the written request of the issuer on a showing of good cause therefor.
- A detailed statement of the plan upon which the issuer proposes to transact business.
- A statement of the amount of the issuer’s income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.
- A statement of the issuer’s cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.
- A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.
- A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which OFR may determine to be relevant to the issue.
- A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

⁹⁹ The Florida Bar Business Law Section, *supra* note 1, at p. 56.

¹⁰⁰ S. 517.081(1), F.S.

¹⁰¹ S. 517.081(2), F.S.

¹⁰² S. 517.081(2), F.S.

- The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.¹⁰³

OFR may also require the applicant to submit a copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.¹⁰⁴ The Commission shall adopt a form for a simplified offering circular to register securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed \$5 million.¹⁰⁵ This is synonymous with a Small Company Offering Registration (SCOR) under the 1933 Act.¹⁰⁶ To qualify for use of the simplified offering circular, the issuer must:

- Agree to provide OFR with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year (and if the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited); and
- Annual financial reports must be filed with OFR within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.¹⁰⁷

Further, if the issuer is a corporation, a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file, must be filed with OFR. If the issuer is a limited liability company, a copy of the articles of organization with all the amendments and a copy of the company's operating agreement as may be amended, if not already on file, must be filed with OFR. If the issuer is a trustee, a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged must be filed with OFR. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file, must be filed with OFR.¹⁰⁸

An issuer filing an application must, at the time of filing, pay OFR a nonreturnable fee of \$1,000 per application for each offering that exceeds \$5 million, or \$200 per application for each offering that does not exceed \$5 million.¹⁰⁹

If upon examination of an application OFR finds that the sale of the security would not be fraudulent, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, OFR must record the registration of such security in the register of securities.¹¹⁰ Thereafter, such registered security may be sold by any registered dealer, subject, however, to the further order of OFR.¹¹¹

The OFR must consider a filed application abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by Commission rule.¹¹²

Effect of the Bill

The bill:

- Consolidates the provisions of the Act relating to the Commission's rule-making authority for registration procedures;
- Eliminates the requirement for 5 years of annual reports and audited financial statements applicable to simplified securities offerings that use the SCOR registration method; and

¹⁰³ S. 517.081(3), F.S.

¹⁰⁴ S. 517.081(3)(g)1., F.S.

¹⁰⁵ S. 517.081(3)(g)2., F.S.

¹⁰⁶ The Florida Bar Business Law Section, *supra* note 1, at p. 59.

¹⁰⁷ S. 517.081(3)(g)2., F.S.

¹⁰⁸ S. 517.081(3)(n), F.S.

¹⁰⁹ S. 517.081(6), F.S.

¹¹⁰ S. 517.081(7), F.S.

¹¹¹ S. 517.081(7), F.S.

¹¹² S. 517.081(8), F.S.

- Eliminates the prohibition against a person using the SCOR registration method for the resale of securities, which will allow non-control persons to resell securities through a Florida-based registration process.¹¹³

Consent to Service

Background

The Act requires an issuer, upon any initial application for registration under the Act or upon request of OFR, to file with such application the irrevocable written consent to service.¹¹⁴ The written consent must be authenticated by the seal of said issuer (if it has a seal), and by the acknowledged signature of a member of the co-partnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, and such consent to service must be duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association (and such resolutions must be filed as a certified copy with the written consent to service).¹¹⁵

Effect of the Bill

The bill expands the type of persons who are eligible to sign the written consent on behalf of a business entity to include directors, managers, managing members, general partners, trustees, or officers of the issuer. The bill also expands the persons who can authorize the signer to execute the written consent to include the issuer's general partners and managing members.

Securities Guaranty Fund

Background

The Act establishes Florida's Securities Guaranty Fund (SGF).¹¹⁶ The SGF provides financial assistance to persons who are adjudged by a court to have suffered monetary damages as a result of a violation of ss. 517.07 or 517.301, F.S., committed by a dealer, investment adviser, or associated person who was licensed under the Act at the time the violation occurred.¹¹⁷ The SGF is funded by a percentage of revenues received as assessment fees by OFR.¹¹⁸

¹¹³

¹¹⁴ S. 517.101, F.S.

¹¹⁵ S. 517.101(1), F.S.

¹¹⁶ S. 517.101, F.S.

¹¹⁷ S. 517.131(1)(a), F.S. See also, Office of Financial Regulation, *Statute Review: Biennial Report December 2022* (<https://flofr.gov/sitePages/documents/OFR-Statute-Review-Report-2022.pdf>), p. 21-22 (last visited Jan 4, 2024).

¹¹⁸ S. 517.131(1)(a), F.S. Specifically, a maximum of 20% of all revenues received as assessment fees pursuant to ss. 517.12(9) and (10), F.S., for dealers and investment advisers (or s. 517.1201 for federal covered advisers), and a maximum of 10% of all revenues received as assessment fees pursuant to ss. 517.12(9) and (10), F.S., for associated persons must be part of the regular registration fee and must be transferred to the SGF.

For a person to be eligible to receive payment from the SGF, the following requirements must be met:

- The act for which recovery is sought occurred on or after January 1, 1979;
- The person has received final judgement from a court that a violation of ss. 517.07 or 517.301, F.S., occurred for which monetary damages are awarded;
- The person has made all reasonable searches and inquiries to ascertain whether the violator possesses assets that can be sold in satisfaction of the damages awarded, and in such search has discovered no or insufficient assets; and
- The person has applied any amounts recovered from the violator, or from any other source, to the damages awarded by the court.¹¹⁹

PAYMENT FROM THE FUND

Any person who meets all the requirements outlined above may apply to OFR for payment to be made to such person from the SGF in the amount equal to the unsatisfied portion of such person's judgement or \$10,000, whichever is less, but only to the extent and amount reflected in the judgement as being actual or compensatory damages, excluding post-judgement interest, costs, and attorney's fees.¹²⁰

Among other things, the Act also establishes that:¹²¹

- Regardless of the number of claims involved, payments for claims shall be limited in the aggregate to \$100,000 against any one dealer, investment adviser, or associated person.
 - If the total claims exceed the aggregate limit of \$100,000, OFR shall prorate the payment to each claimant based upon the ration that the person's claim bears to the total claims filed.
- If the final judgement that gave rise to the claim is overturned in any appeal or any collateral proceeding, the claimant must reimburse the SGF all amounts paid from the SGF.
 - The claimant shall reimburse the SGF all amounts paid from the SGF following any satisfaction of the final judgement.
 - Such reimbursement must be paid to OFR within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of judgement, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.
- OFR may institute legal proceedings to enforce compliance with the section and with s. 517.131, F.S., to recover money owed to the SGF, and is entitled to recover interest, costs, and fees in any action brought pursuant to the section in which OFR prevails.

Moreover, the Act requires a claimant to wait a minimum of two years after filing a claim with OFR before a payment determination can be made.¹²²

Effect of the Bill

These sections are substantially reorganized and amended to improve usability and clarity. Additionally, the term "license" is replaced with "registration" for accuracy and the term "Fund" is replaced with "Securities Guaranty Fund" for consistency throughout ss. 517.131 and 517.141, F.S.

SECURITIES GUARANTY FUND

The bill:

- Specifies that the purpose of the SGF is to provide monetary relief to victims of securities violations under the Act who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the violator.
- Defines the term "final judgment" as also including an arbitration award confirmed by a court of competent jurisdiction.

¹¹⁹ S. 517.131(2), F.S.

¹²⁰ S. 517.131, F.S.

¹²¹ S. 517.141, F.S.

¹²² S. 517.141(3), F.S.

- Requires that a person meet the following conditions to be eligible for payment from the SGF:
 - The person holds an unsatisfied final judgment in which a violator was found to have violated s. 517.07, F.S. or s. 517.301, F.S.
 - The person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator.
 - The person is a natural person who was a resident of this state or is a business entity that was domiciled in this state at the time of the violation giving rise to the claim.
 - In making the above changes, the bill eliminates the requirement that the act for which recovery is sought occurred on or after January 1, 1979; the ability of OFR to waive certain requirements under the section; and the requirement that the claimant make all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment.
- Prohibits a person from being eligible for payment from the Fund if the person has:
 - Participated or assisted in a violation of the Act;
 - Attempted to commit or committed a violation of the Act; or
 - Profited from a violation of the Act

The bill requires that an eligible person, or a receiver on behalf of an eligible person, seeking payment from the SGF to file a written application. The application must be filed with OFR within 1 year after the date of the final judgment, the date on which restitution order has been ripe for execution, or the date of any appellate decision thereon, and the application must contain such information as OFR may require.

Each eligible person or receiver, within 90 days after OFR's receipt of a complete application, must be given written notice, personally or by mail, that OFR intends to approve or deny, or has approved or denied, the application for payment from the SGF. In making this change, the bill eliminates the current two-year waiting period.

The bill requires an eligible person or receiver to assign all right, title, and interest in the final judgment or order of restitution, to the extent of such payment to OFR upon receipt of the notice indicating OFR's intent to approve an application for payment from the SGF and before any disbursement, rather than upon receipt of payment. Further, the bill requires OFR to deem an application abandoned if the eligible person fails to timely complete the application as prescribed by Commission rule.¹²³

PAYMENT FROM THE FUND

The bill increases the amount that an eligible person may recover from the SGF from \$10,000 to \$15,000, adds an exception allowing recovery of up to \$25,000 if the person is a specified adult.¹²⁴ The aggregate limit on claims is also increased from \$100,000 to \$250,000.

Further, the bill requires:

- OFR to submit authorization for payment to the Chief Financial Officer within 30 days after the approval of an eligible person for payment from the SGF, and allow the Chief Financial Officer's designee, to make payments or disbursements from the SGF;

¹²³ Office of Financial Regulation, *supra* note 16, at p. 29.

¹²⁴ The Act defines "specified adult" as a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. See s. 517.34(1)(b), and s. 415.102(28), F.S.

- Reimbursements to the SGF be paid to the Department of Financial Services (DFS), rather than OFR; and
- A claimant who knowingly and willfully files (or causes to be filed) an application or any supporting documentation that contains false, incomplete, or misleading information in any material aspect forfeits all payments from the SGF. (The bill also specifies that filing such false documentation is unlawful and a violation of the Act and punishable as provided therein.)

In connection with the above referenced changes, the bill allows DFS, instead of OFR, to institute legal proceedings to enforce compliance with s. 517.131, F.S., and to recover money owed to the SGF, and to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which DFS prevails. The bill also eliminates the two-year waiting period.

Enforcement by OFR and the Attorney General; Civil Penalties for Violations

Background

When it appears to OFR, whether upon complaint or otherwise, that a person has engaged in any act constituting a violation of the Act or a rule or order thereunder, OFR may investigate and, if the evidence is sufficient, may bring an action on behalf of the state against such person.¹²⁵

Additionally, OFR may also apply to the court for an order directing the defendant to make restitution of those sums shown by OFR to have been obtained in violation of the Act.¹²⁶ OFR may also petition the court to impose a civil penalty against the defendant in an amount not to exceed:

- \$10,000 for a natural person or \$25,000 for any other person, or the gross amount of pecuniary gain to such defendant for each such violation, other than a violation of s. 517.301, F.S.;
- Plus \$50,000 for a natural person or \$250,000 for any other person, or the gross amount of pecuniary gain to such defendant for each violation of s. 517.301, F.S.¹²⁷

All civil penalties collected pursuant to the above-referenced statutory guidelines must be deposited into the Anti-Fraud Trust Fund.¹²⁸

In addition to the authority granted to OFR, the section also provides that when the Attorney General, whether upon complaint or otherwise, has reason to believe that a person has engaged or is about to engage in a practice constituting a violation of ss. 517.275, 517.301, 517.311, or s. 517.312, F.S., the Attorney General may investigate and bring an action to enforce certain provisions of the Act after receiving written approval from OFR.¹²⁹

The Act does not limit the authority of OFR to bring an administrative action against any person that is the subject of a civil action brought pursuant to the Act or limit the authority of OFR to engage in investigations or enforcement actions with the Attorney General.¹³⁰ However, a person may not be subject to both a civil penalty described above and an administrative fine under s. 517.221(3), F.S., as a result of the same facts.¹³¹

An enforcement action must be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.¹³²

Effect of the Bill

The bill:

¹²⁵ S. 517.191, F.S.

¹²⁶ S. 517.191(3), F.S.

¹²⁷ S. 517.191(4), F.S.

¹²⁸ *Id.*

¹²⁹ S. 517.191(5), F.S.

¹³⁰ S. 517.191(6), F.S.

¹³¹ *Id.*

¹³² S. 517.191(7), F.S.

- Increases the civil penalty imposable upon a natural person from \$10,000 to \$20,000;
- Allows OFR to recover any costs and attorney fees related to its investigation or enforcement of the section, which must also be deposited into the Anti-Fraud Trust Fund;
- Provides that in the event a specified adult¹³³ is a victim of a violation of the section, twice the amount of the civil penalty that would otherwise be imposed, which is \$50,000 for a natural person or \$250,000 for a business entity;
- Establishes joint and several liability for any control person who is found to have violated any provision of the Act;
- Provides that a person who knowingly and recklessly provides substantial assistance to another person in violation of a provision of the Act is deemed to violate the provision to the same extent as the person to whom such assistance was provided;
- Allows OFR to issue and serve upon a person a cease and desist order if OFR has reason to believe the person violates any provision of the Act, as well as an emergency cease and desist order under certain circumstances; and
- Grants OFR the authority to impose and collect an administrative fine against any person found to have violated any provision of the Act, which must also be deposited into the Anti-Fraud Trust Fund.

Remedies Available in Cases of Unlawful Sale

Background

The Act provides that every sale made in violation of either ss. 517.07 or 517.12(1), (3), (4), (8), (10), (12), (15), or (17), F.S., may be rescinded at the election of the purchaser, except a sale made in violation of the provisions relating to a renewal of a branch office notification and a sale made in violation of the provisions relating to filing a change of address amendment is not subject to rescission.

Moreover, each person making the sale and every agent of the seller, if the agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security.¹³⁴ Additionally, any person purchasing or selling a security in violation of s. 517.301, F.S.,¹³⁵ and every agent of such person, if the agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.¹³⁶

The Act further provides that:

- In an action for rescission:
 - A purchaser may recover the consideration paid for the security, plus interest thereon at the legal rate, less the amount of any income received by the purchaser on the security upon tender of the security.
 - A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate, less the amount of any income received by the defendant on the security.¹³⁷
- In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:
 - The consideration paid for the security, plus interest thereon at the legal rate from the date of purchase; and

¹³³ The Act defines “specified adult” as a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. See s. 517.34(1)(b), and s. 415.102(28), F.S.

¹³⁴ S. 517.211(1), F.S.

¹³⁵ S. 517.301, F.S., relates to fraudulent transactions and the falsification or concealment of facts.

¹³⁶ S. 517.211(2), F.S.

¹³⁷ S. 517.211(3), F.S.

- The value of the security at the time it was disposed of by the plaintiff, plus the amount of any income received on the security by the plaintiff.¹³⁸
- In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:
 - The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and
 - The consideration received for the security, plus interest at the legal rate from the date of sale.¹³⁹

In any such action, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that doing so would be unjust.¹⁴⁰

Effect of the Bill

The bill establishes that, for purposes of any action brought regarding an unlawful sale, a control person who controls any person found to have violated any provision specified in s. 517.211(1), F.S., is also jointly and severally liable with such controlled person, unless the control person can establish by a preponderance of the evidence that they acted in good faith and did not induce the act that constituted the violation.¹⁴¹

The bill provides that the Act does not limit any statutory or common law right of a person to bring an action in court for an act involved in the sale of securities. The bill also establishes that similar civil remedies provided by federal law for purchasers and sellers of securities in interstate commerce extend to purchasers or sellers of securities under the Act.

Fraudulent Transactions; Falsification or Concealment of Facts; Boiler Rooms

Background

The Act defines the term "investment" for purposes of ss. 517.311¹⁴² and 517.312, F.S.,¹⁴³ as any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

- The purchase of a business opportunity, business enterprise, or real property through a person licensed under ch. 475, F.S.,¹⁴⁴ or registered under former ch. 498, F.S.,¹⁴⁵ or
- The purchase of tangible personal property through a person not engaged in telephone solicitation, where said property is offered and sold in accordance with the following conditions:
 - There are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase;
 - The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office if market conditions so warrant; and
 - The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund may not exceed the bid price in effect at the time the property is returned to the seller.

It is unlawful and a violation of the Act for a person, in connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any security, including any security

¹³⁸ S. 517.211(4), F.S.

¹³⁹ S. 517.211(5), F.S.

¹⁴⁰ S. 517.211(6), F.S.

¹⁴¹ Office of Financial Regulation, *supra* note 16, at p. 31.

¹⁴² S. 517.311, F.S., relates to false representations, deceptive words, and enforcement.

¹⁴³ S. 517.312, F.S., relates to securities, investments, boiler rooms; prohibited practices; and remedies.

¹⁴⁴ Chapter 475, F.S., relates to, among other things, the licensure and regulation of real estate brokers.

¹⁴⁵ The former chapter 498, F.S., related to, among other things, the licensure and regulation of land sales practices.

exempted under the provisions of the Act and including any security sold in a transaction exempted under the Act, directly or indirectly:

- To employ any device, scheme, or artifice to defraud;
- To obtain money or property by means of any untrue statement of a material fact or any omission to of a material fact necessary to make the statements made not misleading; or
- To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.
- To publish or circulate any communication which describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of such individual, without fully disclosing the receipt of such consideration and the amount of the consideration.
- To knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false or fraudulent statement or representation, or make or use any false document, knowing the same to contain any false or fraudulent statement.¹⁴⁶

Further, it is also unlawful and a violation of the Act for any person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, any boiler room¹⁴⁷ in Florida which sells or offers for sale any security or investment in violation of the above described prohibitions.¹⁴⁸

Effect of the Bill

The bill amends the definition of “investment” for purposes of this provision of the Act to read as follows: any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for the purchase of a business opportunity, business enterprise, or real property through a person licensed under ch. 475, F.S.,¹⁴⁹ or registered under former ch. 498, F.S.¹⁵⁰

The bill also consolidates the current provisions of the Act relating to false representations, boiler rooms, and prohibited practices into a single provision. The consolidated version of these provisions does not eliminate any of the liability provisions existing in current law.

Miscellaneous

Pursuant to the changes made by the bill, the bill relocates the following sections of the Act and, where applicable, consolidates the provisions elsewhere:

- S. 517.221, F.S., relating to cease and desist orders.
- S. 517.241, F.S., relating to remedies.
- S. 517.311, F.S., relating to false representations; deceptive words; enforcement.
- S. 517.312, F.S., relating to securities, investments, boiler rooms; prohibited practices; remedies.

Overall, the bill modifies various provisions of the Act to incorporate recent amendments to federal securities laws since their passage and up to the effective date of the bill.

¹⁴⁶ S. 517.301, F.S.

¹⁴⁷ The Financial Industry Regulatory Authority describes “boiler rooms” as follows: “Typically run as outbound call centers, boiler rooms are characterized by high pressure sales pitches from promoters targeting retail investors with highly speculative—oftentimes fraudulent—investments.” See FINRA, *Boiler Rooms: An Old Stock Scam Gets a Technology Makeover*, <https://www.finra.org/investors/insights/boiler-rooms-an-old-stock-gets-a-technology-makeover> (last visited Jan. 8, 2024).

¹⁴⁸ S. 517.312, F.S.

¹⁴⁹ Chapter 475, F.S., relates to, among other things, the licensure and regulation of real estate brokers.

¹⁵⁰ The former chapter 498, F.S., related to, among other things, the licensure and regulation of land sales practices.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 517.021, F.S., relating to definitions.
- Section 2.** Amends s. 517.051, F.S., relating to exempt securities.
- Section 3.** Amends s. 517.061, F.S., relating to exempt transactions.
- Section 4.** Amends s. 617.0611, F.S., relating to intrastate crowdfunding.
- Section 5.** Creates s. 517.0612, F.S., relating to Florida Invest Local Exemption.
- Section 6.** Creates s. 517.0613, F.S., relating to failure to comply with a securities registration exemption.
- Section 7.** Creates s. 517.0614, F.S., relating to integration of offerings.
- Section 8.** Creates s. 517.0615, F.S., relating to solicitations of interest.
- Section 9.** Creates s. 517.0616, F.S., relating to disqualification.
- Section 10.** Amends s. 517.081, F.S., relating to registration procedure.
- Section 11.** Amends s. 517.101, F.S., relating to consent to service.
- Section 12.** Amends s. 517.131, F.S., relating to Securities Guaranty Fund.
- Section 13.** Amends s. 517.141, F.S., relating to payment from the fund.
- Section 14.** Amends s. 517.191, F.S., relating to injunction to restrain violations; civil penalties; enforcement by Attorney General.
- Section 15.** Amends s. 517.211, F.S., relating to remedies available in cases of unlawful sale.
- Section 16.** Repeals s. 517.221, F.S., relating to cease and desist orders.
- Section 17.** Repeals s. 517.241, F.S., relating to remedies.
- Section 18.** Amends s. 517.301, F.S., relating to fraudulent transactions; falsification or concealment of facts.
- Section 19.** Repeals s. 517.311, F.S., relating to false representations; deceptive words; enforcement.
- Section 20.** Repeals s. 517.312, F.S., relating to securities, investments, boiler rooms; prohibited practices; remedies.
- Section 21.** Amends s. 517.072, F.S., relating to viatical settlement investments.
- Section 22.** Amends s. 517.12, F.S., relating to registration of dealers, associated persons, intermediaries, and investment advisers.
- Section 23.** Amends s. 517.1202, F.S., relating to notice-filing requirements for branch offices.
- Section 24.** Amends s. 517.302, F.S., relating to criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.
- Section 25.** Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminable positive impact on state government revenues because the bill increases penalties that can be assessed against certain violators of the Act.

2. Expenditures:

The bill requires issuers conducting an offering under the accredited investor exemption to file a notice of transaction, a consent to service of process, and a copy of the general announcement with OFR. OFR will then review the materials filed. The bill does not provide additional funds for OFR personnel to conduct such review. Although it is unknown how many filings OFR will receive, OFR does not anticipate needing additional personnel in fiscal year 2024/2025 to conduct such reviews.¹⁵¹

The bill also requires issuers conducting an offering under the Florida Invest Local Exemption to file a notice of the offering and a copy of the disclosure document with OFR. OFR will then review the

¹⁵¹ Office of Financial Regulation, *supra* note 16, at p. 35.
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materials filed. The bill does not provide additional funds for OFR personnel to conduct such review. Although it is unknown how many filings OFR will receive, OFR does not anticipate needing additional personnel in fiscal year 2024/2025 to conduct such reviews.¹⁵²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill likely has a minimal positive impact on the private sector, as the bill modernizes Florida's securities laws to align with recent development in federal securities laws and securities laws in other states.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

The table below illustrates the proposed sections of the bill that create rule-making authority.¹⁵³

Section	Rule-Making Authority
S. 517.061(11)	Allows the Commission to prescribe a notice of transaction form and procedures for filing it for purposes of the accredited investor exemption.
S. 517.061(16)(b)1.	Allows the Commission to recognize a clearinghouse by rule.
S. 517.061(20)	Allows the Commission to designate foreign jurisdictions and foreign securities exchanges.
S. 517.0612(2)(h)	Allows the Commission to prescribe a notice of offering form and procedures for filing it for purposes of the Florida Invest Local Exemption
S. 517.131(5)	Allows the Commission to prescribe an application form and procedures for filing it for purposes of the Securities Guaranty Fund
S. 517.131(7)	Allows the Commission to prescribe an assignment form and procedures for filing it for purposes of the Securities Guaranty Fund
S. 517.131(8)	Allows the Commission to specify a time period for completing an application for purposes of the Securities Guaranty Fund

¹⁵² Office of Financial Regulation, *supra* note 16, at p. 33.

¹⁵³ Office of Financial Regulation, *supra* note 16, at p. 33.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to securities and securities
3 transactions; amending s. 517.021, F.S.; providing and
4 revising definitions; amending s. 517.051, F.S.;
5 revising the list of securities that are exempt from
6 registration requirements under certain provisions;
7 amending s. 517.061, F.S.; revising the list of
8 securities transactions that are exempt from
9 registration requirements under certain provisions;
10 amending s. 517.0611, F.S.; revising the short title;
11 providing nonapplicability; deleting provisions
12 relating to registration exemptions under certain
13 provisions for securities transactions; revising
14 requirements for exemptions from registration under
15 certain provisions for securities transactions;
16 providing that certain standards and procedures are
17 established by the Financial Services Commission,
18 rather than by the Office of Financial Regulation;
19 revising the amounts of fines under certain
20 circumstances; conforming provisions to changes made
21 by the act; revising the duties of intermediaries
22 under certain circumstances; providing duties of
23 issuers under certain circumstances; providing that
24 certain sales are voidable within a specified time;
25 providing requirements for purchasers' notices to

26 issuers to void purchases; deleting provisions
27 relating to funds received from investors; creating s.
28 517.0612, F.S.; providing a short title; providing
29 registration exemptions under certain provisions for
30 securities transactions that meet specified
31 requirements; prohibiting agents of issuers from
32 engaging in certain acts under certain circumstances;
33 providing that certain sales are voidable within a
34 specified time; providing requirements for purchasers'
35 notices to issuers to void purchases; creating s.
36 517.0613, F.S.; providing construction; providing that
37 registration exemptions under certain provisions are
38 not available to issuers for certain transactions
39 under specified circumstances; providing registration
40 requirements; creating s. 517.0614, F.S.; providing
41 criteria to determine integration of offerings for the
42 purpose of registration or registration exemption;
43 providing nonapplicability; creating s. 517.0615,
44 F.S.; providing that communications in connection with
45 certain seminars and meetings and communications on
46 securities offerings are not deemed to constitute
47 general solicitation or general advertising under
48 specified circumstances; providing nonapplicability;
49 creating s. 517.0616, F.S.; providing that
50 registration exemptions under certain provisions are

51 not available for specified issuers under a specified
52 circumstance; amending s. 517.081, F.S.; removing
53 certain duties and revising the authority of the
54 commission; revising the list of issuers that are not
55 eligible to submit certain simplified offering
56 circulars; deleting provisions that require issuers to
57 provide certain documents to the office under certain
58 circumstances; revising the requirements that must be
59 met before the office must record the registration of
60 a security; amending s. 517.101, F.S.; revising
61 requirements for certain written consent that
62 accompanies issuers' applications for registration
63 under certain circumstances; amending s. 517.131,
64 F.S.; providing the purpose of the Securities Guaranty
65 Fund; making technical changes; providing a
66 definition; revising circumstances under which a
67 person is eligible for payment from the fund;
68 providing circumstances under which a person is not
69 eligible for payment from the fund; requiring
70 applications for payment to be filed; providing
71 rulemaking authority; providing requirements for the
72 applications; requiring the office to approve
73 applications for payment under certain circumstances
74 and to provide applicants with certain notices within
75 a specified timeframe; requiring assignments to the

76 office of all rights, titles, and interests in final
 77 judgments and orders of restitution; requiring the
 78 office to deem an application for payment abandoned
 79 under certain circumstances; requiring the time period
 80 to complete applications to be tolled under certain
 81 circumstances; deleting provisions relating to
 82 specified notices to the office and relating to
 83 rulemaking authority; amending s. 517.141, F.S.;
 84 providing definitions; revising the Securities
 85 Guaranty Fund disbursement amounts that eligible
 86 persons are entitled to; revising the limits on
 87 payments of claims; providing requirements for
 88 payments and disbursements of claims; deleting
 89 provisions prohibiting payments of claims against
 90 certain persons under certain circumstances; revising
 91 circumstances under which certain claims are treated
 92 as claims of one eligible claimant; conforming
 93 provisions to changes made by the act; requiring that
 94 claimants' reimbursements be paid to the Department of
 95 Financial Services, rather than to the office;
 96 providing forfeiture of all payments under certain
 97 circumstances; providing violations; authorizing the
 98 department, rather than the office, to institute legal
 99 proceeding for certain compliance enforcement and to
 100 recover certain interests, costs, and fees; amending

101 s. 517.191, F.S.; revising the types of courts that
102 have jurisdiction over certain subject matters;
103 revising the civil penalty amounts for certain
104 violations; authorizing the office to recover certain
105 costs and attorney fees; providing disposition of such
106 costs and attorney fees; providing liabilities;
107 providing violations; authorizing the office to issue
108 and serve cease and desist orders under certain
109 circumstances; providing fines; providing disposition
110 of fines; authorizing the office to bar applications
111 or notifications for licenses and registrations under
112 certain circumstances; conforming provisions to
113 changes made by the act; providing construction;
114 providing jurisdiction; amending s. 517.211, F.S.;
115 providing liabilities; specifying the date on which
116 the legal rates of certain interests on securities and
117 investments are considered; providing construction;
118 repealing ss. 517.221 and 517.241, F.S., relating to
119 cease and desist orders and to remedies, respectively;
120 amending s. 517.301, F.S.; revising a definition;
121 conforming provisions to changes made by the act;
122 revising and providing circumstances under which
123 certain activities are considered unlawful and
124 violations of law; providing construction; requiring
125 disclaimers for certain statements; repealing s.

126 517.311, F.S., relating to false representations,
 127 deceptive words, and enforcement; repealing s.
 128 517.312, F.S., relating to securities, investments,
 129 and boiler rooms, prohibited practices, and remedies;
 130 amending ss. 517.072 and 517.12, F.S.; conforming
 131 cross-references; amending ss. 517.1202 and 517.302,
 132 F.S.; conforming provisions to changes made by the
 133 act; providing an effective date.

134

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

136

137 Section 1. Subsections (3), (4), and (5) and subsections
 138 (6) through (25) of section 517.021, Florida Statutes, are
 139 renumbered as subsections (4), (5), and (6) and subsections (8)
 140 through (27), respectively, subsection (1), present subsections
 141 (4), (8), (9), and (14) are amended, and new subsections (3) and
 142 (7) are added to that section, to read:

143 517.021 Definitions.—When used in this chapter, unless the
 144 context otherwise indicates, the following terms have the
 145 following respective meanings:

146 (1) "Accredited investor" shall be defined by rule of the
 147 commission in accordance with Securities and Exchange Commission
 148 Rule 501, 17 C.F.R. s. 230.501, as amended.

149 (3) "Angel investor group" means a group of accredited
 150 investors that holds regular meetings and has defined processes

151 and procedures for making investment decisions, individually or
 152 among the membership of the group, and that is not an associated
 153 person, an affiliate, or an agent of a dealer or investment
 154 adviser.

155 (5)-(4) "Boiler room" means an enterprise in which two or
 156 more persons ~~engage in telephone communications with members of~~
 157 ~~the public using two or more telephones at one location, or at~~
 158 ~~more than one location~~ in a common scheme or enterprise solicit
 159 potential investors through telephone calls, electronic mail,
 160 text messages, social media, chat rooms, or other electronic
 161 means.

162 (7) "Business entity" means a corporation, partnership,
 163 limited partnership, limited liability company, proprietorship,
 164 firm, enterprise, franchise, association, self-employed
 165 individual, or trust, whether fictitiously named or not, doing
 166 business in this state.

167 (10) (a)-(8) "Dealer" includes, unless otherwise specified,
 168 a person, other than an associated person of a dealer, that
 169 engages, for all or part of the person's time, directly or
 170 indirectly, as agent or principal in the business of offering,
 171 buying, selling, or otherwise dealing or trading in securities
 172 issued by another person.

173 (b) The term does not include the following:

174 1.(a) A licensed practicing attorney who renders or
 175 performs any such services in connection with the regular

176 practice of the attorney's profession.

177 2.~~(b)~~ A bank authorized to do business in this state,
178 except nonbank subsidiaries of a bank.

179
180 3.~~(e)~~ A trust company having trust powers that it is
181 authorized to exercise in this state, which renders or performs
182 services in a fiduciary capacity incidental to the exercise of
183 its trust powers.

184 4.~~(d)~~ A wholesaler selling exclusively to dealers.

185 5.~~(e)~~ A person buying and selling for the person's own
186 account exclusively through a registered dealer or stock
187 exchange.

188 6.~~(f)~~ An issuer.

189 7.~~(g)~~ A natural person representing an issuer in the
190 purchase, sale, or distribution of the issuer's own securities
191 if such person:

192 a.1. Is an officer, a director, a limited liability
193 company manager or managing member, or a bona fide employee of
194 the issuer;

195 b.2. Has not participated in the distribution or sale of
196 securities for any issuer for which such person was, within the
197 preceding 12 months, an officer, a director, a limited liability
198 company manager or managing member, or a bona fide employee;

199 c.3. Primarily performs, or is intended to perform at the
200 end of the distribution, substantial duties for, or on behalf

201 of, the issuer other than in connection with transactions in
 202 securities; and

203 ~~d.4.~~ Does not receive a commission, compensation, or other
 204 consideration for the completed sale of the issuer's securities
 205 apart from the compensation received for regular duties to the
 206 issuer.

207 ~~(11)-(9)~~ "Federal covered adviser" means a person that is
 208 registered or required to be registered under s. 203 of the
 209 Investment Advisers Act of 1940, as amended. The term does not
 210 include any person that is excluded from the definition of
 211 investment adviser under subparagraphs (16) (b)1.-7. and 9
 212 ~~(14) (b)1.-8.~~

213 ~~(16)-(14)~~ (a) "Investment adviser" means a person, other
 214 than an associated person of an investment adviser or a federal
 215 covered adviser, that receives compensation, directly or
 216 indirectly, and engages for all or part of the person's time,
 217 directly or indirectly, or through publications or writings, in
 218 the business of advising others as to the value of securities or
 219 as to the advisability of investments in, purchasing of, or
 220 selling of securities.

221 (b) The term does not include the following:

222 1. A dealer or an associated person of a dealer whose
 223 performance of services in paragraph (a) is solely incidental to
 224 the conduct of the dealer's or associated person's business as a
 225 dealer and who does not receive special compensation for those

226 | services.

227 | 2. A licensed practicing attorney or certified public
 228 | accountant whose performance of such services is solely
 229 | incidental to the practice of the attorney's or accountant's
 230 | profession.

231 | 3. A bank authorized to do business in this state.

232 | 4. A bank holding company as defined in the Bank Holding
 233 | Company Act of 1956, as amended, authorized to do business in
 234 | this state.

235 | 5. A trust company having trust powers, as defined in s.
 236 | 658.12, which it is authorized to exercise in this state, which
 237 | trust company renders or performs investment advisory services
 238 | in a fiduciary capacity incidental to the exercise of its trust
 239 | powers.

240 | 6. A person that renders investment advice exclusively to
 241 | insurance or investment companies.

242 | 7. A person that has fewer than six clients during the
 243 | preceding 12 months who are residents of ~~does not hold itself~~
 244 | ~~out to the general public as an investment adviser and has no~~
 245 | ~~more than 15 clients within 12 consecutive months in this state.~~
 246 | As used in this subparagraph, the term "client" has the same
 247 | meaning as provided in Securities and Exchange Commission Rule
 248 | 275.222-2, 17 C.F.R. s. 275.222-2, as amended.

249 | ~~8. A person whose transactions in this state are limited~~
 250 | ~~to those transactions described in s. 222(d) of the Investment~~

251 ~~Advisers Act of 1940, as amended. Those clients listed in~~
 252 ~~subparagraph 6. may not be included when determining the number~~
 253 ~~of clients of an investment adviser for purposes of s. 222(d) of~~
 254 ~~the Investment Advisers Act of 1940, as amended.~~

255 8.9. A federal covered adviser.

256 9. The United States, a state, a political subdivision of
 257 a state, or an agency, authority, or instrumentality of one or
 258 more of the foregoing, or a business entity that is wholly owned
 259 directly or indirectly by one or more of the foregoing, or an
 260 officer, agent, or employee of any of the foregoing acting as
 261 such in the course of his or her official duty.

262 Section 2. Section 517.051, Florida Statutes, is amended
 263 to read:

264 517.051 Exempt securities.—The exemptions provided herein
 265 from the registration requirements of s. 517.07 are self-
 266 executing and do not require any filing with the office before
 267 ~~prior to~~ claiming such exemption. Any person who claims
 268 entitlement to any of these exemptions bears the burden of
 269 proving such entitlement in any proceeding brought under this
 270 chapter. The registration provisions of s. 517.07 do not apply
 271 to any of the following securities:

272 (1) A security issued or guaranteed by the United States
 273 or any territory or insular possession of the United States, by
 274 the District of Columbia, or by any state of the United States
 275 or by any political subdivision or agency or other

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276 instrumentality thereof.

277 (a) ~~A;~~ provided that no person may not shall directly or
278 indirectly offer or sell securities, other than general
279 obligation bonds, under this subsection if the issuer or
280 guarantor is in default or has been in default any time after
281 December 31, 1975, as to principal or interest:

282 1.(a) With respect to an obligation issued by the issuer
283 or successor of the issuer; or

284 2.(b) With respect to an obligation guaranteed by the
285 guarantor or successor of the guarantor,

286
287 except by an offering circular containing a full and fair
288 disclosure as prescribed by rule of the commission.

289 (b) Paragraph (a) does not apply to a security that is an
290 industrial or commercial development bond, unless payments are
291 made or unconditionally guaranteed by a person whose securities
292 are exempt from registration under s. 18(b)(1) of the Securities
293 Act of 1933, as amended.

294 (2) A security issued or guaranteed by any foreign
295 government with which the United States is maintaining
296 diplomatic relations at the time of the sale or offer of sale of
297 the security, or by any state, province, or political
298 subdivision thereof having the power of taxation or assessment,
299 which security is recognized at the time it is offered for sale
300 in this state as a valid obligation by such foreign government

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301 or by such state, province, or political subdivision thereof
 302 issuing the security.

303 (3) A security that is issued by and represents, or will
 304 represent, an interest in or a direct obligation of, or that is
 305 guaranteed by:

306 (a) An international bank of which the United States is a
 307 member;

308 (b) A bank organized under the laws of the United States;

309 (c) A member bank of the Federal Reserve System; or

310 (d) A depository institution a substantial portion of the
 311 business of which consists or will consist of receiving deposits
 312 or share accounts that are insured to the maximum amount
 313 authorized by statute by the Federal Deposit Insurance
 314 Corporation or the National Credit Union Share Insurance Fund.

315 ~~(3) A security issued or guaranteed by:~~

316 ~~(a) A national bank, a federally chartered savings and~~
 317 ~~loan association, or a federally chartered savings bank, or the~~
 318 ~~initial subscription for equity securities in such national~~
 319 ~~bank, federally chartered savings and loan association, or~~
 320 ~~federally chartered savings bank;~~

321 ~~(b) Any federal land bank, joint-stock land bank, or~~
 322 ~~national farm loan association under the provisions of the~~
 323 ~~Federal Farm Loan Act of July 17, 1916;~~

324 ~~(c) An international bank of which the United States is a~~
 325 ~~member; or~~

326 ~~(d) A corporation created and acting as an instrumentality~~
 327 ~~of the government of the United States.~~

328 (4) A security issued or guaranteed, as to principal,
 329 interest, or dividend, by a business entity ~~corporation~~ owning
 330 or operating a railroad, other common carrier, or any other
 331 public service utility; provided that such business entity
 332 ~~corporation~~ is subject to regulation or supervision whether as
 333 to its rates and charges or as to the issue of its own
 334 securities by a public commission, board, or officer of the
 335 government of the United States, of any state, territory, or
 336 insular possession of the United States, of any municipality
 337 located therein, of the District of Columbia, or of the Dominion
 338 of Canada or of any province thereof; also equipment securities
 339 based on chattel mortgages, leases, or agreements for
 340 conditional sale of cars, motive power, or other rolling stock
 341 mortgaged, leased, or sold to or furnished for the use of or
 342 upon such railroad or other public service utility corporation
 343 or where the ownership or title of such equipment is pledged or
 344 retained in accordance with the provisions of the laws of the
 345 United States or of any state or of the Dominion of Canada to
 346 secure the payment of such equipment securities; and also bonds,
 347 notes, or other evidences of indebtedness issued by a holding
 348 corporation and secured by collateral consisting of any
 349 securities hereinabove described; provided, further, that the
 350 collateral securities equal in fair value at least 125 percent

351 of the par value of the bonds, notes, or other evidences of
 352 indebtedness so secured.

353 (5) A security issued or guaranteed by any of the
 354 following which are subject to the examination, supervision, or
 355 control of this state or of the Federal Deposit Insurance
 356 Corporation or the National Credit Union Association:

- 357 (a) A bank,
- 358 (b) A trust company,
- 359 (c) A savings institution,
- 360 (d) A building or savings and loan association,
- 361 (e) An international development bank, or
- 362 (f) A credit union;

363
 364 or the initial subscription for equity securities of any
 365 institution listed in paragraphs (a)-(f), provided such
 366 institution is subject to the examination, supervision, or
 367 control of this state.

368 (6) A security, other than common stock, providing for a
 369 fixed return, which security has been outstanding in the hands
 370 of the public for a period of not less than 5 years, and upon
 371 which security no default in payment of principal or failure to
 372 pay the fixed return has occurred for an immediately preceding
 373 period of 5 years.

374 (7) Securities of nonprofit agricultural cooperatives
 375 organized under the laws of this state when the securities are

376 sold or offered for sale to persons principally engaged in
 377 agricultural production or selling agricultural products.

378 (8) Shares or other equity interests of a business entity
 379 which represent ownership, or entitle the holders of such shares
 380 or other equity interests to possession and occupancy, of
 381 specific apartment units in property owned by such business
 382 entity and organized and operated on a cooperative basis, solely
 383 for residential purposes.

384 (9) A member's or owner's interest in, or a retention
 385 certificate or like security given in lieu of a cash patronage
 386 dividend issued by, a not-for-profit membership entity operated
 387 either as a cooperative under the cooperative laws of a state or
 388 in accordance with the cooperative provisions of subchapter T of
 389 chapter 1 of subtitle A of the United States Internal Revenue
 390 Code, as amended, but not a member's or owner's interest,
 391 retention certificate, or like security sold or transferred to a
 392 person other than:

393 (a) A bona fide member of the not-for-profit membership
 394 entity; or

395 (b) A person who becomes a bona fide member of the not-
 396 for-profit membership entity at the time of or in connection
 397 with the sale or transfer.

398 ~~(8) A note, draft, bill of exchange, or banker's~~
 399 ~~acceptance having a unit amount of \$25,000 or more which arises~~
 400 ~~out of a current transaction, or the proceeds of which have been~~

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401 ~~or are to be used for current transactions, and which has a~~
402 ~~maturity period at the time of issuance not exceeding 9 months~~
403 ~~exclusive of days of grace, or any renewal thereof which has a~~
404 ~~maturity period likewise limited. This subsection applies only~~
405 ~~to prime quality negotiable commercial paper of a type not~~
406 ~~ordinarily purchased by the general public; that is, paper~~
407 ~~issued to facilitate well-recognized types of current~~
408 ~~operational business requirements and of a type eligible for~~
409 ~~discounting by Federal Reserve banks.~~

410 (10) ~~(9)~~ A security issued by a business entity ~~corporation~~
411 organized and operated exclusively for religious, educational,
412 benevolent, fraternal, charitable, or reformatory purposes and
413 not for pecuniary profit, no part of the net earnings of which
414 ~~corporation~~ inures to the benefit of any private stockholder or
415 individual, or any security of a fund that is excluded from the
416 definition of an investment company under s. 3(c)(10)(B) of the
417 Investment Company Act of 1940, as amended; provided that no
418 person shall directly or indirectly offer or sell securities
419 under this subsection except by an offering circular containing
420 full and fair disclosure, as prescribed by the rules of the
421 commission, of all material information, including, but not
422 limited to, a description of the securities offered and terms of
423 the offering, a description of the nature of the issuer's
424 business, a statement of the purpose of the offering and the
425 intended application by the issuer of the proceeds thereof, and

426 financial statements of the issuer prepared in conformance with
 427 United States generally accepted accounting principles. Section
 428 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No.
 429 104-62, does ~~shall~~ not preempt any provision of this chapter.

430 (11) ~~(10)~~ Any insurance or endowment policy or annuity
 431 contract or optional annuity contract or self-insurance
 432 agreement issued by a business entity ~~corporation~~, insurance
 433 company, reciprocal insurer, or risk retention group subject to
 434 the supervision of the insurance regulator or bank regulator, or
 435 any agency or officer performing like functions, of any state or
 436 territory of the United States or the District of Columbia.

437 Section 3. Section 517.061, Florida Statutes, is amended
 438 to read:

439 (Substantial rewording of section. See
 440 s. 517.061, F.S., for present text.)

441 517.061 Exempt transactions.—Except as otherwise provided
 442 in subsection (11), the exemptions for each transaction listed
 443 below are self-executing and do not require any filing with the
 444 office before claiming the exemption. Any person who claims
 445 entitlement to any of the exemptions bears the burden of proving
 446 such entitlement in any proceeding brought under this chapter.
 447 The registration provisions of s. 517.07 do not apply to any of
 448 the following transactions; however, such transactions are
 449 subject to s. 517.301:

450 (1) (a) Any judicial sale or any sale by an executor,

451 administrator, guardian, or conservator; any sale by a receiver
 452 or trustee in insolvency or bankruptcy; any sale by an assignee
 453 as defined in s. 727.103(2) with respect to an assignment as
 454 defined in s. 727.103(4); or any transaction incident to a
 455 judicially approved reorganization in which a security is issued
 456 in exchange for one or more outstanding securities, claims, or
 457 property interests.

458 (b) Except for a security exchanged in a case under Title
 459 11 of the United States Code, a security that is issued in
 460 exchange for one or more bona fide outstanding securities,
 461 claims, or property interests, or partly in such exchange and
 462 partly for cash, if the terms and conditions of such issuance
 463 and exchange are approved:

464 1. By a court, an official or agency of the United States,
 465 a banking or insurance commission of a state or territory of the
 466 United States, or other governmental authority expressly
 467 authorized by law to grant such approval.

468 2. After a hearing upon the fairness of such terms and
 469 conditions and at which all persons to whom issuance of
 470 securities in such exchange is proposed have the right to
 471 appear.

472 (2) The issuance of notes or bonds in connection with the
 473 acquisition of real property or renewals thereof, if such notes
 474 or bonds are issued to the sellers of, and are secured by all or
 475 part of, the real property so acquired.

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476 (3) A transaction involving a stock dividend or equivalent
477 equity distribution, whether the business entity distributing
478 the dividend or equivalent equity distribution is the issuer, if
479 nothing of value is given by stockholders or other equity
480 holders for the dividend or equivalent equity distribution other
481 than the surrender of a right to a cash or property dividend in
482 the event that each stockholder or other equity holder may elect
483 to take the dividend or equivalent equity distribution in cash,
484 property, or stock.

485 (4) A transaction under an offer to existing security
486 holders of the issuer, including persons that at the date of the
487 transaction are holders of convertible securities, options, or
488 warrants, if a commission or other remuneration is not paid or
489 given, directly or indirectly, for soliciting a security holder
490 in this state.

491 (5) The issuance of securities to such equity security
492 holders or creditors of a business entity in the process of a
493 reorganization of such business entity, made in good faith and
494 not for the purpose of avoiding the provisions of this chapter,
495 either in exchange for the securities of such equity security
496 holders or claims of such creditors or partly for cash and
497 partly in exchange for the securities or claims of such equity
498 security holders or creditors.

499 (6) A transaction involving the distribution of the
500 securities of an issuer to the security holders of another

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501 person in connection with a merger, consolidation, exchange of
502 securities, sale of assets, or other reorganization to which the
503 issuer, or the issuer's parent or subsidiary, and the other
504 person, or the person's parent or subsidiary, are parties.

505 (7) The offer or sale of securities, solely in connection
506 with the transfer of ownership of an eligible privately held
507 company, through a merger and acquisition broker in accordance
508 with s. 517.12(21).

509 (8) The offer or sale of securities under a bona fide
510 employees' stock purchase, savings, option, profit-sharing,
511 pension, or similar employees' benefit plan, including any
512 securities, plan interests, and guarantees issued under a
513 compensatory benefit plan or compensation contract, contained in
514 a record, established by the issuer, its parents, its majority-
515 owned subsidiaries, or the majority-owned subsidiaries of the
516 issuer's parent for the participation of their employees
517 including offers or sales of such securities to:

518 (a) Directors, general partners, trustees if the issuer is
519 a business trust, officers, consultants, and advisors.

520 (b) Family members who acquire such securities from those
521 persons through gifts or domestic relations orders.

522 (c) Former employees, directors, general partners,
523 trustees, officers, consultants, and advisors if those
524 individuals were employed by or providing services to the issuer
525 when the securities were offered.

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526 (d) Insurance agents who are exclusive insurance agents of
527 the issuer, or of the issuer's subsidiaries or parents, or who
528 derive more than 50 percent of their annual income from those
529 organizations.

530 (9) The offer or sale of securities to a bank, trust
531 company, savings institution, insurance company, dealer,
532 investment company as defined in the Investment Company Act of
533 1940, as amended, pension or profit-sharing trust, or qualified
534 institutional buyer, whether any of such entities is acting in
535 its individual or fiduciary capacity.

536 (10) (a) The offer or sale, by or on behalf of an issuer,
537 of its own securities if the offer or sale is part of an
538 offering made in accordance with all of the following
539 conditions:

540 1. There are no more than 35 purchasers, or the issuer
541 reasonably believes that there are no more than 35 purchasers,
542 of the securities of the issuer in this state during an offering
543 made in reliance upon this subsection or, if such offering
544 continues for a period in excess of 12 months, in any
545 consecutive 12-month period.

546 a. The following purchasers are excluded from the
547 calculation of the number of purchasers under this subparagraph:

548 (I) A relative or spouse, or relative of such spouse, of a
549 purchaser who has the same principal residence as such
550 purchaser.

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551 (II) A trust or estate in which a purchaser, any of the
552 persons related to such purchaser specified in sub-sub-
553 subparagraph (I), and any business entity specified in
554 subparagraph sub-sub-subparagraph (III) collectively have more
555 than 50 percent of the beneficial interest, excluding contingent
556 interest.

557 (III) A business entity in which a purchaser, any of the
558 persons related to such purchaser specified in sub-sub-
559 subparagraph (I), and any trust or estate specified in sub-sub-
560 subparagraph (II) collectively are beneficial owners of more
561 than 50 percent of the equity securities or equity interest.

562 (IV) An accredited investor.

563 b. A business entity shall be counted as one purchaser.
564 If, however, the business entity is organized for the specific
565 purpose of acquiring the securities offered and is not an
566 accredited investor, each beneficial owner of equity securities
567 or equity interests in the business entity shall be counted as a
568 separate purchaser.

569 c. A noncontributory employee benefit plan within the
570 meaning of Title I of the Employee Retirement Income Security
571 Act of 1974 shall be counted as one purchaser if the trustee
572 makes all investment decisions for the plan.

573 2. Neither the issuer nor any person acting on behalf of
574 the issuer offers or sells securities pursuant to this
575 subsection by means of any form of general solicitation or

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576 general advertising in this state.

577 3. Before the sale, each purchaser or the purchaser's
578 representative, if any, is provided with, or given reasonable
579 access to, full and fair disclosure of all material information,
580 which must include written notification of a purchaser's right
581 to void the sale under subparagraph 4.

582 (b) Any sale made pursuant to this subsection is voidable
583 by the purchaser within 3 days after the first tender of
584 consideration is made by such purchaser to the issuer by
585 notifying the issuer that the purchaser expressly voids the
586 purchase. The purchaser's notice to the issuer must be sent by
587 e-mail to the issuer's e-mail address set forth in the
588 disclosure document provided to the purchaser or purchaser's
589 representative or by hand delivery, courier service, or other
590 method by which written proof of delivery to the issuer of the
591 purchaser's election to rescind the purchase is evidenced.

592 (11) The offers or sales of securities by an issuer in a
593 transaction that meets the requirements of this subsection.

594 (a) Sales of securities shall be made only to persons who
595 are, or the issuer reasonably believes are, accredited
596 investors.

597 (b) The exemption is not available to an issuer that is in
598 the development stage and that:

- 599 1. Has no specific business plan or purpose; or
600 2. Has indicated that its business plan is to engage in a

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601 merger or acquisition with an unidentified company or other
602 entity or person.

603 (c) The issuer reasonably believes that all purchasers are
604 purchasing for investment and not with the view to, or for sale
605 in connection with, a distribution of the security. Any resale
606 of a security sold in reliance on this exemption within 12
607 months after a sale is presumed to be with a view to
608 distribution and not for investment, except a resale pursuant to
609 a registration statement effective under this chapter or
610 pursuant to an exemption available under this chapter, the
611 Securities Act of 1933, as amended, or the rules and regulation
612 adopted thereunder.

613 (d) A general announcement of the proposed offering, made
614 by any means, must include only the following information:

615 1. The name, address, and telephone number of the issuer
616 of the securities;

617 2. The name; a brief description; and the price, if known,
618 of any security to be issued;

619 3. A brief description of the business;

620 4. The type, number, and aggregate amount of securities
621 being offered;

622 5. The name, address, and telephone number of the person
623 to contact for additional information; and

624 6. Statements declaring that:

625 a. Sales will be made only to accredited investors;

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626 b. Money or other consideration is not being solicited and
627 will not be accepted by way of this general announcement; and

628 c. The securities have not been registered with or
629 approved by any state securities agency or the Securities and
630 Exchange Commission and are being offered and sold pursuant to
631 an exemption from registration.

632 (e) The issuer, in connection with an offer, may provide
633 information in addition to the general announcement under
634 paragraph (d) if such information is delivered:

635 1. Through an electronic database that is restricted to
636 persons who have been prequalified as accredited investors; or

637 2. After the issuer reasonably believes that the
638 prospective purchaser is an accredited investor.

639 (f) No telephone solicitation shall be permitted unless,
640 before placing the call, the issuer reasonably believes that the
641 prospective purchaser to be solicited is an accredited investor.

642 (g) Dissemination of the general announcement of the
643 proposed offering to persons who are not accredited investors
644 does not disqualify the issuer from claiming the exemption under
645 this rule.

646 (h) The issuer files with the office a notice of
647 transaction, a consent to service of process, and a copy of the
648 general announcement within 15 days after the first sale in this
649 state. The commission may establish by rule procedures for
650 filing documents by electronic means.

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651 (12) The isolated sale or offer for sale of securities
652 when made by or on behalf of a bona fide owner, not the issuer
653 or underwriter, of the securities, who disposes of such
654 securities for the owner's own account, and such sale is not
655 made directly or indirectly for the benefit of the issuer or an
656 underwriter of such securities or for the direct or indirect
657 promotion of any scheme or enterprise with the intent of
658 violating or evading any provision of this chapter. For purposes
659 of this subsection, isolated offers or sales include, but are
660 not limited to, an isolated offer or sale made by or on behalf
661 of a bona fide owner, not the issuer or underwriter, of the
662 securities if:

663 (a) The offer or sale of securities is in a transaction
664 satisfying all of the requirements of subparagraphs (10) (a)1.,
665 2., and 3. and paragraph (10) (b); or

666 (b) The offer or sale of securities is in a transaction
667 exempt under s. 4(a) (1) of the Securities Act of 1933, as
668 amended, or under Securities and Exchange Commission rules or
669 regulations.

670 (13) By or for the account of a pledgeholder, a secured
671 party as defined in s. 679.1021(1)(ttt), or a mortgagee selling
672 or offering for sale or delivery in the ordinary course of
673 business and not for the purposes of avoiding the provisions of
674 this chapter, to liquidate a bona fide debt, a security pledged
675 in good faith as security for such debt.

676 (14) An unsolicited purchase or sale of securities on
 677 order of, and as the agent for, another by a dealer registered
 678 pursuant to the provisions of s. 517.12; provided that this
 679 exemption applies solely and exclusively to such registered
 680 dealers and does not authorize or permit the purchase or sale of
 681 securities on order of, and as agent for, another by any person
 682 other than a dealer so registered; and provided, further, that
 683 such purchase or sale is not directly or indirectly for the
 684 benefit of the issuer or an underwriter of such securities or
 685 for the direct or indirect promotion of any scheme or enterprise
 686 with the intent of violation or evading any provision of this
 687 chapter.

688 (15) A nonissuer transaction with a covered adviser with
 689 investments under management in excess of \$100 million acting in
 690 the exercise of discretionary authority in a signed record for
 691 the account of others.

692 (16) The sale by or through a registered dealer of any
 693 securities option if, at the time of the sale of the option:

694 (a) The performance of the terms of the option is
 695 guaranteed by any dealer registered under the federal Securities
 696 Exchange Act of 1934, as amended, which guaranty and dealer are
 697 in compliance with such requirements or rules as may be approved
 698 or adopted by the commission; or

699 (b)1. Such options transactions are cleared by the Options
 700 Clearing Corporation or any other clearinghouse recognized by

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701 commission rule;

702 2. The option is not sold by or for the benefit of the
703 issuer of the underlying security; and

704 3. The underlying security may be purchased or sold on a
705 recognized securities exchange registered under the Securities
706 Exchange Act of 1934, as amended.

707 (17) (a) The offer or sale of securities, as agent or
708 principal, by a dealer registered pursuant to s. 517.12, when
709 such securities are offered or sold at a price reasonably
710 related to the current market price of such securities, provided
711 such securities are:

712 1. Securities of an issuer for which reports are required
713 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
714 of 1934, as amended;

715 2. Securities of a company registered under the Investment
716 Company Act of 1940, as amended;

717 3. Securities of an insurance company, as that term is
718 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
719 amended; or

720 4. Securities, other than any security that is a federal
721 covered security and is not subject to any registration or
722 filing requirements under this chapter, which securities have
723 been listed or approved for listing upon notice of issuance by a
724 securities exchange registered under the Securities Exchange Act
725 of 1934, as amended, and also all securities senior to any

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726 securities so listed or approved for listing upon notice of
727 issuance, or represented by subscription rights which have been
728 so listed or approved for listing upon notice of issuance, or
729 evidences of indebtedness guaranteed by an issuer with a class
730 of securities listed or approved for listing upon notice of
731 issuance by such securities exchange, such securities to be
732 exempt only so long as such listings or approvals remain in
733 effect. The exemption provided for herein does not apply when
734 the securities are suspended from listing approval for listing
735 or trading.

736 (b) The exemption provided in this subsection does not
737 apply if the sale is made for the direct or indirect benefit of
738 an issuer or a control person of such issuer or if such
739 securities constitute the whole or part of an unsold allotment
740 to, or subscription or participation by, a dealer as an
741 underwriter of such securities.

742 (c) The exemption provided in this subsection is not
743 available for any securities that have been denied registration
744 pursuant to s. 517.111. Additionally, the office may deny this
745 exemption with reference to any particular security, other than
746 a federal covered security, by order published in such manner as
747 the office finds proper.

748 (18) Any nonissuer transaction by a registered dealer, and
749 any resale transaction by a sponsor of a unit investment trust
750 registered under the Investment Company Act of 1940, as amended,

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751 in a security of a class that has been outstanding in the hands
752 of the public for at least 90 days; provided, at the time of the
753 transaction:

754 (a) The issuer of the security is actually engaged in
755 business and is not in the organization stage or in bankruptcy
756 or receivership and is not a blank check, blind pool, or shell
757 company whose primary plan of business is to engage in a merger
758 or combination of the business with, or an acquisition of, any
759 unidentified person;

760 (b) The security is sold at a price reasonably related to
761 the current market price of the security;

762 (c) The security does not constitute the whole or part of
763 an unsold allotment to, or a subscription or participation by,
764 the dealer as an underwriter of the security; and

765 (d)1. The security is listed in a nationally recognized
766 securities manual designated by rule of the commission, or in a
767 document filed with and publicly viewable through the Securities
768 and Exchange Commission's electronic data gathering and
769 retrieval system, and such listing contains:

770 a. A description of the business and operations of the
771 issuer;

772 b. The names of the issuer's officers and directors, if
773 any, or, in the case of an issuer not domiciled in the United
774 States, the corporate equivalents of such persons in the
775 issuer's country of domicile;

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776 c. An audited balance sheet of the issuer as of a date
777 within 18 months before such transaction or, in the case of a
778 reorganization or merger in which parties to the reorganization
779 or merger had such audited balance sheet, a pro forma balance
780 sheet; and

781 d. An audited income statement for each of the issuer's
782 immediately preceding 2 fiscal years, or for the period of
783 existence of the issuer, if in existence for less than 2 years
784 or, in the case of a reorganization or merger in which the
785 parties to the reorganization or merger had such audited income
786 statement, a pro forma income statement; or

787 2.a. The issuer of the security has a class of equity
788 securities listed on a national securities exchange registered
789 under the Securities Exchange Act of 1934, as amended;

790 b. The security is offered, purchased, or sold through an
791 alternative trading system registered under Securities and
792 Exchange Commission Regulation 242.301, 17 C.F.R. 242.301, as
793 amended;

794 c. The issuer of the security is a unit investment trust
795 registered under the Investment Company Act of 1940, as amended;

796 d. The issuer of the security has been engaged in
797 continuous business, including predecessors, for at least 3
798 years; or

799 e. The issuer of the security has total assets of at least
800 \$2 million based on an audited balance sheet as of a date within

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801 18 months before such transaction or, in the case of a
802 reorganization or merger in which parties to the reorganization
803 or merger had such audited balance sheet, a pro forma balance
804 sheet.

805 (19) The offer or sale of any security effected by or
806 through a person in compliance with s. 517.12(16).

807 (20) A nonissuer transaction in an outstanding security by
808 or through a dealer registered or exempt from registration under
809 this chapter, if:

810 (a) The issuer is a reporting issuer in a foreign
811 jurisdiction designated by this subsection or by commission rule
812 and the issuer has been subject to continuous reporting
813 requirements in the foreign jurisdiction for not less than 180
814 days before the transaction; and

815 (b) The security is listed on the foreign jurisdiction's
816 securities exchange that has been designated by this subsection
817 or by commission rule, or is a security of the same issuer that
818 is of senior or substantially equal rank to the listed security
819 or is a warrant or right to purchase or subscribe to any of the
820 foregoing.

821
822 For purposes of this subsection, Canada, together with its
823 provinces and territories, is a designated foreign jurisdiction,
824 and The Toronto Stock Exchange, Inc., is a designated securities
825 exchange. After an administrative hearing in compliance with ss.

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826 120.569 and 120.57, the office may revoke the designation of a
827 securities exchange under this subsection if the office finds
828 that revocation is necessary or appropriate in the public
829 interest and for the protection of investors.

830 (21) Other transactions defined by rules as transactions
831 exempted from the registration provisions of s. 517.07, which
832 rules the commission may adopt from time to time, but only after
833 a finding by the office that the application of the provisions
834 of s. 517.07 to a particular transaction is not necessary in the
835 public interest and for the protection of investors because of
836 the small dollar amount of securities involved or the limited
837 character of the offering. In conjunction with its adoption of
838 such rules, the commission may also provide in such rules that
839 persons selling or offering for sale securities in a transaction
840 exempted by rule adopted under this section are exempt from the
841 registration requirements of s. 517.12. A rule adopted under
842 this section may not have the effect of narrowing or limiting
843 any exemption provided for by statute.

844 Section 4. Section 517.0611, Florida Statutes, is amended
845 to read:

846 517.0611 The Florida Limited Offering Exemption ~~intrastate~~
847 ~~crowdfunding.~~—

848 (1) This section may be cited as the "Florida Limited
849 Offering Intrastate Crowdfunding Exemption."

850 (2) The registration provisions of s. 517.07 do not apply

851 to a securities transaction conducted in accordance with this
 852 section; however, such transaction is subject to s. 517.301
 853 ~~Notwithstanding any other provision of this chapter, an offer or~~
 854 ~~sale of a security by an issuer is an exempt transaction under~~
 855 ~~s. 517.061 if the offer or sale is conducted in accordance with~~
 856 ~~this section. The exemption provided in this section may not be~~
 857 ~~used in conjunction with any other exemption under s. 517.051 or~~
 858 ~~s. 517.061.~~

859 (3) The offer or sale of securities ~~under this section~~
 860 must be conducted in accordance with the requirements of the
 861 federal exemption for intrastate offerings in s. 3(a)(11) of the
 862 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, and
 863 ~~United States~~ Securities and Exchange Commission Rule 147, 17
 864 C.F.R. s. 230.147, as amended, or Securities and Exchange
 865 Commission Rule 147A, 17. C.F.R. s. 230.147A, as amended ~~adopted~~
 866 ~~pursuant to the Securities Act of 1933.~~

867 (4) An issuer must:

868 (a) Be a for-profit business entity that maintains ~~formed~~
 869 ~~under the laws of the state, be registered with the Secretary of~~
 870 ~~State, maintain~~ its principal place of business in the state,
 871 and derives ~~derive~~ its revenues primarily from operations in the
 872 state.

873 (b) Conduct transactions for an ~~the~~ offering of \$2.5
 874 million or more through a dealer registered with the office or
 875 an intermediary registered under s. 517.12 ~~s. 517.12(19)~~. For an

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876 offering of less than \$2.5 million, the issuer may, but is not
 877 required to, use such a dealer or intermediary.

878 (c) Not be, ~~either~~ before or as a result of the offering,
 879 an investment company as defined in s. 3 of the Investment
 880 Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, or subject
 881 to the reporting requirements of s. 13 or s. 15(d) of the
 882 Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d),
 883 as amended.

884 (d) Not be a business entity that: ~~a company with~~
 885 1. Has an undefined business operation;~~;~~ ~~a company that~~
 886 2. Lacks a business plan; ~~;~~ ~~a company that~~
 887 3. Lacks a stated investment goal for the funds being
 888 raised; ~~;~~ ~~or a company that~~
 889 4. Plans to engage in a merger or acquisition with an
 890 unspecified business entity.

891 (e) Not be subject to a disqualification established by
 892 the commission ~~or office~~ or a disqualification described in s.
 893 517.0616 or s. 517.1611 ~~or United States Securities and Exchange~~
 894 ~~Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant~~
 895 ~~to the Securities Act of 1933.~~ Each director, officer, manager,
 896 managing member, or general partner, or person occupying a
 897 similar status or performing a similar function, or person
 898 holding more than 20 percent of the equity interest ~~shares~~ of
 899 the issuer, is subject to this requirement.

900 (f) Cause all funds received from investors to be

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901 deposited in an account in ~~Execute an escrow agreement with a~~
902 ~~federally insured financial institution authorized to do~~
903 ~~business in the state,~~ and maintain all such funds in the
904 account until the target offering amount has been reached, the
905 offering has been terminated, or the offering has expired. If
906 the target offering amount has not been reached within the
907 period specified by the issuer in the disclosure document
908 provided to investors or the offering is terminated or expires,
909 the issuer must within 10 business days refund the funds to all
910 investors ~~for the deposit of investor funds, and ensure that all~~
911 ~~offering proceeds are provided to the issuer only when the~~
912 ~~aggregate capital raised from all investors is equal to or~~
913 ~~greater than the target offering amount.~~

914 (g) Use all funds in accordance with the use of proceeds
915 as disclosed to prospective investors ~~Allow investors to cancel~~
916 ~~a commitment to invest within 3 business days before the~~
917 ~~offering deadline, as stated in the disclosure statement, and~~
918 ~~issue refunds to all investors if the target offering amount is~~
919 ~~not reached by the offering deadline.~~

920 (5) The issuer must file a notice of the offering with the
921 office, in writing or in electronic form, in a format prescribed
922 by commission rule, together with a nonrefundable filing fee of
923 \$200. The filing fee shall be deposited into the Regulatory
924 Trust Fund of the office. The commission may adopt rules
925 establishing procedures for the deposit of fees and the filing

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926 of documents by electronic means if the procedures provide the
927 office with the information and data required by this section. A
928 notice is effective upon receipt, by the office, of the
929 completed form, filing fee, and an irrevocable written consent
930 to service of civil process, similar to that provided for in s.
931 517.101. The notice may be terminated by filing with the office
932 a notice of termination. The notice and offering expire 12
933 months after filing the notice with the office and are not
934 eligible for renewal. The notice must:

935 (a) Be filed with the office at least 10 days before the
936 issuer commences an offering of securities or the offering is
937 displayed on a website of an intermediary in reliance upon the
938 exemption provided by this section.

939 (b) Indicate that the issuer is conducting an offering in
940 reliance upon the exemption provided by this section.

941 (c) Contain the name and contact information, including an
942 e-mail address, of the issuer.

943 (d) Identify any predecessors, owners, officers,
944 directors, general partners, managers, managing members, ~~and~~
945 ~~control persons~~ or any person occupying a similar status or
946 performing a similar function of the issuer, including that
947 person's title, ~~his or her~~ status as a partner, trustee, or sole
948 proprietor or a similar role, and ~~his or her~~ ownership
949 percentage.

950 (e) Identify the federally insured financial institution

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951 ~~into, authorized to do business in the state, in~~ which investor
952 funds will be deposited, ~~in accordance with the escrow~~
953 ~~agreement.~~

954 ~~(f) Require an attestation under oath that the issuer, its~~
955 ~~predecessors, affiliated issuers, directors, officers, and~~
956 ~~control persons, or any other person occupying a similar status~~
957 ~~or performing a similar function, are not currently and have not~~
958 ~~been within the past 10 years the subject of regulatory or~~
959 ~~criminal actions involving fraud or deceit.~~

960 ~~(g) Include documentation verifying that the issuer is~~
961 ~~organized under the laws of the state and authorized to do~~
962 ~~business in the state.~~

963 ~~(f)-(h)~~ If applicable, include the intermediary's website
964 address where the issuer's securities will be offered.

965 ~~(g)-(i)~~ State Include the target offering amount and the
966 date, not to exceed 365 days, by which the target amount must be
967 reached in order for the offering not to be terminated.

968 (6) The issuer must amend the notice form within 10
969 business ~~30~~ days after any material information contained in the
970 notice becomes inaccurate for any reason. The commission may
971 require, by rule, an issuer who has filed a notice under this
972 section to file amendments with the office.

973 (7) The issuer may engage in general advertising and
974 general solicitation of the offer to prospective investors. Any
975 oral or written statements made in advertising or solicitation

976 of the offer are subject to the enforcement provisions of this
 977 chapter in the event of any material misstatement or
 978 nondisclosure of material information. Any general advertising
 979 or other general announcement must state that the offering is
 980 limited and open only to residents of this state.

981 (8)~~(7)~~ The issuer must provide a disclosure statement to
 982 ~~investors and the dealer or intermediary, along with a copy to~~
 983 ~~the office at the time that the notice is filed, and make~~
 984 ~~available to potential investors through the dealer or~~
 985 ~~intermediary, if applicable, to the office at the time that the~~
 986 ~~notice is filed, and to each prospective investor at least 3~~
 987 ~~days before the investor's commitment to purchase or payment of~~
 988 ~~any consideration. The~~a disclosure statement must contain
 989 ~~containing~~ material information about the issuer and the
 990 offering, including:

991 (a) The name, legal status, physical address, e-mail
 992 address, and website address of the issuer.

993 (b) The names of the directors, officers, managers,
 994 managing members, and general partners and any person occupying
 995 a similar status or performing a similar function, and the name
 996 and ownership percentage of each person holding more than 20
 997 percent of the issuer's equity interests ~~shares of the issuer.~~

998 (c) A description of the current business ~~of the issuer~~
 999 and ~~the~~ anticipated business plan of the issuer.

1000 (d) A description of the stated purpose and intended use

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1001 of the proceeds of the offering.

1002 (e) The target offering amount and, the deadline to reach
1003 the target offering amount, ~~and regular updates regarding the~~
1004 ~~progress of the issuer in meeting the target offering amount.~~

1005 (f) The price to the public of the securities ~~or the~~
1006 ~~method for determining the price. However, before the sale, each~~
1007 ~~investor must receive in writing the final price and all~~
1008 ~~required disclosures and have an opportunity to rescind the~~
1009 ~~commitment to purchase the securities.~~

1010 (g) A description of the ownership and capital structure
1011 of the issuer, including:

1012 1. Terms of the securities being offered and each class of
1013 security of the issuer, including how those terms may be
1014 modified, and a summary of the differences between such
1015 securities, including how the rights of the securities being
1016 offered may be materially limited, diluted, or qualified by
1017 rights of any other class of security of the issuer.

1018 2. A description of how the exercise of the rights held by
1019 the principal equity holders ~~shareholders~~ of the issuer could
1020 negatively impact the purchasers of the securities being
1021 offered.

1022 ~~3. The name and ownership level of each existing~~
1023 ~~shareholder who owns more than 20 percent of any class of the~~
1024 ~~securities of the issuer.~~

1025 ~~4. How the securities being offered are being valued, and~~

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1026 ~~examples of methods of how such securities may be valued by the~~
1027 ~~issuer in the future, including during subsequent corporate~~
1028 ~~actions.~~

1029 ~~5. The risks to purchasers of the securities relating to~~
1030 ~~minority ownership in the issuer, the risks associated with~~
1031 ~~corporate action, including additional issuances of shares, a~~
1032 ~~sale of the issuer or of assets of the issuer, or transactions~~
1033 ~~with related parties.~~

1034 (h) A statement that the security being offered is not
1035 registered under federal or state securities laws and that the
1036 securities are subject to the limitation on resale contained in
1037 Securities and Exchange Commission Rule 147 or Rule 147A.

1038 (i) Any issuer plans, formal or informal, to offer
1039 additional securities in the future.

1040 (j) The risks to purchasers of the securities relating to
1041 minority ownership in the issuer.

1042 ~~(k)-(h)~~ A description of the financial condition of the
1043 issuer.

1044 1. For offerings that, in combination with all other
1045 offerings of the issuer within the preceding 12-month period,
1046 have ~~target~~ offering amounts of \$500,000 ~~\$100,000~~ or less, the
1047 financial statements of the issuer may, but are not required to,
1048 be included ~~description must include the most recent income tax~~
1049 ~~return filed by the issuer, if any, and a financial statement~~
1050 ~~that must be certified by the principal executive officer of the~~

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1051 ~~issuer as true and complete in all material respects.~~

1052 2. For offerings that, in combination with all other
1053 offerings of the issuer within the preceding 12-month period,
1054 have ~~target~~ offering amounts of more than \$500,000 ~~\$100,000~~, but
1055 not more than \$2.5 million ~~\$500,000~~, the description must
1056 include financial statements prepared in accordance with
1057 generally accepted accounting principles and reviewed by a
1058 certified public accountant, as defined in s. 473.302, who is
1059 independent of the issuer, using professional standards and
1060 procedures for such review or standards and procedures
1061 established by the commission ~~office~~, by rule, for such purpose.

1062 3. For offerings that, in combination with all other
1063 offerings of the issuer within the preceding 12-month period,
1064 have ~~target~~ offering amounts of more than \$2.5 million ~~\$500,000~~,
1065 the description must include audited financial statements
1066 prepared in accordance with generally accepted accounting
1067 principles by a certified public accountant, as defined in s.
1068 473.302, who is independent of the issuer, and other
1069 requirements as the commission may establish by rule.

1070 (1)-(i) The following statement in boldface, conspicuous
1071 type on the front page of the disclosure statement:

1072
1073 Neither the Securities and Exchange Commission nor any state
1074 securities commission has approved or disapproved these
1075 securities or determined if this disclosure statement is

1076 truthful or complete. Any representation to the contrary is a
1077 criminal offense.

1078
1079 These securities are offered under, and will be sold in reliance
1080 upon, an exemption from the registration requirements of federal
1081 and Florida securities laws. ~~Consequently,~~ Neither the Federal
1082 Government nor the State of Florida has reviewed the accuracy or
1083 completeness of any offering materials. In making an investment
1084 decision, investors must rely on their own examination of the
1085 issuer and the terms of the offering, including the merits and
1086 risks involved. These securities are subject to restrictions on
1087 transferability and resale and may not be transferred or resold
1088 except as specifically authorized by applicable federal and
1089 state securities laws. Investing in these securities involves a
1090 speculative risk, and investors should be able to bear the loss
1091 of their entire investment.

1092 ~~(8) The issuer shall provide to the office a copy of the~~
1093 ~~escrow agreement with a financial institution authorized to~~
1094 ~~conduct business in this state. All investor funds must be~~
1095 ~~deposited in the escrow account. The escrow agreement must~~
1096 ~~require that all offering proceeds be released to the issuer~~
1097 ~~only when the aggregate capital raised from all investors is~~
1098 ~~equal to or greater than the minimum target offering amount~~
1099 ~~specified in the disclosure statement as necessary to implement~~
1100 ~~the business plan, and that all investors will receive a full~~

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1101 ~~return of their investment commitment if that target offering~~
1102 ~~amount is not raised by the date stated in the disclosure~~
1103 ~~statement.~~

1104 (9) The sum of all cash and other consideration received
1105 for sales of a security under this section may not exceed \$5 ~~\$1~~
1106 million, less the aggregate amount received for all sales of
1107 securities by the issuer within the 12 months preceding the
1108 first offer or sale made in reliance upon this exemption. Offers
1109 or sales to a person owning 20 percent or more of the
1110 outstanding equity interests ~~shares~~ of any class or classes of
1111 securities or to an officer, director, manager, managing member,
1112 general partner, or trustee, or a person occupying a similar
1113 status, do not count toward this limitation.

1114 (10) Unless the investor is an accredited investor ~~as~~
1115 ~~defined by Rule 501 of Regulation D, adopted pursuant to the~~
1116 ~~Securities Act of 1933,~~ the aggregate amount sold by an issuer
1117 to an investor ~~in transactions exempt from registration~~
1118 ~~requirements under this subsection~~ in a 12-month period may not
1119 exceed \$10,000.~~÷~~

1120 ~~(a) The greater of \$2,000 or 5 percent of the annual~~
1121 ~~income or net worth of such investor, if the annual income or~~
1122 ~~the net worth of the investor is less than \$100,000.~~

1123 ~~(b) Ten percent of the annual income or net worth of such~~
1124 ~~investor, not to exceed a maximum aggregate amount sold of~~
1125 ~~\$100,000, if either the annual income or net worth of the~~

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1126 ~~investor is equal to or exceeds \$100,000.~~

1127 ~~(11) The issuer shall file with the office and provide to~~
1128 ~~investors free of charge an annual report of the results of~~
1129 ~~operations and financial statements of the issuer within 45 days~~
1130 ~~after the end of its fiscal year, until no securities under this~~
1131 ~~offering are outstanding. The annual reports must meet the~~
1132 ~~following requirements:~~

1133 ~~(a) Include an analysis by management of the issuer of the~~
1134 ~~business operations and the financial condition of the issuer,~~
1135 ~~and disclose the compensation received by each director,~~
1136 ~~executive officer, and person having an ownership interest of 20~~
1137 ~~percent or more of the issuer, including cash compensation~~
1138 ~~earned since the previous report and on an annual basis, and any~~
1139 ~~bonuses, stock options, other rights to receive securities of~~
1140 ~~the issuer, or any affiliate of the issuer, or other~~
1141 ~~compensation received.~~

1142 ~~(b) Disclose any material change to information contained~~
1143 ~~in the disclosure statements which was not disclosed in a~~
1144 ~~previous report.~~

1145 (11) ~~(12)~~ ~~(a)~~ A notice-filing under this section shall be
1146 summarily suspended by the office if:

1147 (a) The payment for the filing is dishonored by the
1148 financial institution upon which the funds are drawn. For
1149 purposes of s. 120.60(6), failure to pay the required notice
1150 filing fee constitutes an immediate and serious danger to the

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1151 public health, safety, and welfare. The office shall enter a
 1152 final order revoking a notice-filing in which the payment for
 1153 the filing is dishonored by the financial institution upon which
 1154 the funds are drawn; or-

1155 (b) ~~A notice-filing under this section shall be summarily~~
 1156 ~~suspended by the office if~~ The issuer made a material false
 1157 statement in the issuer's notice-filing. The summary suspension
 1158 shall remain in effect until a final order is entered by the
 1159 office. For purposes of s. 120.60(6), a material false statement
 1160 made in the issuer's notice-filing constitutes an immediate and
 1161 serious danger to the public health, safety, and welfare. If an
 1162 issuer made a material false statement in the issuer's notice-
 1163 filing, the office shall enter a final order revoking the
 1164 notice-filing, issue a fine as prescribed by s. 517.191(9) ~~s.~~
 1165 ~~517.221(3)~~, and issue permanent bars under s. 517.191(10) ~~s.~~
 1166 ~~517.221(4)~~ to the issuer and all owners, officers, directors,
 1167 general partners, and control persons, or any person occupying a
 1168 similar status or performing a similar function of the issuer,
 1169 including title; status as a partner, trustee, sole proprietor,
 1170 or similar role; and ownership percentage.

1171 ~~(12)-(13)~~ If the issuer employs the services of an
 1172 intermediary, the ~~An~~ intermediary must:

1173 (a) Take measures, as established by commission rule, to
 1174 reduce the risk of fraud with respect to the offering
 1175 ~~transactions, including verifying that the issuer is in~~

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1176 ~~compliance with the requirements of this section and, if~~
1177 ~~necessary, denying an issuer access to its platform if the~~
1178 ~~intermediary believes it is unable to adequately assess the risk~~
1179 ~~of fraud of the issuer or its potential offering.~~

1180 (b) Provide ~~basic~~ information on its website regarding the
1181 high risk of investment in and limitation on the resale of
1182 exempt securities and the potential for loss of an entire
1183 investment. The basic information must include, but need not be
1184 limited to:

1185 1. A description of the financial institution into which
1186 investor funds will be deposited ~~escrow agreement that the~~
1187 ~~issuer has executed~~ and the conditions for the use of ~~release of~~
1188 ~~such funds by~~ to the issuer ~~in accordance with the agreement and~~
1189 ~~subsection (4).~~

1190 2. A description of whether financial information provided
1191 by the issuer has been audited by an independent certified
1192 public accountant, as defined in s. 473.302.

1193 (c) Obtain from each prospective investor a zip code or
1194 residence address, a copy of a driver's license, and, if
1195 requested by the issuer or intermediary, any other proof of
1196 residency in order for the issuer or intermediary to reasonably
1197 believe that the potential investor is a resident of the state.
1198 The commission may adopt rules authorizing additional forms of
1199 identification and prescribing the process for verifying any
1200 identification presented by the prospective investor.

1201 (d) Obtain information sufficient for the issuer or
1202 intermediary to reasonably believe that a particular prospective
1203 investor is an accredited investor.

1204 ~~(c) Obtain a zip code or residence address from each~~
1205 ~~potential investor who seeks to view information regarding~~
1206 ~~specific investment opportunities, in order to confirm that the~~
1207 ~~potential investor is a resident of the state.~~

1208 ~~(d) Obtain and verify a valid Florida driver license~~
1209 ~~number or Florida identification card number from each investor~~
1210 ~~before purchase of a security to confirm that the investor is a~~
1211 ~~resident of the state. The commission may adopt rules~~
1212 ~~authorizing additional forms of identification and prescribing~~
1213 ~~the process for verifying any identification presented by the~~
1214 ~~investor.~~

1215 ~~(e) Obtain an affidavit from each investor stating that~~
1216 ~~the investment being made by the investor is consistent with the~~
1217 ~~income requirements of subsection (10).~~

1218 ~~(f) Direct the release of investor funds in escrow in~~
1219 ~~accordance with subsection (4).~~

1220 ~~(g) Direct investors to transmit funds directly to the~~
1221 ~~financial institution designated in the escrow agreement to hold~~
1222 ~~the funds for the benefit of the investor.~~

1223 (e)-(h) Provide a monthly update for each offering, after
1224 the first full month after the date of the offering. The update
1225 must be accessible on the intermediary's website and must

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1226 display the date and amount of each sale of securities, and each
1227 cancellation of commitment to invest, in the previous calendar
1228 month.

1229 ~~(i) Require each investor to certify in writing, including~~
1230 ~~as part of such certification his or her signature and his or~~
1231 ~~her initials next to each paragraph of the certification, as~~
1232 ~~follows:~~

1233 ~~I understand and acknowledge that:~~

1234 ~~I am investing in a high-risk, speculative business venture. I~~
1235 ~~may lose all of my investment, and I can afford the loss of my~~
1236 ~~investment.~~

1237 ~~This offering has not been reviewed or approved by any state or~~
1238 ~~federal securities commission or other regulatory authority and~~
1239 ~~no regulatory authority has confirmed the accuracy or determined~~
1240 ~~the adequacy of any disclosure made to me relating to this~~
1241 ~~offering.~~

1242 ~~The securities I am acquiring in this offering are illiquid and~~
1243 ~~are subject to possible dilution. There is no ready market for~~
1244 ~~the sale of the securities. It may be difficult or impossible~~
1245 ~~for me to sell or otherwise dispose of the securities, and I may~~
1246 ~~be required to hold the securities indefinitely.~~

1247 ~~I may be subject to tax on my share of the taxable income and~~
1248 ~~losses of the issuer, whether or not I have sold or otherwise~~
1249 ~~disposed of my investment or received any dividends or other~~
1250 ~~distributions from the issuer.~~

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1251 ~~By entering into this transaction with the issuer, I am~~
1252 ~~affirmatively representing myself as being a Florida resident at~~
1253 ~~the time this contract is formed, and if this representation is~~
1254 ~~subsequently shown to be false, the contract is void.~~

1255 ~~If I resell any of the securities I am acquiring in this~~
1256 ~~offering to a person that is not a Florida resident within 9~~
1257 ~~months after the closing of the offering, my contract with the~~
1258 ~~issuer for the purchase of these securities is void.~~

1259 ~~(j) Require each investor to answer questions~~
1260 ~~demonstrating an understanding of the level of risk generally~~
1261 ~~applicable to investments in startups, emerging businesses, and~~
1262 ~~small issuers, and an understanding of the risk of illiquidity.~~

1263 ~~(f)(k)~~ Take reasonable steps to protect personal
1264 information collected from investors, as required by s. 501.171.

1265 (g)(l) Prohibit its directors, and officers, managers,
1266 managing members, general partners, employees, and agents from
1267 having any financial interest in the issuer using its services.

1268 ~~(m) Implement written policies and procedures that are~~
1269 ~~reasonably designed to achieve compliance with federal and state~~
1270 ~~securities laws; comply with the anti-money laundering~~
1271 ~~requirements of 31 C.F.R. chapter X applicable to registered~~
1272 ~~brokers; and comply with the privacy requirements of 17 C.F.R.~~
1273 ~~part 248 relating to brokers.~~

1274 ~~(13)(14)~~ An intermediary not registered as a dealer under
1275 s. 517.12(5) may not:

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1276 (a) Offer investment advice or recommendations. A refusal
 1277 by an intermediary to post an offering that it deems not
 1278 credible or that represents a potential for fraud may not be
 1279 construed as an offer of investment advice or recommendation.

1280 (b) Solicit purchases, sales, or offers to buy securities
 1281 offered or displayed on its website.

1282 (c) Compensate employees, agents, or other persons for the
 1283 solicitation of, or based on the sale of, securities offered or
 1284 displayed on its website.

1285 (d) Hold, manage, possess, or otherwise handle investor
 1286 funds or securities.

1287 (e) Compensate promoters, finders, or lead generators for
 1288 providing the intermediary with the personal identifying
 1289 information of any prospective ~~potential~~ investor.

1290 (f) Engage in any other activities set forth by commission
 1291 rule.

1292 (14) If the issuer does not employ a dealer or
 1293 intermediary for an offering pursuant to the exemption under
 1294 this section, the issuer shall undertake each of the obligations
 1295 set forth in paragraphs (12) (c) - (f).

1296 (15) Any sale made pursuant to the exemption under this
 1297 section is voidable by the purchaser within 3 days after the
 1298 first tender of consideration is made by such purchaser to the
 1299 issuer by notifying the issuer that the purchaser expressly
 1300 voids the purchase. The purchaser's notice to the issuer must be

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1301 sent by e-mail to the issuer's e-mail address set forth in the
1302 disclosure document that is provided to a purchaser or
1303 purchaser's representative or by certified mail or overnight
1304 delivery service with proof of delivery to the mailing address
1305 set forth in the disclosure document.

1306 ~~(15) All funds received from investors must be directed to~~
1307 ~~the financial institution designated in the escrow agreement to~~
1308 ~~hold the funds and must be used in accordance with~~
1309 ~~representations made to investors by the intermediary. If an~~
1310 ~~investor cancels a commitment to invest, the intermediary must~~
1311 ~~direct the financial institution designated to hold the funds to~~
1312 ~~promptly refund the funds of the investor.~~

1313 Section 5. Section 517.0612, Florida Statutes, is created
1314 to read:

1315 517.0612 Florida Invest Local Exemption.-

1316 (1) This section may be cited as the "Florida Invest Local
1317 Exemption."

1318 (2) The offer or sale of a security by the issuer is
1319 exempt from registration under s. 517.07 if all the following
1320 requirements are met:

1321 (a) The issuer must be a for-profit business entity
1322 registered with the Department of State with its principal place
1323 of business in this state. The issuer may not be, before or as a
1324 result of the offering:

1325 1. An investment company as defined in the Investment

1326 Company Act of 1940, as amended;
 1327 2. Subject to the reporting requirements of the Securities
 1328 and Exchange Act of 1934, as amended;
 1329 3. A business entity with an undefined business operation,
 1330 a company that lacks a business plan, a business entity that
 1331 lacks a stated investment goal for the funds being raised, or a
 1332 business entity that plans to engage in a merger or acquisition
 1333 with an unspecified business entity; or
 1334 4. Subject to a disqualification pursuant to s. 517.0616.
 1335 (b) The transaction must meet the requirements of the
 1336 federal exemption for intrastate offerings in s. 3(a)(11) of the
 1337 Securities Act of 1933, Securities and Exchange Commission Rule
 1338 147, or Securities and Exchange Commission Rule 147A, as
 1339 amended.
 1340 (c) The sum of all cash and other consideration received
 1341 for all sales of the security in reliance upon the exemption
 1342 under this section may not exceed \$500,000, less the aggregate
 1343 amount received for all sales of securities by the issuer within
 1344 the 12 months before the first offer or sale made in reliance on
 1345 this exemption.
 1346 (d)1. The issuer may not accept more than \$10,000 from any
 1347 single purchaser unless:
 1348 a. The issuer reasonably believes that the purchaser is an
 1349 accredited investor;
 1350 b. The purchaser is an officer, director, partner, or

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1351 trustee, or an individual occupying a similar status or
1352 performing similar functions, of the issuer; or

1353 c. The purchaser is an owner of 10 percent or more of the
1354 issuer's outstanding equity.

1355 2. For purposes of this section:

1356 a. Any spouse or child of the purchaser or any family
1357 relative who has the same primary residence as the purchaser
1358 shall collectively be treated as a single purchaser.

1359 b. Any business entity of which the purchaser and any
1360 person related to the purchaser under sub-subparagraph a.
1361 collectively own more than 50 percent of the equity interest
1362 shall collectively be treated as a single purchaser.

1363 (e) The issuer may engage in general advertising and
1364 general solicitation of the offering. Any general advertising or
1365 other general announcement must state that the offer is limited
1366 and open only to residents of this state. Written or oral
1367 statements made in the advertising or solicitation of the offer
1368 are subject to the enforcement provisions of this chapter.

1369 (f) A purchaser shall receive, at least 3 business days
1370 before any binding commitment to purchase or consideration paid,
1371 a disclosure document that provides material information of the
1372 issuer, including, but not limited to, the following:

1373 1. The issuer's name, form of entity, and contact
1374 information.

1375 2. The name and contact information of each director,

- 1376 officer, or other manager of the issuer.
- 1377 3. A description of the issuer's business.
- 1378 4. A description of the security being offered.
- 1379 5. The total amount of the offering.
- 1380 6. The intended use of proceeds from the sale of the
- 1381 securities.
- 1382 7. The target offering amount.
- 1383 8. A statement that if the target offering amount is not
- 1384 obtained in cash or in the value of other tangible consideration
- 1385 received within a date that is no more than 180 days after the
- 1386 commencement of the offering, the offering will be terminated,
- 1387 and any funds or other consideration received from purchasers
- 1388 shall be promptly returned.
- 1389 9. A statement that the security being offered is not
- 1390 registered under federal or state securities laws and that the
- 1391 securities are subject to the limitation on resale contained in
- 1392 Securities and Exchange Commission Rule 147 or Rule 147A.
- 1393 10. The names and addresses of all persons who will be
- 1394 involved in the offer and sale of securities on behalf of the
- 1395 issuer.
- 1396 11. The bank or other depository institution into which
- 1397 investor funds will be deposited.
- 1398 12. The following statement in boldface type: "Neither the
- 1399 Securities and Exchange Commission nor any state securities
- 1400 commission has approved or disapproved these securities or

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1401 determined if this disclosure document is truthful or complete.
1402 Any representation to the contrary is a criminal offense."

1403 (g) All funds received from investors shall be deposited
1404 into a bank or depository institution authorized to do business
1405 in this state. The issuer may not withdraw any amount of the
1406 offering proceeds unless and until the target offering amount
1407 has been received.

1408 (h) The issuer must file a notice of the offering with the
1409 office, in writing or in electronic form, in a format prescribed
1410 by commission rule, no less than 5 business days before the
1411 offering commences, along with the disclosure document described
1412 in paragraph (f). The issuer must, within 3 business days, file
1413 an amended notice if there are any material changes to the
1414 information previously submitted.

1415 (3) An individual, entity, or entity employee who acts as
1416 an agent for the issuer in the offer or sale of securities and
1417 is not registered as a dealer under this chapter may not:

1418 (a) Receive compensation based upon the solicitation of
1419 purchases, sales, or offers to purchase the securities; or

1420 (b) Take custody of investor funds or securities.

1421 (4) Any sale made pursuant to the exemption under this
1422 section is voidable by the purchaser within 3 days after the
1423 first tender of consideration is made by such purchaser to the
1424 issuer by notifying the issuer that the purchaser expressly
1425 voids the purchase. The purchaser's notice to the issuer must be

1426 sent by e-mail to the issuer's e-mail address set forth in the
 1427 disclosure document that is provided to a purchaser or
 1428 purchaser's representative or by hand delivery, courier service,
 1429 or other method by which written proof of delivery to the issuer
 1430 of the purchaser's election to rescind the purchase is
 1431 evidenced.

1432 Section 6. Section 517.0613, Florida Statutes, is created
 1433 to read:

1434 517.0613 Failure to comply with a securities registration
 1435 exemption.—

1436 (1) Failure to comply with any exemption from securities
 1437 registration does not preclude the issuer from claiming the
 1438 availability of any other applicable state or federal exemption.

1439 (2) Sections 517.061, 517.0611, and 517.0612 are not
 1440 available to an issuer for any transaction or chain of
 1441 transactions that, although in technical compliance with the
 1442 applicable provisions, is part of a plan or scheme to evade the
 1443 registration provisions of s. 517.07. In such cases,
 1444 registration under s. 517.07 is required.

1445 Section 7. Section 517.0614, Florida Statutes, is created
 1446 to read:

1447 517.0614 Integration of offerings.—

1448 (1) If the safe harbors in subsection (2) do not apply, in
 1449 determining whether two or more offerings are to be treated as
 1450 one for the purpose of registration or qualifying for an

1451 exemption from registration under this chapter, offers and sales
1452 may not be integrated if, based on the particular facts and
1453 circumstances, the issuer can establish either that each
1454 offering complies with the registration requirements of this
1455 chapter, or that an exemption from registration is available for
1456 the particular offering, provided that any transaction or series
1457 of transactions that, although in technical compliance with this
1458 chapter, is part of a plan or scheme to evade the registration
1459 requirements of this chapter will not have the effect of
1460 avoiding integration. In making this determination:

1461 (a) For an exempt offering prohibiting general
1462 solicitation, the issuer must have a reasonable belief, based on
1463 the facts and circumstances, with respect to each purchaser in
1464 the exempt offering prohibiting general solicitation, that the
1465 issuer or any person acting on the issuer's behalf:

1466 1. Did not solicit such purchaser through the use of
1467 general solicitation; or

1468 2. Established a substantive relationship with such
1469 purchaser before the commencement of the exempt offering
1470 prohibiting general solicitation, provided that a purchaser
1471 previously solicited through the use of general solicitation is
1472 not deemed to have been solicited through the use of general
1473 solicitation in the current offering if, during the 45 calendar
1474 days following such previous general solicitation:

1475 a. No offer or sale of the same or similar class of

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1476 securities has been made by or on behalf of the issuer,
1477 including to such purchaser; and

1478 b. The issuer or any person acting on the issuer's behalf
1479 has not solicited such purchaser through the use of general
1480 solicitation for any other security.

1481 (b) For two or more concurrent exempt offerings permitting
1482 general solicitation, in addition to satisfying the requirements
1483 of the particular exemption relied on, general solicitation
1484 offering materials for one offering that includes information
1485 about the material terms of a concurrent offering under another
1486 exemption may constitute an offer of securities in such other
1487 offering, and therefore the offer must comply with all the
1488 requirements for, and restrictions on, offers under the
1489 exemption being relied on for such other offering, including any
1490 legend requirements and communications restrictions.

1491 (2) No integration analysis under subsection (1) is
1492 required if any of the following nonexclusive safe harbors
1493 apply:

1494 (a) An offering commenced more than 30 calendar days
1495 before the commencement of any other offering, or more than 30
1496 calendar days after the termination or completion of any other
1497 offering, may not be integrated with such other offering,
1498 provided that for an exempt offering for which general
1499 solicitation is not permitted which follows by 30 calendar days
1500 or more an offering that allows general solicitation, paragraph

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1501 (1) (a) applies.

1502 (b) Offers and sales made in compliance with any provision
1503 of s. 517.051; s. 517.061, except s. 517.061(9), (10), or (11);
1504 s. 517.0611; or s. 517.0612 are not subject to integration with
1505 other offerings.

1506 Section 8. Section 517.0615, Florida Statutes, is created
1507 to read:

1508 517.0615 Solicitations of interest.-

1509 (1) A communication is not deemed to constitute general
1510 solicitation or general advertising if the communication is made
1511 in connection with a seminar or meeting in which more than one
1512 issuer participates and if the seminar or meeting is sponsored
1513 by a college, university, or other institution of higher
1514 education, a state or local government or instrumentality
1515 thereof, a nonprofit chamber of commerce or other nonprofit
1516 organization, or an angel investor group, incubator, or
1517 accelerator, provided that:

1518 (a) No advertising for the seminar or meeting references a
1519 specific offering of securities by the issuer;

1520 (b) The sponsor of the seminar or meeting does not:

1521 1. Make investment recommendations or provide investment
1522 advice to attendees of the seminar or meeting;

1523 2. Engage in any investment negotiations between the
1524 issuer and investors attending the seminar or meeting;

1525 3. Charge attendees of the seminar or meeting any fees,

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1526 other than reasonable administrative fees;
1527 4. Receive any compensation for making introductions
1528 between seminar or meeting attendees and issuers or for
1529 investment negotiations between such parties; or
1530 5. Receive any compensation with respect to the seminar or
1531 meeting, which compensation would require registration or
1532 notice-filing under this chapter, the Securities Exchange Act of
1533 1934, 15 U.S.C. ss. 78a et seq., as amended, or the Investment
1534 Advisers Act of 1940, 15 U.S.C. s. 80b-1 et seq., as amended.
1535 The sponsorship of or participation in the seminar or meeting
1536 does not by itself require registration or notice-filing under
1537 this chapter;
1538 (c) The type of information regarding an offering of
1539 securities by the issuer which is communicated or distributed by
1540 or on behalf of the issuer in connection with the seminar or
1541 meeting is limited to a notification that the issuer is in the
1542 process of offering or planning to offer securities, the type
1543 and amount of securities being offered, the intended use of
1544 proceeds of the offering, and the unsubscribed amount in an
1545 offering; and
1546 (d) If the seminar or meeting allows attendees to
1547 participate virtually rather than in person, online
1548 participation in the seminar or meeting is limited to
1549 individuals who:
1550 1. Are members of, or are otherwise associated with, the

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1551 sponsor organization;
1552 2. The sponsor reasonably believes are accredited
1553 investors; or
1554 3. Have been:
1555 a. Invited to the seminar or meeting by the sponsor based
1556 on industry or investment-related experience;
1557 b. Reasonably selected by the sponsor in good faith; and
1558 c. Disclosed in the public communications about the
1559 seminar or meeting.
1560 (2) Before any offers or sales are made in connection with
1561 an offering, a communication by an issuer or any person
1562 authorized to act on behalf of an issuer is not deemed to
1563 constitute general solicitation or general advertising if the
1564 communication is solely for the purpose of determining whether
1565 there is any interest in a contemplated securities offering.
1566 Written or oral statements made in the course of such
1567 communication are subject to the enforcement provisions of this
1568 chapter. No solicitation or acceptance of money or other
1569 consideration, nor of any commitment, binding or otherwise, from
1570 any person is permitted.
1571 (a) The communication must state that:
1572 1. Money or other consideration is not being solicited
1573 and, if sent in response, will not be accepted;
1574 2. Any offer to buy the securities will not be accepted,
1575 and any part of the purchase price will not be received; and

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1576 3. A person's indication of interest does not involve
1577 obligation or commitment of any kind.

1578 (b) Any written communication under this subsection may
1579 include a means by which a person may indicate to the issuer
1580 that the person is interested in a potential offering. The
1581 issuer may require the name, address, telephone number, or e-
1582 mail address in any response form included in the written
1583 communication under this paragraph.

1584 (c) A communication in accordance with this subsection is
1585 not subject to s. 501.059 regarding telephone solicitations.

1586 Section 9. Section 517.0616, Florida Statutes, is created
1587 to read:

1588 517.0616 Disqualification.—A registration exemption under
1589 s. 517.061(9), (10), or (11); s. 517.0611; or s. 517.0612 is not
1590 available to an issuer that would be disqualified under
1591 Securities and Exchange Commission Rule 506(d), 17 C.F.R.
1592 230.506(d), as amended, at the time the issuer makes an offer
1593 for the sale of a security.

1594 Section 10. Subsections (6) and (7) of section 517.081,
1595 Florida Statutes, are renumbered as subsections (7) and (8),
1596 respectively, subsection (2), paragraph (g) of subsection (3),
1597 subsection (5), and present subsection (7) are amended, and a
1598 new subsection (6) is added to that section, to read:

1599 517.081 Registration procedure.—

1600 (2) The office shall receive and act upon applications to

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1601 have securities registered, ~~and the commission may prescribe~~
1602 ~~forms on which it may require such applications to be submitted.~~
1603 Applications shall be duly signed by the applicant, sworn to by
1604 any person having knowledge of the facts, and filed with the
1605 office. ~~The commission may establish, by rule, procedures for~~
1606 ~~depositing fees and filing documents by electronic means~~
1607 ~~provided such procedures provide the office with the information~~
1608 ~~and data required by this section.~~ An application may be made
1609 either by the issuer of the securities for which registration is
1610 applied or by any registered dealer desiring to sell the same
1611 within the state.

1612 (3) The office may require the applicant to submit to the
1613 office the following information concerning the issuer and such
1614 other relevant information as the office may in its judgment
1615 deem necessary to enable it to ascertain whether such securities
1616 shall be registered pursuant to the provisions of this section:

1617 (g)~~1.~~ A specimen copy of the securities certificate, if
1618 applicable, and a copy of any circular, prospectus,
1619 advertisement, or other description of such securities.

1620 ~~2. The commission shall adopt a form for a simplified~~
1621 ~~offering circular to register, under this section, securities~~
1622 ~~that are sold in offerings in which the aggregate offering price~~
1623 ~~in any consecutive 12-month period does not exceed the amount~~
1624 ~~provided in s. 3(b) of the Securities Act of 1933, as amended.~~
1625 ~~The following issuers shall not be eligible to submit a~~

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1626 ~~simplified offering circular adopted pursuant to this~~
1627 ~~subparagraph:~~

1628 ~~a. An issuer seeking to register securities for resale by~~
1629 ~~persons other than the issuer.~~

1630 ~~b. An issuer that is subject to any of the~~
1631 ~~disqualifications described in 17 C.F.R. s. 230.262, adopted~~
1632 ~~pursuant to the Securities Act of 1933, as amended, or that has~~
1633 ~~been or is engaged or is about to engage in an activity that~~
1634 ~~would be grounds for denial, revocation, or suspension under s.~~
1635 ~~517.111. For purposes of this subparagraph, an issuer includes~~
1636 ~~an issuer's director, officer, general partner, manager or~~
1637 ~~managing member, trustee, or equity owner who owns at least 10~~
1638 ~~percent of the ownership interests of the issuer, promoter, or~~
1639 ~~selling agent of the securities to be offered or any officer,~~
1640 ~~director, partner, or manager or managing member of such selling~~
1641 ~~agent.~~

1642 ~~c. An issuer that is a development-stage company that~~
1643 ~~either has no specific business plan or purpose or has indicated~~
1644 ~~that its business plan is to merge with an unidentified company~~
1645 ~~or companies.~~

1646 ~~d. An issuer of offerings in which the specific business~~
1647 ~~or properties cannot be described.~~

1648 ~~e. Any issuer the office determines is ineligible because~~
1649 ~~the form does not provide full and fair disclosure of material~~
1650 ~~information for the type of offering to be registered by the~~

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1651 ~~issuer.~~

1652 ~~f. Any issuer that has failed to provide the office the~~
1653 ~~reports required for a previous offering registered pursuant to~~
1654 ~~this subparagraph.~~

1655
1656 ~~As a condition precedent to qualifying for use of the simplified~~
1657 ~~offering circular, an issuer shall agree to provide the office~~
1658 ~~with an annual financial report containing a balance sheet as of~~
1659 ~~the end of the issuer's fiscal year and a statement of income~~
1660 ~~for such year, prepared in accordance with United States~~
1661 ~~generally accepted accounting principles and accompanied by an~~
1662 ~~independent accountant's report. If the issuer has more than 100~~
1663 ~~security holders at the end of a fiscal year, the financial~~
1664 ~~statements must be audited. Annual financial reports must be~~
1665 ~~filed with the office within 90 days after the close of the~~
1666 ~~issuer's fiscal year for each of the first 5 years following the~~
1667 ~~effective date of the registration.~~

1668 (5) The commission may by rule:

1669 (a) Establish criteria relating to the issuance of equity
1670 securities, debt securities, insurance company securities, real
1671 estate investment trusts, oil and gas investments, and other
1672 investments. The criteria may, at a minimum, include such
1673 elements as the promoter's equity investment ratio, the
1674 financial condition of the issuer, the voting rights of
1675 shareholders, the grant of options or warrants to underwriters

1676 and others, loans and other transactions with affiliates of the
1677 issuer, and the use, escrow, or refund of proceeds of the
1678 offering. In establishing the criteria, the commission shall
1679 consider the rules and regulations of the Securities and
1680 Exchange Commission and statements of policy by the North
1681 American Securities Administrators Association, Inc., relating
1682 to the registration of securities offerings.

1683 (b) Prescribe forms requiring applications for the
1684 registration of securities to be submitted to the office,
1685 including a simplified offering circular to register under this
1686 section securities that are sold in offerings in which the
1687 aggregate offering price in any consecutive 12-month period does
1688 not exceed the amount provided in s. 3(b) of the Securities Act
1689 of 1933, as amended.

1690 (c) Establish procedures for depositing fees and filing
1691 documents by electronic means if such procedures provide the
1692 office with the information and data required by this section.

1693 (d) Establish requirements and standards for the filing,
1694 content, and circulation of a preliminary, final, or amended
1695 prospectus, advertisements, and other sales literature. The
1696 commission shall consider the rules and regulations of the
1697 Securities and Exchange Commission relating to preliminary,
1698 final, or amended or supplemented prospectuses and the rules of
1699 the Financial Industry Regulatory Authority relating to
1700 advertisements and sales literature.

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1701 (e) Fix the maximum discounts, commissions, expenses,
1702 remuneration, and other compensation to be paid in cash or
1703 otherwise, not to exceed 20 percent, directly or indirectly, for
1704 or in connection with the sale or offering for sale of such
1705 securities in this state.

1706 (6) The following issuers are not eligible to submit a
1707 simplified offering circular adopted under paragraph (5) (b):

1708 (a) An issuer that is subject to any of the
1709 disqualifications described in Securities and Exchange
1710 Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that
1711 has been or is engaged or is about to engage in an activity that
1712 would be grounds for denial, revocation, or suspension under s.
1713 517.111. For purposes of this paragraph, an issuer includes an
1714 issuer's director, officer, general partner, manager or managing
1715 member, trustee, or equity owner who owns at least 10 percent of
1716 the ownership interests of the issuer, promoter, or selling
1717 agent of the securities to be offered or any officer, director,
1718 partner, or manager or managing member of such selling agent.

1719 (b) An issuer that is a development-stage company that
1720 either has no specific business plan or purpose or has indicated
1721 that its business plan is to merge with an unidentified business
1722 entity or business entities.

1723 (c) An issuer of offerings in which the specific business
1724 or properties cannot be described.

1725 (d) An issuer the office determines is ineligible because

1726 the form does not provide full and fair disclosure of material
 1727 information for the type of offering to be registered by the
 1728 issuer.

1729 (8)(a)-(7) The office shall record the registration of a
 1730 security in the register of securities if, upon examination of
 1731 an any application, the office finds that all of the following
 1732 requirements are met:

- 1733 1. The application is complete.
- 1734 2. The fee in subsection (7) has been paid.
- 1735 3. The sale of the security would not be fraudulent and
 1736 would not work or tend to work a fraud upon the purchaser.
- 1737 4. The terms of the sale of such securities would be fair,
 1738 just, and equitable.
- 1739 5. The enterprise or business of the issuer is not based
 1740 upon unsound business principles.

1741 (b) Upon registration, the security may be sold by the
 1742 issuer or any registered dealer, subject, however, to the
 1743 further order of the office shall find that the sale of the
 1744 security referred to therein would not be fraudulent and would
 1745 not work or tend to work a fraud upon the purchaser, that the
 1746 terms of the sale of such securities would be fair, just, and
 1747 equitable, and that the enterprise or business of the issuer is
 1748 not based upon unsound business principles, it shall record the
 1749 registration of such security in the register of securities; and
 1750 thereupon such security so registered may be sold by any

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1751 ~~registered dealer, subject, however, to the further order of the~~
1752 ~~office. In order to determine if an offering is fair, just, and~~
1753 ~~equitable, the commission may by rule establish requirements and~~
1754 ~~standards for the filing, content, and circulation of any~~
1755 ~~preliminary, final, or amended prospectus and other sales~~
1756 ~~literature and may by rule establish merit qualification~~
1757 ~~criteria relating to the issuance of equity securities, debt~~
1758 ~~securities, insurance company securities, real estate investment~~
1759 ~~trusts, and other traditional and nontraditional investments,~~
1760 ~~including, but not limited to, oil and gas investments. The~~
1761 ~~criteria may include such elements as the promoter's equity~~
1762 ~~investment ratio, the financial condition of the issuer, the~~
1763 ~~voting rights of shareholders, the grant of options or warrants~~
1764 ~~to underwriters and others, loans and other affiliated~~
1765 ~~transaction, the use or refund of proceeds of the offering, and~~
1766 ~~such other relevant criteria as the office in its judgment may~~
1767 ~~deem necessary to such determination.~~

1768 Section 11. Section 517.101, Florida Statutes, is amended
1769 to read:

1770 517.101 Consent to service.—

1771 (1) Upon any initial application for registration under s.
1772 517.081 or s. 517.082 or upon request of the office, the issuer
1773 shall file with such application the irrevocable written consent
1774 of the issuer that in suits, proceedings, and actions growing
1775 out of the violation of any provision of this chapter, the

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1776 service on the office of a notice, process, or pleading therein,
1777 authorized by the laws of this state, shall be as valid and
1778 binding as if due service had been made on the issuer.

1779 (2) Any such action shall be brought either in the county
1780 of the plaintiff's residence or in the county in which the
1781 office has its official headquarters. The written consent shall
1782 be authenticated by the seal of said issuer, if it has a seal,
1783 and by the acknowledged signature of a director, manager,
1784 managing member, general partner, trustee, or officer of the
1785 issuer ~~member of the copartnership or company, or by the~~
1786 ~~acknowledged signature of any officer of the incorporated or~~
1787 ~~unincorporated association, if it be an incorporated or~~
1788 ~~unincorporated association, duly authorized by resolution of the~~
1789 ~~board of directors, trustees, or managers of the corporation or~~
1790 ~~association,~~ and shall in such case be accompanied by a duly
1791 certified copy of the resolution of the issuer's board of
1792 directors, trustees, ~~or~~ managing members, or general
1793 partners of the corporation or association, authorizing the
1794 signer to execute the consent ~~officers to execute the same.~~ In
1795 case any process or pleadings mentioned in this chapter are
1796 served upon the office, it shall be by duplicate copies, one of
1797 which shall be filed in the office and another immediately
1798 forwarded by the office by registered mail to the principal
1799 office of the issuer against which said process or pleadings are
1800 directed.

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1801 Section 12. Section 517.131, Florida Statutes, is amended
1802 to read:

1803 517.131 Securities Guaranty Fund.—

1804 (1)(a) The Chief Financial Officer shall establish a
1805 Securities Guaranty Fund to provide monetary relief to victims
1806 of securities violations under this chapter who are entitled to
1807 monetary damages or restitution and cannot recover the full
1808 amount of such monetary damages or restitution from the
1809 wrongdoer. An amount not exceeding 20 percent of all revenues
1810 received as assessment fees pursuant to s. 517.12(9) and (10)
1811 for dealers and investment advisers or s. 517.1201 for federal
1812 covered advisers and an amount not exceeding 10 percent of all
1813 revenues received as assessment fees pursuant to s. 517.12(9)
1814 and (10) for associated persons shall be part of the regular
1815 registration ~~license~~ fee and shall be transferred to or
1816 deposited in the Securities Guaranty Fund.

1817 (b) If the Securities Guaranty Fund at any time exceeds
1818 \$1.5 million, transfer of assessment fees to the ~~this~~ fund shall
1819 be discontinued at the end of that registration ~~license~~ year,
1820 and transfer of such assessment fees shall not be resumed unless
1821 the fund is reduced below \$1 million by disbursement made in
1822 accordance with s. 517.141.

1823 (2) As used in this section, the term "final judgment"
1824 includes an arbitration award confirmed ~~The Securities Guaranty~~
1825 ~~Fund shall be disbursed as provided in s. 517.141 to a person~~

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1826 ~~who is adjudged by a court of competent jurisdiction, to have~~
 1827 ~~suffered monetary damages as a result of any of the following~~
 1828 ~~acts committed by a dealer, investment adviser, or associated~~
 1829 ~~person who was licensed under this chapter at the time the act~~
 1830 ~~was committed:~~

1831 ~~(a) A violation of s. 517.07.~~

1832 ~~(b) A violation of s. 517.301.~~

1833 (3) A ~~Any~~ person is eligible for payment to seek recovery
 1834 from the Securities Guaranty Fund if the person:

1835 (a)1. Holds an unsatisfied final judgment in which a
 1836 wrongdoer was found to have violated s. 517.07 or s. 517.301;

1837 2. Has applied any amount recovered from the judgment
 1838 debtor, or from any other source, to the damages awarded by the
 1839 court or arbitrator; and

1840 3. Is a natural person who was a resident of this state or
 1841 is a business entity that was domiciled in this state at the
 1842 time of the violation of any section referred to in subparagraph
 1843 1.; or

1844 (b) Is a receiver appointed pursuant to s. 517.191(2) by a
 1845 court of competent jurisdiction for a wrongdoer ordered to pay
 1846 restitution under s. 517.191(3) as a result of a violation of s.
 1847 517.07 or s. 517.301 which has requested payment from the
 1848 Securities Guaranty Fund on behalf of a person eligible for
 1849 payment under paragraph (a).

1850 ~~(a) Such person has received final judgment in a court of~~

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1851 ~~competent jurisdiction in any action wherein the cause of action~~
1852 ~~was based on a violation of those sections referred to in~~
1853 ~~subsection (2).~~

1854 ~~(b) Such person has made all reasonable searches and~~
1855 ~~inquiries to ascertain whether the judgment debtor possesses~~
1856 ~~real or personal property or other assets subject to being sold~~
1857 ~~or applied in satisfaction of the judgment, and by her or his~~
1858 ~~search the person has discovered no property or assets; or she~~
1859 ~~or he has discovered property and assets and has taken all~~
1860 ~~necessary action and proceedings for the application thereof to~~
1861 ~~the judgment, but the amount thereby realized was insufficient~~
1862 ~~to satisfy the judgment. To verify compliance with such~~
1863 ~~condition, the office may require such person to have a writ of~~
1864 ~~execution be issued upon such judgment, may require a showing~~
1865 ~~that no personal or real property of the judgment debtor liable~~
1866 ~~to be levied upon in complete satisfaction of the judgment can~~
1867 ~~be found, or may require an affidavit from the claimant setting~~
1868 ~~forth the reasonable searches and inquiries undertaken and the~~
1869 ~~result of those searches and inquiries.~~

1870 ~~(c) Such person has applied any amounts recovered from the~~
1871 ~~judgment debtor, or from any other source, to the damages~~
1872 ~~awarded by the court.~~

1873 ~~(d) The act for which recovery is sought occurred on or~~
1874 ~~after January 1, 1979.~~

1875 ~~(e) The office waives compliance with the requirements of~~

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1876 ~~paragraph (a) or paragraph (b). The office may waive such~~
1877 ~~compliance if the dealer, investment adviser, or associated~~
1878 ~~person which is the subject of the claim filed with the office~~
1879 ~~is the subject of any proceeding in which a receiver has been~~
1880 ~~appointed by a court of competent jurisdiction. If the office~~
1881 ~~waives such compliance, the office may, upon petition by the~~
1882 ~~debtor or the court-appointed trustee, examiner, or receiver,~~
1883 ~~distribute funds from the Securities Guaranty Fund up to the~~
1884 ~~amount allowed under s. 517.141. Any waiver granted pursuant to~~
1885 ~~this section shall be considered a judgment for purposes of~~
1886 ~~complying with the requirements of this section and of s.~~
1887 ~~517.141.~~

1888 (4) A person is not eligible for payment from the
1889 Securities Guaranty Fund if the person has:

1890 (a) Participated or assisted in a violation of this
1891 chapter;

1892 (b) Attempted to commit or committed a violation of this
1893 chapter; or

1894 (c) Profited from a violation of this chapter.

1895 (5) An eligible person, or a receiver on behalf of an
1896 eligible person, seeking payment from the Securities Guaranty
1897 Fund must file with the office a written application on a form
1898 that the commission may by rule prescribe. The commission may
1899 establish by rule procedures for filing documents by electronic
1900 means, if such procedures provide the office with the

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1901 information and data required by this section. The application
1902 shall be filed with the office within 1 year after the date of
1903 the final judgment, the date on which restitution order has been
1904 ripe for execution, or the date of any appellate decision
1905 thereon, and the application must contain such information as
1906 the office may require, including, but not limited to:

1907 (a) The eligible person's full name, address, and contact
1908 information.

1909 (b) The receiver's full name, address, and contact
1910 information, if any.

1911 (c) The person ordered to pay restitution.

1912 (d) The eligible person's form and place of organization,
1913 if the eligible person is a business entity, and a copy of the
1914 business entity's articles of incorporation, articles of
1915 organization with amendments, trust agreement, or partnership
1916 agreement.

1917 (e) Any final judgment and a copy thereof.

1918 (f) Any restitution ordered pursuant to s. 517.191(3), and
1919 a copy thereof.

1920 (g) An affidavit stating that:

1921 1. The eligible person has made all reasonable searches
1922 and inquiries to ascertain whether the judgment debtor possesses
1923 real or personal property or other assets subject to being sold
1924 or applied in satisfaction of the final judgment and, by the
1925 eligible person's search, the eligible person has not discovered

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1926 any property or assets; or

1927 2. The eligible person has available property and assets
1928 executed on all of the wrongdoer and the final judgment remains
1929 unsatisfied.

1930 (h) An affidavit from the receiver stating the amount of
1931 restitution owed to the eligible person on whose behalf the
1932 claim is filed; the amount, if any, of any money, property, or
1933 assets paid to the eligible person on whose behalf the claim is
1934 filed by the person over whom the receiver is appointed; and the
1935 amount of any unsatisfied portion of any eligible person's order
1936 of restitution.

1937 (i) The eligible person's residence or domicile at the
1938 time of the violation of s. 517.07 or s. 517.301 which resulted
1939 in the eligible person's monetary damages.

1940 (j) The amount of any unsatisfied portion of the eligible
1941 person's final judgment.

1942 (k) Whether an appeal or motion to vacate an arbitration
1943 award has been filed.

1944 (6) If the office finds that a person is eligible for
1945 payment from the Securities Guaranty Fund and if the person has
1946 complied with the provisions of this section and the rules
1947 adopted under this section, the office shall approve such person
1948 for payment from the fund. Each eligible person or receiver,
1949 within 90 days after the office's receipt of a complete
1950 application, shall be given written notice, personally or by

1951 mail, that the office intends to approve or deny, or has
 1952 approved or denied, the application for payment from the
 1953 Securities Guaranty Fund.

1954 (7) Upon receipt by the eligible person or receiver of
 1955 notice of the office's decision that the eligible person's or
 1956 receiver's application for payment from the Securities Guaranty
 1957 Fund is approved and before any disbursement, the eligible
 1958 person shall assign all right, title, and interest in the final
 1959 judgment or order of restitution, to the extent of such payment,
 1960 to the office on a form prescribed by commission rule.

1961 (8) The office shall deem an application for payment from
 1962 the Securities Guaranty Fund abandoned if the eligible person or
 1963 receiver, or any person acting on behalf of the eligible person
 1964 or receiver, fails to timely complete the application as
 1965 prescribed by commission rule. The time period to complete an
 1966 application shall be tolled during the pendency of an appeal or
 1967 motion to vacate an arbitration award.

1968 ~~(4) Any person who files an action that may result in the~~
 1969 ~~disbursement of funds from the Securities Guaranty Fund pursuant~~
 1970 ~~to the provisions of s. 517.141 shall give written notice by~~
 1971 ~~certified mail to the office as soon as practicable after such~~
 1972 ~~action has been filed. The failure to give such notice shall not~~
 1973 ~~bar a payment from the Securities Guaranty Fund if all of the~~
 1974 ~~conditions specified in subsection (3) are satisfied.~~

1975 ~~(5) The commission may adopt rules pursuant to ss.~~

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1976 | ~~120.536(1) and 120.54 specifying the procedures for complying~~
 1977 | ~~with subsections (2), (3), and (4), including rules for the form~~
 1978 | ~~of submission and guidelines for the sufficiency and content of~~
 1979 | ~~submissions of notices and claims.~~

1980 | Section 13. Section 517.141, Florida Statutes, is amended
 1981 | to read:

1982 | 517.141 Payment from the fund.—

1983 | (1) As used in this section, the term:

1984 | (a) "Claimant" means an eligible person under s. 517.131
 1985 | who is approved by the office for payment from the Securities
 1986 | Guaranty Fund.

1987 | (b) "Final judgment" includes an arbitration award
 1988 | confirmed by a court of competent jurisdiction.

1989 | (c) "Specified adult" has the same meaning as in s.
 1990 | 517.34(1).

1991 | (2) A claimant is entitled to disbursement from the
 1992 | Securities Guaranty Fund in the amount equal to the lesser of:

1993 | (a) The unsatisfied portion of the claimant's final
 1994 | judgment or final order of restitution, but only to the extent
 1995 | that the final judgment or final order of restitution reflects
 1996 | actual or compensatory damages, excluding postjudgment interest,
 1997 | costs, and attorney fees; or

1998 | (b)1. The amount of \$15,000; or

1999 | 2. The amount of \$25,000 if the claimant is a specified
 2000 | adult or if a specified adult is a beneficial owner or

2001 beneficiary of the claimant.

2002 ~~(1) Any person who meets all of the conditions prescribed~~
 2003 ~~in s. 517.131 may apply to the office for payment to be made to~~
 2004 ~~such person from the Securities Guaranty Fund in the amount~~
 2005 ~~equal to the unsatisfied portion of such person's judgment or~~
 2006 ~~\$10,000, whichever is less, but only to the extent and amount~~
 2007 ~~reflected in the judgment as being actual or compensatory~~
 2008 ~~damages, excluding postjudgment interest, costs, and attorney's~~
 2009 ~~fees.~~

2010 ~~(3)~~⁽²⁾ Regardless of the number of claims or claimants
 2011 involved, payments for claims shall be limited in the aggregate
 2012 to \$250,000 ~~\$100,000~~ against any one ~~dealer, investment adviser,~~
 2013 ~~or associated~~ person. If the total claim filed by a receiver on
 2014 behalf of claimants exceeds ~~claims exceed~~ the aggregate limit of
 2015 \$250,000 ~~\$100,000~~, the office shall prorate the payment to each
 2016 claimant based upon the ratio that each claimant's individual
 2017 ~~the person's~~ claim bears to the total claim ~~claims~~ filed.

2018 (4) If at any time the money in the Securities Guaranty
 2019 Fund is insufficient to satisfy a valid claim or portion of a
 2020 valid claim approved by the office, the office shall satisfy the
 2021 unpaid claim or portion of the valid claim as soon as a
 2022 sufficient amount of money has been deposited into or
 2023 transferred to the Securities Guaranty Fund. If there is more
 2024 than one unsatisfied claim outstanding, the claims shall be paid
 2025 in the sequence in which the claims were approved by final order

2026 of the office, which final order is not subject to an appeal or
 2027 other pending proceeding.

2028 (5) All payments and disbursements made from the
 2029 Securities Guaranty Fund shall be made by the Chief Financial
 2030 Officer, or his or her designee, upon authorization by the
 2031 office. The office shall submit such authorization within 30
 2032 days after the approval of an eligible person for payment from
 2033 the Securities Guaranty Fund.

2034 ~~(3) No payment shall be made on any claim against any one~~
 2035 ~~dealer, investment adviser, or associated person before the~~
 2036 ~~expiration of 2 years from the date any claimant is found by the~~
 2037 ~~office to be eligible for recovery pursuant to this section. If~~
 2038 ~~during this 2-year period more than one claim is filed against~~
 2039 ~~the same dealer, investment adviser, or associated person, or if~~
 2040 ~~the office receives notice pursuant to s. 517.131(4) that an~~
 2041 ~~action against the same dealer, investment adviser, or~~
 2042 ~~associated person is pending, all such claims and notices of~~
 2043 ~~pending claims received during this period against the same~~
 2044 ~~dealer, investment adviser, or associated person may be handled~~
 2045 ~~by the office as provided in this section. Two years after the~~
 2046 ~~first claimant against that same dealer, investment adviser, or~~
 2047 ~~associated person applies for payment pursuant to this section:~~

2048 ~~(a) The office shall determine those persons eligible for~~
 2049 ~~payment or for potential payment in the event of a pending~~
 2050 ~~action. All such persons may be entitled to receive their pro~~

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2051 ~~rata shares of the fund as provided in this section.~~

2052 ~~(b) Those persons who meet all the conditions prescribed~~
 2053 ~~in s. 517.131 and who have applied for payment pursuant to this~~
 2054 ~~section will be entitled to receive their pro rata shares of the~~
 2055 ~~total disbursement.~~

2056 ~~(c) Those persons who have filed notice with the office of~~
 2057 ~~a pending claim pursuant to s. 517.131(4) but who are not yet~~
 2058 ~~eligible for payment from the fund will be entitled to receive~~
 2059 ~~their pro rata shares of the total disbursement once they have~~
 2060 ~~complied with subsection (1). However, in the event that the~~
 2061 ~~amounts they are eligible to receive pursuant to subsection (1)~~
 2062 ~~are less than their pro rata shares as determined under this~~
 2063 ~~section, any excess shall be distributed pro rata to those~~
 2064 ~~persons entitled to disbursement under this subsection whose pro~~
 2065 ~~rata shares of the total disbursement were less than the amounts~~
 2066 ~~of their claims.~~

2067 ~~(6)(4)~~ Individual claims filed by persons owning the same
 2068 joint account, or claims arising stemming from any other type of
 2069 account ~~maintained by a particular licensee~~ on which more than
 2070 one name appears, shall be treated as the claims of one eligible
 2071 claimant with respect to payment from the Securities Guaranty
 2072 Fund. If a claimant who has obtained a final judgment or final
 2073 order of restitution that ~~which~~ qualifies for disbursement under
 2074 s. 517.131 has maintained more than one account with the ~~dealer,~~
 2075 ~~investment adviser, or associated person who is the subject of~~

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2076 the claims, for purposes of disbursement of the Securities
 2077 Guaranty Fund, all such accounts, whether joint or individual,
 2078 shall be considered as one account and shall entitle such
 2079 claimant to only one distribution from the fund ~~not to exceed~~
 2080 ~~the lesser of \$10,000 or the unsatisfied portion of such~~
 2081 ~~claimant's judgment as provided in subsection (1)~~. To the extent
 2082 that a claimant obtains more than one final judgment or final
 2083 order of restitution against a person ~~dealer, investment~~
 2084 ~~adviser, or one or more associated persons~~ arising out of the
 2085 same transactions, occurrences, or conduct or out of such ~~the~~
 2086 ~~dealer's, investment adviser's, or associated person's~~ handling
 2087 of the claimant's account, the final ~~such~~ judgments or final
 2088 orders of restitution shall be consolidated for purposes of this
 2089 section and shall entitle the claimant to only one disbursement
 2090 from the fund ~~not to exceed the lesser of \$10,000 or the~~
 2091 ~~unsatisfied portion of such claimant's judgment as provided in~~
 2092 ~~subsection (1)~~.

2093 (7)(5) If the final judgment or final order of restitution
 2094 that gave rise to the claim is overturned in any appeal or in
 2095 any collateral proceeding, the claimant shall reimburse the
 2096 Securities Guaranty Fund all amounts paid from the fund to the
 2097 claimant on the claim. If the claimant satisfies the final
 2098 judgment or final order of restitution ~~specified in s.~~
 2099 ~~517.131(3)(a)~~, the claimant shall reimburse the Securities
 2100 Guaranty Fund all amounts paid from the fund to the claimant on

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2101 the claim. Such reimbursement shall be paid to the Department of
 2102 Financial Services ~~office~~ within 60 days after the final
 2103 resolution of the appellate or collateral proceedings or the
 2104 satisfaction of the final judgment or final order of
 2105 restitution, with the 60-day period commencing on the date the
 2106 final order or decision is entered in such proceedings.

2107 ~~(8)(6)~~ If a claimant receives payments in excess of that
 2108 which is permitted under this chapter, the claimant shall
 2109 reimburse the Securities Guaranty Fund such excess within 60
 2110 days after the claimant receives such excess payment or after
 2111 the payment is determined to be in excess of that permitted by
 2112 law, whichever is later.

2113 (9) A claimant who knowingly and willfully files or causes
 2114 to be filed an application under s. 517.131 or documents
 2115 supporting the application any of which contain false,
 2116 incomplete, or misleading information in any material aspect
 2117 shall forfeit all payments from the Securities Guaranty Fund,
 2118 and such act violates s. 517.301(2)(c).

2119 ~~(10)(7)~~ The Department of Financial Services ~~office~~ may
 2120 institute legal proceedings to enforce compliance with this
 2121 section and with s. 517.131 to recover moneys owed to the
 2122 Securities Guaranty Fund, and shall be entitled to recover
 2123 interest, costs, and attorney ~~attorney's~~ fees in any action
 2124 brought pursuant to this section in which the department ~~office~~
 2125 prevails.

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2126 ~~(8) If at any time the money in the Securities Guaranty~~
 2127 ~~Fund is insufficient to satisfy any valid claim or portion of a~~
 2128 ~~valid claim approved by the office, the office shall satisfy~~
 2129 ~~such unpaid claim or portion of such valid claim as soon as a~~
 2130 ~~sufficient amount of money has been deposited in or transferred~~
 2131 ~~to the fund. When there is more than one unsatisfied claim~~
 2132 ~~outstanding, such claims shall be paid in the order in which the~~
 2133 ~~claims were approved by final order of the office, which order~~
 2134 ~~is not subject to an appeal or other pending proceeding.~~

2135 ~~(9) Upon receipt by the claimant of the payment from the~~
 2136 ~~Securities Guaranty Fund, the claimant shall assign any~~
 2137 ~~additional right, title, and interest in the judgment, to the~~
 2138 ~~extent of such payment, to the office. If the provisions of s.~~
 2139 ~~517.131(3)(c) apply, the claimant must assign to the office any~~
 2140 ~~right, title, and interest in the debt to the extent of any~~
 2141 ~~payment by the office from the Securities Guaranty Fund.~~

2142 ~~(10) All payments and disbursements made from the~~
 2143 ~~Securities Guaranty Fund shall be made by the Chief Financial~~
 2144 ~~Officer upon authorization signed by the director of the office,~~
 2145 ~~or such agent as she or he may designate.~~

2146 Section 14. Section 517.191, Florida Statutes, is amended
 2147 to read:

2148 517.191 Enforcement by the office ~~Injunction to restrain~~
 2149 ~~violations; civil penalties; enforcement by Attorney General.-~~

2150 (1) When it appears to the office, either upon complaint

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2151 or otherwise, that a person has engaged or is about to engage in
2152 any act or practice constituting a violation of this chapter or
2153 a rule or order hereunder, the office may investigate; and
2154 whenever it shall believe from evidence satisfactory to it that
2155 any such person has engaged, is engaged, or is about to engage
2156 in any act or practice constituting a violation of this chapter
2157 or a rule or order hereunder, the office may, in addition to any
2158 other remedies, bring action in the name and on behalf of the
2159 state against such person and any other person concerned in or
2160 in any way participating in or about to participate in such
2161 practices or engaging therein or doing any act or acts in
2162 furtherance thereof or in violation of this chapter to enjoin
2163 such person or persons from continuing such fraudulent practices
2164 or engaging therein or doing any act or acts in furtherance
2165 thereof or in violation of this chapter. In any such court
2166 proceedings, the office may apply for, and on due showing be
2167 entitled to have issued, the court's subpoena requiring
2168 forthwith the appearance of any defendant and her or his
2169 employees, associated persons, or agents and the production of
2170 documents, books, and records that may appear necessary for the
2171 hearing of such petition, to testify or give evidence concerning
2172 the acts or conduct or things complained of in such application
2173 for injunction. In such action, the ~~equity~~ courts shall have
2174 jurisdiction of the subject matter, and a judgment may be
2175 entered awarding such injunction as may be proper.

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2176 (2) In addition to all other means provided by law for the
 2177 enforcement of any temporary restraining order, temporary
 2178 injunction, or permanent injunction issued in any such court
 2179 proceedings, the court shall have the power and jurisdiction,
 2180 upon application of the office, to impound and to appoint a
 2181 receiver or administrator for the property, assets, and business
 2182 of the defendant, including, but not limited to, the books,
 2183 records, documents, and papers appertaining thereto. Such
 2184 receiver or administrator, when appointed and qualified, shall
 2185 have all powers and duties as to custody, collection,
 2186 administration, winding up, and liquidation of said property and
 2187 business as shall from time to time be conferred upon her or him
 2188 by the court. In any such action, the court may issue orders and
 2189 decrees staying all pending suits and enjoining any further
 2190 suits affecting the receiver's or administrator's custody or
 2191 possession of the said property, assets, and business or, in its
 2192 discretion, may with the consent of the presiding judge of the
 2193 circuit require that all such suits be assigned to the circuit
 2194 court judge appointing the said receiver or administrator.

2195 (3) In addition to, or in lieu of, any other remedies
 2196 provided by this chapter, the office may apply to the court
 2197 hearing this matter for an order directing the defendant to make
 2198 restitution of those sums shown by the office to have been
 2199 obtained in violation of any of the provisions of this chapter.
 2200 The office has standing to request such restitution on behalf of

2201 victims in cases brought by the office under this chapter,
 2202 regardless of the appointment of an administrator or receiver
 2203 under subsection (2) or an injunction under subsection (1).
 2204 Further, such restitution shall, at the option of the court, be
 2205 payable to the administrator or receiver appointed pursuant to
 2206 this section or directly to the persons whose assets were
 2207 obtained in violation of this chapter.

2208 (4) In addition to any other remedies provided by this
 2209 chapter, the office may apply to the court hearing the matter
 2210 for, and the court shall have jurisdiction to impose, a civil
 2211 penalty against any person found to have violated any provision
 2212 of this chapter, any rule or order adopted by the commission or
 2213 office, or any written agreement entered into with the office in
 2214 an amount not to exceed:

2215 (a) The greater of \$20,000 ~~\$10,000~~ for a natural person or
 2216 \$25,000 for a business entity ~~any other person~~, or the gross
 2217 amount of any pecuniary loss to investors or pecuniary gain to a
 2218 natural person or business entity ~~such defendant~~ for each such
 2219 violation, other than a violation of s. 517.301; plus the
 2220 greater of \$50,000 for a natural person or \$250,000 for a
 2221 business entity ~~any other person~~, or the gross amount of any
 2222 pecuniary loss to investors or pecuniary gain to a natural
 2223 person or business entity ~~such defendant~~ for each violation of
 2224 s. 517.301.

2225 (b) Twice the amount of the civil penalty that would

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2226 otherwise be imposed under this subsection if a specified adult,
2227 as defined in s. 517.34(1), is a victim of a violation of this
2228 chapter.

2229
2230 All civil penalties collected pursuant to this subsection shall
2231 be deposited into the Anti-Fraud Trust Fund. The office may
2232 recover any costs and attorney fees related to the office's
2233 investigation or enforcement of this section. Notwithstanding
2234 any other law, moneys recovered by the office for costs and
2235 attorney fees collected pursuant to this subsection must be
2236 deposited into the Anti-Fraud Trust Fund.

2237 (5) For purposes of any action brought by the office under
2238 this section, a control person who controls any person found to
2239 have violated any provision of this chapter or any rule adopted
2240 under this chapter is jointly and severally liable with, and to
2241 the same extent as, the controlled person in any action brought
2242 by the office under this section unless the control person can
2243 establish by a preponderance of the evidence that he or she
2244 acted in good faith and did not directly or indirectly induce
2245 the act that constitutes the violation or cause of action.

2246 (6) For purposes of any action brought by the office under
2247 this section, a person who knowingly or recklessly provides
2248 substantial assistance to another person in violation of a
2249 provision of this chapter or of any rule adopted under this
2250 chapter is deemed to violate the provision or the rule to the

2251 same extent as the person to whom such assistance is provided.

2252 (7) The office may issue and serve upon a person a cease
 2253 and desist order if the office has reason to believe that the
 2254 person violates, has violated, or is about to violate any
 2255 provision of this chapter, any rule or order adopted by the
 2256 commission or office, or any written agreement entered into with
 2257 the office.

2258 (8) If the office finds that any conduct described in
 2259 subsection (7) presents an immediate danger to the public
 2260 requiring an immediate final order, the office may issue an
 2261 emergency cease and desist order reciting with particularity the
 2262 facts underlying such findings. The emergency cease and desist
 2263 order is effective immediately upon service of a copy of the
 2264 order on the respondent named in the order and remains effective
 2265 for 90 days. If the office begins nonemergency cease and desist
 2266 proceedings under subsection (7), the emergency cease and desist
 2267 order remains effective until conclusion of the proceedings
 2268 under ss. 120.569 and 120.57.

2269 (9) The office may impose and collect an administrative
 2270 fine against any person found to have violated any provision of
 2271 this chapter, any rule or order adopted by the commission or
 2272 office, or any written agreement entered into with the office in
 2273 an amount not to exceed the penalties provided in subsection
 2274 (4). All fines collected under this subsection shall be
 2275 deposited into the Anti-Fraud Trust Fund.

2276 (10) The office may bar, permanently or for a specific
 2277 time period, any person found to have violated any provision of
 2278 this chapter, any rule or order adopted by the commission or
 2279 office, or any written agreement entered into with the office
 2280 from submitting an application or notification for a license or
 2281 registration with the office.

2282 ~~(11)-(5)~~ In addition to all other means provided by law for
 2283 enforcing any of the provisions of this chapter, when the
 2284 Attorney General, upon complaint or otherwise, has reason to
 2285 believe that a person has engaged or is engaged in any act or
 2286 practice constituting a violation of s. 517.275 or s. 517.301,
 2287 ~~s. 517.311, or s. 517.312,~~ or any rule or order issued under
 2288 such sections, the Attorney General may investigate and bring an
 2289 action to enforce these provisions as provided in ss. 517.171,
 2290 517.201, and 517.2015 after receiving written approval from the
 2291 office. Such an action may be brought against such person and
 2292 any other person in any way participating in such act or
 2293 practice or engaging in such act or practice or doing any act in
 2294 furtherance of such act or practice, to obtain injunctive
 2295 relief, restitution, civil penalties, and any remedies provided
 2296 for in this section. The Attorney General may recover any costs
 2297 and attorney fees related to the Attorney General's
 2298 investigation or enforcement of this section. Notwithstanding
 2299 any other provision of law, moneys recovered by the Attorney
 2300 General for costs, attorney fees, and civil penalties for a

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2301 violation of s. 517.275 or, s. 517.301, ~~s. 517.311, or s.~~
 2302 ~~517.312,~~ or any rule or order issued pursuant to such sections,
 2303 shall be deposited in the Legal Affairs Revolving Trust Fund.
 2304 The Legal Affairs Revolving Trust Fund may be used to
 2305 investigate and enforce this section.

2306 (12)~~(6)~~ This section does not limit the authority of the
 2307 office to bring an administrative action against any person that
 2308 is the subject of a civil action brought pursuant to this
 2309 section or limit the authority of the office to engage in
 2310 investigations or enforcement actions with the Attorney General.
 2311 However, a person may not be subject to both a civil penalty
 2312 under subsection (4) and an administrative fine under subsection
 2313 (9) ~~s. 517.221(3)~~ as the result of the same facts.

2314 (13)~~(7)~~ Notwithstanding s. 95.11(4)(f), an enforcement
 2315 action brought under this section based on a violation of any
 2316 provision of this chapter or any rule or order issued under this
 2317 chapter shall be brought within 6 years after the facts giving
 2318 rise to the cause of action were discovered or should have been
 2319 discovered with the exercise of due diligence, but not more than
 2320 8 years after the date such violation occurred.

2321 (14) This chapter does not limit any statutory right of
 2322 the state to punish a person for a violation of a law.

2323 (15) When not in conflict with the Constitution or laws of
 2324 the United States, the courts of this state have the same
 2325 jurisdiction over civil suits instituted in connection with the

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2326 sale or offer of sale of securities under any laws of the United
2327 States as the courts of this state may have under similar cases
2328 instituted under the laws of this state.

2329 Section 15. Subsections (3) through (6) of section
2330 517.211, Florida Statutes, are renumbered as subsections (4)
2331 through (7), respectively, present subsection (3) is amended, a
2332 new subsection (3) and subsections (8) and (9) are added to that
2333 section, and subsection (1) is republished, to read:

2334 517.211 Private remedies available in cases of unlawful
2335 sale.—

2336 (1) Every sale made in violation of either s. 517.07 or s.
2337 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be
2338 rescinded at the election of the purchaser, except a sale made
2339 in violation of the provisions of s. 517.1202(3) relating to a
2340 renewal of a branch office notification shall not be subject to
2341 this section, and a sale made in violation of the provisions of
2342 s. 517.12(12) relating to filing a change of address amendment
2343 shall not be subject to this section. Each person making the
2344 sale and every director, officer, partner, or agent of or for
2345 the seller, if the director, officer, partner, or agent has
2346 personally participated or aided in making the sale, is jointly
2347 and severally liable to the purchaser in an action for
2348 rescission, if the purchaser still owns the security, or for
2349 damages, if the purchaser has sold the security. No purchaser
2350 otherwise entitled will have the benefit of this subsection who

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2351 has refused or failed, within 30 days of receipt, to accept an
2352 offer made in writing by the seller, if the purchaser has not
2353 sold the security, to take back the security in question and to
2354 refund the full amount paid by the purchaser or, if the
2355 purchaser has sold the security, to pay the purchaser an amount
2356 equal to the difference between the amount paid for the security
2357 and the amount received by the purchaser on the sale of the
2358 security, together, in either case, with interest on the full
2359 amount paid for the security by the purchaser at the legal rate,
2360 pursuant to s. 55.03, for the period from the date of payment by
2361 the purchaser to the date of repayment, less the amount of any
2362 income received by the purchaser on the security.

2363 (3) For purposes of any action brought under this section,
2364 a control person who controls any person found to have violated
2365 any provision specified in subsection (1) is jointly and
2366 severally liable with, and to the same extent as, such
2367 controlled person in any action brought under this section
2368 unless the control person can establish by a preponderance of
2369 the evidence that he or she acted in good faith and did not
2370 directly or indirectly induce the act that constitutes the
2371 violation or cause of action.

2372 (4)~~(3)~~ In an action for rescission:

2373 (a) A purchaser may recover the consideration paid for the
2374 security or investment, plus interest thereon at the legal rate
2375 from the date of purchase, less the amount of any income

2376 received by the purchaser on the security or investment upon
 2377 tender of the security or investment.

2378 (b) A seller may recover the security upon tender of the
 2379 consideration paid for the security, plus interest at the legal
 2380 rate from the date of purchase, less the amount of any income
 2381 received by the defendant on the security.

2382 (8) This chapter does not limit any statutory or common-
 2383 law right of a person to bring an action in a court for an act
 2384 involved in the sale of securities or investments.

2385 (9) The same civil remedies provided by the laws of the
 2386 United States for the purchasers or sellers of securities in
 2387 interstate commerce extend also to purchasers or sellers of
 2388 securities under this chapter.

2389 Section 16. Section 517.221, Florida Statutes, is
 2390 repealed.

2391 Section 17. Section 517.241, Florida Statutes, is
 2392 repealed.

2393 Section 18. Section 517.301, Florida Statutes, is amended
 2394 to read:

2395 517.301 Fraudulent transactions; falsification or
 2396 concealment of facts.-

2397 (1)(2) As used in ~~For purposes of ss. 517.311 and 517.312~~
 2398 ~~and~~ this section, the term "investment" means any commitment of
 2399 money or property principally induced by a representation that
 2400 an economic benefit may be derived from such commitment, except

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2401 that the term does not include a commitment of money or property
 2402 for:

2403 ~~(a) the purchase of a business opportunity, business~~
 2404 ~~enterprise, or real property through a person licensed under~~
 2405 ~~chapter 475 or registered under former chapter 498; or~~

2406 ~~(b) The purchase of tangible personal property through a~~
 2407 ~~person not engaged in telephone solicitation, where said~~
 2408 ~~property is offered and sold in accordance with the following~~
 2409 ~~conditions:~~

2410 ~~1. There are no specific representations or guarantees~~
 2411 ~~made by the offeror or seller as to the economic benefit to be~~
 2412 ~~derived from the purchase;~~

2413 ~~2. The tangible property is delivered to the purchaser~~
 2414 ~~within 30 days after sale, except that such 30-day period may be~~
 2415 ~~extended by the office if market conditions so warrant; and~~

2416 ~~3. The seller has offered the purchaser a full refund~~
 2417 ~~policy in writing, exercisable by the purchaser within 10 days~~
 2418 ~~of the date of delivery of such tangible personal property,~~
 2419 ~~except that the amount of such refund may not exceed the bid~~
 2420 ~~price in effect at the time the property is returned to the~~
 2421 ~~seller. If the applicable sellers' market is closed at the time~~
 2422 ~~the property is returned to the seller for a refund, the amount~~
 2423 ~~of such refund shall be based on the bid price for such property~~
 2424 ~~at the next opening of such market.~~

2425 (2)-(1) It is unlawful and a violation of the provisions of

2426 | this chapter for a person:

2427 | (a) In connection with the rendering of any investment
 2428 | advice or in connection with the offer, sale, or purchase of any
 2429 | investment or security, including any security exempted under
 2430 | the provisions of s. 517.051 and including any security sold in
 2431 | a transaction exempted under the provisions of s. 517.061, s.
 2432 | 517.0611, or s. 517.0612, directly or indirectly:

2433 | 1. To employ any device, scheme, or artifice to defraud;

2434 | 2. To obtain money or property by means of any untrue
 2435 | statement of a material fact or any omission to state a material
 2436 | fact necessary in order to make the statements made, in the
 2437 | light of the circumstances under which they were made, not
 2438 | misleading; or

2439 | 3. To engage in any transaction, practice, or course of
 2440 | business which operates or would operate as a fraud or deceit
 2441 | upon a person.

2442 | (b) Through the use of any means, to publish, give
 2443 | publicity to, or circulate any notice, circular, advertisement,
 2444 | newspaper, article, letter, investment service, communication,
 2445 | or broadcast which, though not purporting to offer a security
 2446 | for sale, describes such security for a consideration received
 2447 | or to be received directly or indirectly from an issuer,
 2448 | underwriter, or dealer, or from an agent or employee of an
 2449 | issuer, underwriter, or dealer, without fully disclosing the
 2450 | receipt, whether past or prospective, of such consideration and

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2451 the amount of the consideration.

2452 (c) In any matter within the jurisdiction of the office,
2453 to knowingly and willfully falsify, conceal, or cover up, by any
2454 trick, scheme, or device, a material fact, make any false,
2455 fictitious, or fraudulent statement or representation, or make
2456 or use any false writing or document, knowing the same to
2457 contain any false, fictitious, or fraudulent statement or entry.

2458 (3) It is unlawful for a person in issuing or selling a
2459 security within the state, including a security exempted under
2460 s. 517.051 and including a transaction exempted under s.
2461 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such
2462 security or business entity has been guaranteed, sponsored,
2463 recommended, or approved by the state or an agency or officer of
2464 the state or by the United States or an agency or officer of the
2465 United States.

2466 (4) It is unlawful for a person registered or required to
2467 be registered, or subject to the notice requirements, under any
2468 section of this chapter, including such persons and issuers
2469 within the purview of s. 517.051, s. 517.061, s. 517.0611, s.
2470 517.0612, or s. 517.081, to misrepresent that such person has
2471 been sponsored, recommended, or approved or that such person's
2472 abilities or qualifications have in any respect been passed upon
2473 by the state or an agency or officer of the state or by the
2474 United States or an agency or officer of the United States.

2475 (5) It is unlawful and a violation of this chapter for a

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2476 person in connection with the offer or sale of an investment to
2477 obtain money or property by means of:

2478 (a) A misrepresentation that the investment offered or
2479 sold is guaranteed, sponsored, recommended, or approved by the
2480 state or an agency or officer of the state or by the United
2481 States or an agency or officer of the United States; or

2482 (b) A misrepresentation that such person is sponsored,
2483 recommended, or approved or that such person's abilities or
2484 qualifications have in any respect been passed upon by the state
2485 or an agency or officer of the state or by the United States or
2486 an agency or officer of the United States.

2487 (6)(a) No provision of subsection (3) or subsection (4)
2488 shall be construed to prohibit a statement that a person or
2489 security is registered or has made a notice filing under this
2490 chapter if such statement is required by the provisions of this
2491 chapter or rules adopted thereunder, if such statement is true
2492 in fact, and if the effect of such statement is not
2493 misrepresented.

2494 (b) A statement that a person is registered made in
2495 connection with the offer or sale of a security under the
2496 provisions of this chapter must include the following
2497 disclaimer: "Registration does not imply that such person has
2498 been sponsored, recommended, or approved by the state or an
2499 agency or officer of the state or by the United States or an
2500 agency or officer of the United States."

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2501 1. If the statement of registration is made in writing,
 2502 the disclaimer must immediately follow such statement and must
 2503 be in the same size and style of print as the statement of
 2504 registration.

2505 2. If the statement of registration is made orally, the
 2506 disclaimer shall be made or broadcast with the same force and
 2507 effect as the statement of registration.

2508 (7) It is unlawful and a violation of this chapter for a
 2509 person to directly or indirectly manage, supervise, control, or
 2510 own, alone or in association with others, a boiler room in this
 2511 state which sells or offers for sale a security or investment in
 2512 violation of subsection (2), subsection (3), subsection (4),
 2513 subsection (5), or subsection (6).

2514 Section 19. Section 517.311, Florida Statutes, is
 2515 repealed.

2516 Section 20. Section 517.312, Florida Statutes, is
 2517 repealed.

2518 Section 21. Subsections (1), (2), and (3) of section
 2519 517.072, Florida Statutes, are amended to read:

2520 517.072 Viatical settlement investments.—

2521 (1) The exemptions provided for by s. 517.051(6) ~~ss.~~
 2522 ~~517.051(6), (8), and (11) (10)~~ do not apply to a viatical
 2523 settlement investment.

2524 (2) The offering of a viatical settlement investment is
 2525 not an exempt transaction under s. 517.061(10), (12), (13) ~~s.~~

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2526 | ~~517.061(2), (3), (8), (11)~~, and (18), regardless of whether the
 2527 | offering otherwise complies with the conditions of that section,
 2528 | unless such offering is to a qualified institutional buyer.

2529 | (3) The registration provisions of ss. 517.07 and 517.12
 2530 | do not apply to any of the following transactions in viatical
 2531 | settlement investments; however, such transactions in viatical
 2532 | settlement investments are subject to s. 517.301 ~~the provisions~~
 2533 | ~~of ss. 517.301, 517.311, and 517.312:~~

2534 | (a) The transfer or assignment of an interest in a
 2535 | previously viaticated policy from a natural person who transfers
 2536 | or assigns no more than one such interest in a single calendar
 2537 | year.

2538 | (b) The provision of stop-loss coverage to a viatical
 2539 | settlement provider, financing entity, or related provider
 2540 | trust, as those terms are defined in s. 626.9911, by an
 2541 | authorized or eligible insurer.

2542 | (c) The transfer or assignment of a viaticated policy from
 2543 | a licensed viatical settlement provider to another licensed
 2544 | viatical settlement provider, a related provider trust, a
 2545 | financing entity, or a special purpose entity, as those terms
 2546 | are defined in s. 626.9911, or to a contingency insurer,
 2547 | provided such transfer or assignment is not the direct or
 2548 | indirect promotion of any scheme or enterprise with the intent
 2549 | of violating or evading any provision of this chapter.

2550 | (d) The transfer or assignment of a viaticated policy to a

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2551 bank, trust company, savings institution, insurance company,
 2552 dealer, investment company as defined in the Investment Company
 2553 Act of 1940, as amended, pension or profit-sharing trust,
 2554 qualified institutional buyer, or an accredited investor,
 2555 provided such transfer or assignment is not for the direct or
 2556 indirect promotion of any scheme or enterprise with the intent
 2557 of violating or evading any provision of this chapter.

2558 (e) The transfer or assignment of a viaticated policy by a
 2559 conservator of a viatical settlement provider appointed by a
 2560 court of competent jurisdiction who transfers or assigns
 2561 ownership of viaticated policies pursuant to that court's order.

2562 Section 22. Subsections (2) and (20) and paragraph (c) of
 2563 subsection (21) of section 517.12, Florida Statutes, are amended
 2564 to read:

2565 517.12 Registration of dealers, associated persons,
 2566 intermediaries, and investment advisers.—

2567 (2) The registration requirements of this section do not
 2568 apply in a transaction exempted by s. 517.061(1)-(6), (8), (9),
 2569 (12), and (13) ~~s. 517.061(1)-(10), (12), (14), and (15)~~.

2570 (20) The registration requirements of this section do not
 2571 apply to any general lines insurance agent or life insurance
 2572 agent licensed under chapter 626, for the sale of a security as
 2573 defined in s. 517.021(25)(g) ~~s. 517.021(23)(g)~~, if the
 2574 individual is directly authorized by the issuer to offer or sell
 2575 the security on behalf of the issuer and the issuer is a

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2576 federally chartered savings bank subject to regulation by the
2577 Federal Deposit Insurance Corporation. Actions under this
2578 subsection shall constitute activity under the insurance agent's
2579 license for purposes of ss. 626.611 and 626.621.

2580 (21)

2581 (c) A merger and acquisition broker engaged in a
2582 transaction exempt under s. 517.061(7) ~~s. 517.061(22)~~ is exempt
2583 from registration under this section unless the merger and
2584 acquisition broker:

2585 1. Directly or indirectly, in connection with the transfer
2586 of ownership of an eligible privately held company, receives,
2587 holds, transmits, or has custody of the funds or securities to
2588 be exchanged by the parties to the transaction;

2589 2. Engages on behalf of an issuer in a public offering of
2590 any class of securities which is registered, or which is
2591 required to be registered, with the United States Securities and
2592 Exchange Commission under the Securities Exchange Act of 1934,
2593 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;
2594 or for which the issuer files, or is required to file, periodic
2595 information, documents, and reports under s. 15(d) of the
2596 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

2597 3. Engages on behalf of any party in a transaction
2598 involving a public shell company;

2599 4. Is subject to a suspension or revocation of
2600 registration under s. 15(b)(4) of the Securities Exchange Act of

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2601 1934, 15 U.S.C. s. 78o(b)(4);

2602 5. Is subject to a statutory disqualification described in
 2603 s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s.
 2604 78c(a)(39);

2605 6. Is subject to a disqualification under the United
 2606 States Securities and Exchange Commission Rule 506(d), 17 C.F.R.
 2607 s. 230.506(d); or

2608 7. Is subject to a final order described in s. 15(b)(4)(H)
 2609 of the Securities Exchange Act of 1934, 15 U.S.C. s.
 2610 78o(b)(4)(H).

2611 Section 23. Subsection (4) of section 517.1202, Florida
 2612 Statutes, is amended to read:

2613 517.1202 Notice-filing requirements for branch offices.—

2614 (4) A branch office notice-filing under this section shall
 2615 be summarily suspended by the office if the notice-filer fails
 2616 to provide to the office, within 30 days after a written request
 2617 by the office, all of the information required by this section
 2618 and the rules adopted under this section. The summary suspension
 2619 shall be in effect for the branch office until such time as the
 2620 notice-filer submits the requested information to the office,
 2621 pays a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and a
 2622 final order is entered. At such time, the suspension shall be
 2623 lifted. For purposes of s. 120.60(6), failure to provide all
 2624 information required by this section and the underlying rules
 2625 constitutes immediate and serious danger to the public health,

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2626 safety, and welfare. If the notice-filer fails to provide all of
 2627 the requested information within a period of 90 days, the
 2628 notice-filing shall be revoked by the office.

2629 Section 24. Subsection (2) of section 517.302, Florida
 2630 Statutes, is amended to read:

2631 517.302 Criminal penalties; alternative fine; Anti-Fraud
 2632 Trust Fund; time limitation for criminal prosecution.—

2633 (2) Any person who violates the provisions of s. 517.301
 2634 ~~s. 517.312(1)~~ by obtaining money or property of an aggregate
 2635 value exceeding \$50,000 from five or more persons is guilty of a
 2636 felony of the first degree, punishable as provided in s.
 2637 775.082, s. 775.083, or s. 775.084.

2638 Section 25. This act shall take effect October 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 311 by Rep. Barnaby Relating to Securities and Securities Transactions

AMENDMENT SUMMARY January 11, 2024

Amendment 1 by Rep. Barnaby (Strike-all): The amendment:

- Conforms to the Senate bill, which is substantively identical to the House bill, except:
 - Makes the proposed revisions to the Securities Guaranty Fund prospective to October 1, 2024; and
 - Provides clarification for the proposed revision to the exemption for transactions conducted through alternative trading systems.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Barnaby offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Present subsections (3), (4), and (5) and
 8 subsections (6) through (25) of section 517.021, Florida
 9 Statutes, are redesignated as subsections (4), (5), and (6) and
 10 subsections (8) through (27), respectively, new subsections (3)
 11 and (7) are added to that section, and subsection (1) and
 12 present subsections (4), (8), (9), and (14) of that section are
 13 amended, to read:

14 517.021 Definitions.—When used in this chapter, unless the
 15 context otherwise indicates, the following terms have the
 16 following respective meanings:

Amendment No. 1

17 (1) "Accredited investor" shall be defined by rule of the
18 commission in accordance with Securities and Exchange Commission
19 Rule 501, 17 C.F.R. s. 230.501, as amended.

20 (3) "Angel investor group" means a group of accredited
21 investors who hold regular meetings and have defined processes
22 and procedures for making investment decisions, individually or
23 among the membership of the group, and who are not associated
24 persons, affiliates, or agents of a dealer or investment
25 adviser.

26 ~~(5)(4)~~ "Boiler room" means an enterprise in which two or
27 more persons in a common scheme or enterprise solicit potential
28 investors through telephone calls, e-mail, text messages, social
29 media, chat rooms, or other electronic means ~~engage in telephone~~
30 ~~communications with members of the public using two or more~~
31 ~~telephones at one location, or at more than one location in a~~
32 ~~common scheme or enterprise.~~

33 (7) "Business entity" means any corporation, partnership,
34 limited partnership, limited liability company, proprietorship,
35 firm, enterprise, franchise, association, self-employed
36 individual, or trust, which may or may not be fictitiously
37 named, doing business in this state.

38 (10) (a) ~~(8)~~ "Dealer" includes, unless otherwise specified,
39 a person, other than an associated person of a dealer, that
40 engages, for all or part of the person's time, directly or
41 indirectly, as agent or principal in the business of offering,

Amendment No. 1

42 buying, selling, or otherwise dealing or trading in securities
43 issued by another person.

44 (b) The term "dealer" does not include any of the
45 following:

46 ~~1.(a)~~ A licensed practicing attorney who renders or
47 performs any such services in connection with the regular
48 practice of the attorney's profession.

49 ~~2.(b)~~ A bank authorized to do business in this state,
50 except nonbank subsidiaries of a bank.

51 ~~3.(c)~~ A trust company having trust powers that it is
52 authorized to exercise in this state, which renders or performs
53 services in a fiduciary capacity incidental to the exercise of
54 its trust powers.

55 ~~4.(d)~~ A wholesaler selling exclusively to dealers.

56 ~~5.(e)~~ A person buying and selling for the person's own
57 account exclusively through a registered dealer or stock
58 exchange.

59 ~~6.(f)~~ An issuer.

60 ~~7.(g)~~ A natural person representing an issuer in the
61 purchase, sale, or distribution of the issuer's own securities
62 if such person:

63 ~~a.1.~~ Is an officer, a director, a limited liability
64 company manager or managing member, or a bona fide employee of
65 the issuer;

Amendment No. 1

66 ~~b.2.~~ Has not participated in the distribution or sale of
67 securities for any issuer for which such person was, within the
68 preceding 12 months, an officer, a director, a limited liability
69 company manager or managing member, or a bona fide employee;

70 ~~c.3.~~ Primarily performs, or is intended to perform at the
71 end of the distribution, substantial duties for, or on behalf
72 of, the issuer other than in connection with transactions in
73 securities; and

74 ~~d.4.~~ Does not receive a commission, compensation, or other
75 consideration for the completed sale of the issuer's securities
76 apart from the compensation received for regular duties to the
77 issuer.

78 ~~(11)(9)~~ "Federal covered adviser" means a person that is
79 registered or required to be registered under s. 203 of the
80 Investment Advisers Act of 1940, as amended. The term does not
81 include any person that is excluded from the definition of
82 investment adviser under subparagraphs (16)(b)1.-7. and 9
83 ~~(14)(b)1.-8.~~

84 ~~(16)(a)(14)(a)~~ "Investment adviser" means a person, other
85 than an associated person of an investment adviser or a federal
86 covered adviser, that receives compensation, directly or
87 indirectly, and engages for all or part of the person's time,
88 directly or indirectly, or through publications or writings, in
89 the business of advising others as to the value of securities or

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90 as to the advisability of investments in, purchasing of, or
91 selling of securities.

92 (b) The term does not include any of the following:

93 1. A dealer or an associated person of a dealer whose
94 performance of services in paragraph (a) is solely incidental to
95 the conduct of the dealer's or associated person's business as a
96 dealer and who does not receive special compensation for those
97 services.

98 2. A licensed practicing attorney or certified public
99 accountant whose performance of such services is solely
100 incidental to the practice of the attorney's or accountant's
101 profession.

102 3. A bank authorized to do business in this state.

103 4. A bank holding company as defined in the Bank Holding
104 Company Act of 1956, as amended, authorized to do business in
105 this state.

106 5. A trust company having trust powers, as defined in s.
107 658.12, which it is authorized to exercise in this state, which
108 trust company renders or performs investment advisory services
109 in a fiduciary capacity incidental to the exercise of its trust
110 powers.

111 6. A person that renders investment advice exclusively to
112 insurance or investment companies.

113 7. A person that, during the preceding 12 months, has
114 fewer than six clients who are residents of this state. As used

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115 in this subparagraph, the term "client" has the same meaning as
116 provided in Securities and Exchange Commission Rule 275.222-2,
117 17 C.F.R. s. 275.222-2, as amended ~~does not hold itself out to~~
118 ~~the general public as an investment adviser and has no more than~~
119 ~~15 clients within 12 consecutive months in this state.~~

120 ~~8. A person whose transactions in this state are limited~~
121 ~~to those transactions described in s. 222(d) of the Investment~~
122 ~~Advisers Act of 1940, as amended. Those clients listed in~~
123 ~~subparagraph 6. may not be included when determining the number~~
124 ~~of clients of an investment adviser for purposes of s. 222(d) of~~
125 ~~the Investment Advisers Act of 1940, as amended.~~

126 ~~9. A federal covered adviser.~~

127 9. The United States, a state, or any political
128 subdivision of a state, or any agency, authority, or
129 instrumentality of any such entity; a business entity that is
130 wholly owned directly or indirectly by such a governmental
131 entity; or any officer, agent, or employee of any such
132 governmental or business entity who is acting within the scope
133 of his or her official duties.

134 Section 2. Present subsections (9) and (10) of section
135 517.051, Florida Statutes, are redesignated as subsections (10)
136 and (11), respectively, and amended, a new subsection (9) is
137 added to that section, and subsections (1), (3), (4), and (8) of
138 that section are amended, to read:

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139 517.051 Exempt securities.—The exemptions provided herein
140 from the registration requirements of s. 517.07 are self-
141 executing and do not require any filing with the office prior to
142 claiming such exemption. Any person who claims entitlement to
143 any of these exemptions bears the burden of proving such
144 entitlement in any proceeding brought under this chapter. The
145 registration provisions of s. 517.07 do not apply to any of the
146 following securities:

147 (1) A security issued or guaranteed by the United States
148 or any territory or insular possession of the United States, by
149 the District of Columbia, or by any state of the United States
150 or by any political subdivision or agency or other
151 instrumentality thereof. ~~provided that~~

152 (a) Except as provided in paragraph (b), a ne person may
153 not shall directly or indirectly offer or sell securities, other
154 than general obligation bonds, described under this subsection
155 if the issuer or guarantor is in default or has been in default
156 any time after December 31, 1975, as to principal or interest:

157 1.(a) With respect to an obligation issued by the issuer
158 or successor of the issuer; or

159 2.(b) With respect to an obligation guaranteed by the
160 guarantor or successor of the guarantor,

161
162 except by an offering circular containing a full and fair
163 disclosure as prescribed by rule of the commission.

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164 (b) Paragraph (a) does not apply to a security that is an
165 industrial or commercial development bond unless payments are
166 made or unconditionally guaranteed by a person whose securities
167 are exempt from registration under s. 18(b)(1) of the Securities
168 Act of 1933, as amended.

169 (3) A security issued by and which represents or will
170 represent an interest in or a direct obligation of or be
171 guaranteed by any of the following:

172 (a) An international bank of which the United States is a
173 member.

174 (b) A bank organized under the laws of the United States.

175 (c) A member bank of the Federal Reserve System.

176 (d) A depository institution, when a substantial portion
177 of its business consists of or will consist of receiving
178 deposits or share accounts that are insured to the maximum
179 amount authorized by statute by the Federal Deposit Insurance
180 Corporation or the National Credit Union Share Insurance Fund or
181 guaranteed by:

182 ~~(a) A national bank, a federally chartered savings and~~
183 ~~loan association, or a federally chartered savings bank, or the~~
184 ~~initial subscription for equity securities in such national~~
185 ~~bank, federally chartered savings and loan association, or~~
186 ~~federally chartered savings bank;~~

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187 ~~(b) Any federal land bank, joint-stock land bank, or~~
188 ~~national farm loan association under the provisions of the~~
189 ~~Federal Farm Loan Act of July 17, 1916;~~

190 ~~(c) An international bank of which the United States is a~~
191 ~~member; or~~

192 ~~(d) A corporation created and acting as an instrumentality~~
193 ~~of the government of the United States.~~

194 (4) A security issued or guaranteed, as to principal,
195 interest, or dividend, by a business entity ~~corporation~~ owning
196 or operating a railroad, another common carrier, or any other
197 public service utility; provided that such business entity
198 ~~corporation~~ is subject to regulation or supervision whether as
199 to its rates and charges or as to the issue of its own
200 securities by a public commission, board, or officer of the
201 government of the United States, of any state, territory, or
202 insular possession of the United States, of any municipality
203 located therein, of the District of Columbia, or of the Dominion
204 of Canada or of any province thereof; also equipment securities
205 based on chattel mortgages, leases, or agreements for
206 conditional sale of cars, motive power, or other rolling stock
207 mortgaged, leased, or sold to or furnished for the use of or
208 upon such railroad or other public service utility corporation
209 or where the ownership or title of such equipment is pledged or
210 retained in accordance with ~~the provisions of~~ the laws of the
211 United States or of any state or of the Dominion of Canada to

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212 secure the payment of such equipment securities; and also bonds,
213 notes, or other evidences of indebtedness issued by a holding
214 corporation and secured by collateral consisting of any
215 securities hereinabove described; provided, further, that the
216 collateral securities equal in fair value at least 125 percent
217 of the par value of the bonds, notes, or other evidences of
218 indebtedness so secured.

219 (8) Shares or other equity interests of a business entity
220 which represent ownership or entitle the holders of such shares
221 or other equity interests to possession and occupancy of
222 specific apartment units in property owned by such business
223 entity and organized and operated on a cooperative basis, solely
224 for residential purposes ~~A note, draft, bill of exchange, or~~
225 ~~banker's acceptance having a unit amount of \$25,000 or more~~
226 ~~which arises out of a current transaction, or the proceeds of~~
227 ~~which have been or are to be used for current transactions, and~~
228 ~~which has a maturity period at the time of issuance not~~
229 ~~exceeding 9 months exclusive of days of grace, or any renewal~~
230 ~~thereof which has a maturity period likewise limited. This~~
231 ~~subsection applies only to prime quality negotiable commercial~~
232 ~~paper of a type not ordinarily purchased by the general public;~~
233 ~~that is, paper issued to facilitate well-recognized types of~~
234 ~~current operational business requirements and of a type eligible~~
235 ~~for discounting by Federal Reserve banks.~~

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236 (9) A member's or owner's interest in, or a retention
237 certificate or like security given in lieu of a cash patronage
238 dividend issued by, a not-for-profit membership entity operated
239 either as a cooperative under the cooperative laws of a state or
240 in accordance with the cooperative provisions of subchapter T of
241 chapter 1 of subtitle A of the United States Internal Revenue
242 Code, as amended, but not a member's or owner's interest,
243 retention certificate, or like security sold or transferred to a
244 person other than:

245 (a) A bona fide member of the not-for-profit membership
246 entity; or

247 (b) A person who becomes a bona fide member of the not-
248 for-profit membership entity at the time of or in connection
249 with the sale or transfer.

250 (10)-(9) A security issued by a business entity ~~corporation~~
251 organized and operated exclusively for religious, educational,
252 benevolent, fraternal, charitable, or reformatory purposes and
253 not for pecuniary profit, no part of the net earnings of which
254 ~~corporation~~ inures to the benefit of any private stockholder or
255 individual, or any security of a fund that is excluded from the
256 definition of an investment company under s. 3(c)(10)(B) of the
257 Investment Company Act of 1940, as amended; provided that a ~~no~~
258 person may not ~~shall~~ directly or indirectly offer or sell
259 securities under this subsection except by an offering circular
260 containing full and fair disclosure, as prescribed by the rules

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261 of the commission, of all material information, including, but
262 not limited to, a description of the securities offered and
263 terms of the offering, a description of the nature of the
264 issuer's business, a statement of the purpose of the offering
265 and the intended application by the issuer of the proceeds
266 thereof, and financial statements of the issuer prepared in
267 conformance with United States generally accepted accounting
268 principles. Section 6(c) of the Philanthropy Protection Act of
269 1995, Pub. L. No. 104-62, does ~~shall~~ not preempt any provision
270 of this chapter.

271 (11)~~(10)~~ Any insurance or endowment policy or annuity
272 contract or optional annuity contract or self-insurance
273 agreement issued by a business entity ~~corporation~~, insurance
274 company, reciprocal insurer, or risk retention group subject to
275 the supervision of the insurance regulator or bank regulator, or
276 any agency or officer performing like functions, of any state or
277 territory of the United States or the District of Columbia.

278 Section 3. Section 517.061, Florida Statutes, is amended
279 to read:

280 (Substantial rewording of section. See
281 s. 517.061, F.S., for present text.)

282 517.061 Exempt transactions.—Except as otherwise provided
283 in subsection (11), the exemptions provided herein from the
284 registration requirements of s. 517.07 are self-executing and do
285 not require any filing with the office before being claimed. Any

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286 person who claims entitlement to an exemption under this section
287 bears the burden of proving such entitlement in any proceeding
288 brought under this chapter. The registration provisions of s.
289 517.07 do not apply to any of the following transactions;
290 however, such transactions are subject to s. 517.301:

291 (1) (a) Any judicial sale or any sale by an executor, an
292 administrator, a guardian, or a conservator; any sale by a
293 receiver or trustee in insolvency or bankruptcy; any sale by an
294 assignee as defined in s. 727.103 with respect to an assignment
295 as defined in that section; or any transaction incident to a
296 judicially approved reorganization in which a security is issued
297 in exchange for one or more outstanding securities, claims, or
298 property interests.

299 (b) Except for a security exchanged in a case brought
300 under Title 11 of the United States Code, a security that is
301 issued in exchange for one or more bona fide outstanding
302 securities, claims, or property interests, or partly in such
303 exchange and partly for cash, if the terms and conditions of
304 such issuance and exchange are approved:

305 1. By a court, an official or agency of the United States,
306 a banking or insurance commission of a state or territory of the
307 United States, or another governmental authority expressly
308 authorized by law to grant such approval.

309 2. After a hearing upon the fairness of such terms and
310 conditions and at which all persons to whom issuance of

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311 securities in such exchange is proposed have the right to
312 appear.

313 (2) The issuance of notes or bonds in connection with the
314 acquisition of real property or renewals thereof, if such notes
315 or bonds are issued to the sellers of, and are secured by all or
316 part of, the real property so acquired.

317 (3) A transaction involving a stock dividend or equivalent
318 equity distribution, regardless of whether the business entity
319 distributing the dividend or equivalent equity distribution is
320 the issuer, if nothing of value is given by stockholders or
321 other equity holders for the dividend or equivalent equity
322 distribution other than the surrender of a right to a cash or
323 property dividend in the event that each stockholder or other
324 equity holder may elect to take the dividend or equivalent
325 equity distribution in cash, property, or stock.

326 (4) A transaction under an offer to existing security
327 holders of the issuer, including persons that at the date of the
328 transaction are holders of convertible securities, options, or
329 warrants, if a commission or other remuneration is not paid or
330 given, directly or indirectly, for soliciting a security holder
331 in this state.

332 (5) The issuance of securities to such equity security
333 holders or creditors of a business entity in the process of a
334 reorganization of such business entity, made in good faith and
335 not for the purpose of evading this chapter, either in exchange

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336 for the securities of such equity security holders or claims of
337 such creditors or partly for cash and partly in exchange for the
338 securities or claims of such equity security holders or
339 creditors.

340 (6) A transaction involving the distribution of the
341 securities of an issuer to the security holders of another
342 person in connection with a merger, consolidation, exchange of
343 securities, sale of assets, or other reorganization to which the
344 issuer, or the issuer's parent or subsidiary, and the other
345 person, or the person's parent or subsidiary, are parties.

346 (7) The offer or sale of securities, solely in connection
347 with the transfer of ownership of an eligible privately held
348 company, through a merger and acquisition broker in accordance
349 with s. 517.12(21).

350 (8) The offer or sale of securities under a bona fide
351 employee stock purchase, savings, option, profit-sharing,
352 pension, or similar employee benefit plan, including any
353 securities, plan interests, and guarantees issued under a
354 compensatory benefit plan or compensation contract, contained in
355 a record, established by the issuer, its parents, its majority-
356 owned subsidiaries, or the majority-owned subsidiaries of the
357 issuer's parent for the participation of their employees. This
358 includes offers or sales of such securities to all of the
359 following persons:

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360 (a) Directors, managers, managing members, general
361 partners, officers, consultants, and advisors.

362 (b) If the issuer is a business trust, trustees and former
363 trustees.

364 (c) Family members who acquire such securities from
365 persons described in this section through gifts or domestic
366 relations orders.

367 (d) Former employees, directors, managers, managing
368 members, general partners, officers, consultants, and advisors,
369 if those individuals were employed by or providing services to
370 the issuer when the securities were offered.

371 (e) Insurance agents who are exclusive insurance agents of
372 the issuer, or of the issuer's parents or subsidiaries, or who
373 derive more than 50 percent of their annual income from such
374 persons.

375 (9) The offer or sale of securities to a bank, trust
376 company, savings institution, insurance company, dealer,
377 investment company as defined in the Investment Company Act of
378 1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing
379 trust, or qualified institutional buyer, whether any of such
380 entities is acting in its individual or fiduciary capacity.

381 (10) (a) The offer or sale, by or on behalf of an issuer,
382 of its own securities if the offer or sale is part of an
383 offering made in accordance with all of the following
384 conditions:

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385 1. There are no more than 35 purchasers, or the issuer
386 reasonably believes that there are no more than 35 purchasers,
387 of the securities of the issuer in this state during an offering
388 made in reliance upon this subsection or, if such offering
389 continues for a period in excess of 12 months, in any
390 consecutive 12-month period.

391 2. Neither the issuer nor any person acting on behalf of
392 the issuer offers or sells securities pursuant to this
393 subsection by means of any form of general solicitation or
394 general advertising in this state.

395 3. Before the sale, each purchaser or the purchaser's
396 representative, if any, is provided with, or given reasonable
397 access to, full and fair disclosure of all material information,
398 which must include written notification of a purchaser's right
399 to void the sale under subparagraph 4.

400 4. Any sale made pursuant to this subsection is voidable
401 by the purchaser within 3 days after the first tender of
402 consideration is made by such purchaser to the issuer by
403 notifying the issuer that the purchaser expressly voids the
404 purchase. The purchaser's notice to the issuer must be sent by
405 e-mail to the issuer's e-mail address set forth in the
406 disclosure document provided to the purchaser or purchaser's
407 representative or by hand delivery, courier service, or other
408 method by which written proof of delivery to the issuer of the
409 purchaser's election to rescind the purchase is evidenced.

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410 (b) The following purchasers are excluded from the
411 calculation of the number of purchasers under subparagraph
412 (a)1.:

413 1. Any spouse or child of the purchaser or any related
414 family member who has the same principal residence as such
415 purchaser.

416 2. A trust or estate in which a purchaser, any of the
417 persons related to such purchaser specified in subparagraph 1.,
418 and any business entity specified in subparagraph 3.
419 collectively have more than 50 percent of the beneficial
420 interest, excluding any contingent interest.

421 3. A business entity in which a purchaser, any of the
422 persons related to such purchaser specified in subparagraph 1.,
423 and any trust or estate specified in subparagraph 2.
424 collectively are beneficial owners of more than 50 percent of
425 the equity securities or equity interest.

426 4. An accredited investor.

427
428 A business entity must be counted as one purchaser. However, if
429 the business entity is organized for the specific purpose of
430 acquiring the securities offered and is not an accredited
431 investor, each beneficial owner of equity securities or equity
432 interests in the business entity must be counted as a separate
433 purchaser. A noncontributory employee benefit plan within the
434 meaning of Title I of the Employee Retirement Income Security

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435 Act of 1974 must be counted as one purchaser if the trustee
436 makes all investment decisions for the plan.

437 (11) Offers or sales of securities by an issuer in a
438 transaction that meets all of the following conditions:

439 (a) The offers or sales of securities are made only to
440 persons who are, or who the issuer reasonably believes are,
441 accredited investors.

442 (b) The issuer is not a business entity that has an
443 undefined business operation, lacks a business plan, lacks a
444 stated investment goal for the funds being raised, or plans to
445 engage in a merger or acquisition with an unspecified business
446 entity.

447 (c) The issuer reasonably believes that all purchasers are
448 purchasing for investment and not with the view to or for sale
449 in connection with a distribution of the security. Any resale of
450 a security sold in reliance on this exemption within 12 months
451 after sale is presumed to be with a view to distribution and not
452 for investment, except a resale pursuant to a registration
453 statement effective under this chapter or pursuant to an
454 exemption available under this chapter, the Securities Act of
455 1933, as amended, or the rules and regulations adopted
456 thereunder.

457 (d)1. A general announcement of the proposed offering,
458 made by any means, includes only the following information:

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- 459 a. The name, address, and telephone number of the issuer
460 of the securities.
- 461 b. The name, a brief description, and price, if known, of
462 any security to be issued.
- 463 c. A brief description of the business.
- 464 d. The type, number, and aggregate amount of securities
465 being offered.
- 466 e. The name, address, and telephone number of the person
467 to contact for additional information.
- 468 f. A statement that:
- 469 (I) Sales will be made only to accredited investors;
470 (II) Money or other consideration is not being solicited
471 and will not be accepted by way of this general announcement;
472 and
- 473 (III) The securities have not been registered with or
474 approved by any state securities agency or the Securities and
475 Exchange Commission and are being offered and sold pursuant to
476 an exemption from registration.
- 477 2. The issuer, in connection with an offer, may provide
478 information in addition to the information provided in the
479 general announcement as specified in subparagraph 1. if such
480 information is delivered:
- 481 a. Through an electronic database that is restricted to
482 persons who have been prequalified as accredited investors; or

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483 b. After the issuer reasonably believes that the
484 prospective purchaser is an accredited investor.

485 (e) The issuer does not use telephone solicitation unless,
486 before placing the call, the issuer reasonably believes that the
487 prospective purchaser to be solicited is an accredited investor.

488 (f) The issuer files with the office a notice of
489 transaction, a consent to service of process, and a copy of the
490 general announcement within 15 days after the first sale is made
491 in this state. The commission may adopt by rule procedures for
492 filing documents by electronic means.

493 (g) Dissemination of the general announcement of the
494 proposed offering to persons who are not accredited investors
495 does not disqualify the issuer from claiming the exemption under
496 this subsection.

497 (12) The isolated sale or offer for sale of securities
498 when made by or on behalf of a bona fide owner, not the issuer
499 or underwriter, of the securities, who disposes of such
500 securities for the owner's own account, and such sale is not
501 made directly or indirectly for the benefit of the issuer or an
502 underwriter of such securities or for the direct or indirect
503 promotion of any scheme or enterprise with the intent of
504 violating or evading this chapter. For purposes of this
505 subsection, isolated offers or sales include, but are not
506 limited to, an isolated offer or sale made by or on behalf of a

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507 bona fide owner, rather than the issuer or underwriter, of the
508 securities if:

509 (a) The offer or sale of securities is in a transaction
510 satisfying all of the conditions specified in subparagraphs
511 (10) (a) 1., 2., and 3. and paragraph (10) (b); or

512 (b) The offer or sale of securities is in a transaction
513 exempt under s. 4(a) (1) of the Securities Act of 1933, as
514 amended, or under Securities and Exchange Commission rules or
515 regulations.

516 (13) By or for the account of a pledgeholder, a secured
517 party as defined in s. 679.1021(1) (ttt), or a mortgagee selling
518 or offering for sale or delivery in the ordinary course of
519 business and not for the purposes of avoiding the provisions of
520 this chapter, to liquidate a bona fide debt, a security pledged
521 in good faith as security for such debt.

522 (14) An unsolicited purchase or sale of securities on
523 order of, and as the agent for, another solely and exclusively
524 by a dealer registered pursuant to s. 517.12; provided that this
525 exemption applies solely and exclusively to such registered
526 dealers and does not authorize or permit the purchase or sale of
527 securities at the direction of, and as agent for, another by any
528 person other than a dealer so registered; and provided further
529 that such purchase or sale may not be directly or indirectly for
530 the benefit of the issuer or an underwriter of such securities

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531 or for the direct or indirect promotion of any scheme or
532 enterprise with the intent of violating or evading this chapter.

533 (15) A nonissuer transaction with a federal covered
534 adviser with investments under management in excess of \$100
535 million acting in the exercise of discretionary authority in a
536 signed record for the account of others.

537 (16) The sale by or through a registered dealer of any
538 securities option if, at the time of the sale of the option:

539 (a) The performance of the terms of the option is
540 guaranteed by any dealer registered under the Securities
541 Exchange Act of 1934, as amended, which guaranty and dealer are
542 in compliance with such requirements or rules as may be approved
543 or adopted by the commission; or

544 (b)1. Such options transactions are cleared by the Options
545 Clearing Corporation or any other clearinghouse recognized by
546 commission rule;

547 2. The option is not sold by or for the benefit of the
548 issuer of the underlying security; and

549 3. The underlying security may be purchased or sold on a
550 recognized securities exchange registered under the Securities
551 Exchange Act of 1934, as amended.

552 (17) (a) The offer or sale of securities, as agent or
553 principal, by a dealer registered pursuant to s. 517.12, when
554 such securities are offered or sold at a price reasonably

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555 related to the current market price of such securities, provided
556 that such securities are:

557 1. Securities of an issuer for which reports are required
558 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
559 of 1934, as amended;

560 2. Securities of a company registered under the Investment
561 Company Act of 1940, as amended;

562 3. Securities of an insurance company, as that term is
563 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
564 amended; or

565 4. Securities, other than any security that is a federal
566 covered security and is not subject to any registration or
567 filing requirements under this chapter, that have been listed or
568 approved for listing upon notice of issuance by a securities
569 exchange registered under the Securities Exchange Act of 1934,
570 as amended; and all securities senior to any securities so
571 listed or approved for listing upon notice of issuance, or
572 represented by subscription rights which have been so listed or
573 approved for listing upon notice of issuance, or evidences of
574 indebtedness guaranteed by an issuer with a class of securities
575 listed or approved for listing upon notice of issuance by such
576 securities exchange, such securities to be exempt only so long
577 as such listings or approvals remain in effect. The exemption
578 provided in this subparagraph does not apply when the securities
579 are suspended from listing approval for listing or trading.

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580 (b) The exemption provided in this subsection does not
581 apply if the sale is made for the direct or indirect benefit of
582 an issuer or a control person of such issuer or if such
583 securities constitute the whole or part of an unsold allotment
584 to, or subscription or participation by, a dealer as an
585 underwriter of such securities.

586 (c) The exemption provided in this subsection is not
587 available for any securities that have been denied registration
588 pursuant to s. 517.111. Additionally, the office may deny this
589 exemption with reference to any particular security, other than
590 a federal covered security, by order published in such manner as
591 the office finds proper.

592 (18) Any nonissuer transaction by a registered dealer, and
593 any resale transaction by a sponsor of a unit investment trust
594 registered under the Investment Company Act of 1940, as amended,
595 in a security of a class that has been outstanding in the hands
596 of the public for at least 90 days; provided that, at the time
597 of the transaction, the following conditions in paragraphs (a),
598 (b), and (c) and either paragraph (d) or (e) are met:

599 (a) The issuer of the security is actually engaged in
600 business and is not in the organizational stage or in bankruptcy
601 or receivership and is not a blank check, blind pool, or shell
602 company whose primary plan of business is to engage in a merger
603 or combination of the business with, or an acquisition of, an
604 unidentified person.

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605 (b) The security is sold at a price reasonably related to
606 the current market price of the security.

607 (c) The security does not constitute the whole or part of
608 an unsold allotment to, or a subscription or participation by,
609 the dealer as an underwriter of the security.

610 (d) The security is listed in a nationally recognized
611 securities manual designated by rule of the commission or a
612 document filed with and publicly viewable through the Securities
613 and Exchange Commission electronic data gathering and retrieval
614 system and contains:

615 1. A description of the business and operations of the
616 issuer;

617 2. The names of the issuer's officers and directors, if
618 any, or, in the case of an issuer not domiciled in the United
619 States, the corporate equivalents of such persons in the
620 issuer's country of domicile;

621 3. An audited balance sheet of the issuer as of a date
622 within 18 months before such transaction or, in the case of a
623 reorganization or merger in which parties to the reorganization
624 or merger had such audited balance sheet, a pro forma balance
625 sheet; and

626 4. An audited income statement for each of the issuer's
627 immediately preceding 2 fiscal years, or for the period of
628 existence of the issuer, if in existence for less than 2 years
629 or, in the case of a reorganization or merger in which the

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630 parties to the reorganization or merger had such audited income
631 statement, a pro forma income statement.

632 (e)1. The issuer of the security has a class of equity
633 securities listed on a national securities exchange registered
634 under the Securities Exchange Act of 1934, as amended;

635 2. The class of security is quoted, offered, purchased, or
636 sold through an alternative trading system registered under
637 Securities and Exchange Commission Regulation ATS, 17 C.F.R. s.
638 242.301, as amended. and the issuer of the security has made
639 current information publicly available in accordance with
640 Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s.
641 240.15c2-11, as amended;

642 3. The issuer of the security is a unit investment trust
643 registered under the Investment Company Act of 1940, as amended;

644 4. The issuer of the security has been engaged in
645 continuous business, including predecessors, for at least 3
646 years; or

647 5. The issuer of the security has total assets of at least
648 \$2 million based on an audited balance sheet as of a date within
649 18 months before such transaction or, in the case of a
650 reorganization or merger in which parties to the reorganization
651 or merger had such audited balance sheet, a pro forma balance
652 sheet.

653 (19) The offer or sale of any security effected by or
654 through a person in compliance with s. 517.12(16).

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655 (20) A nonissuer transaction in an outstanding security by
656 or through a dealer registered or exempt from registration under
657 this chapter, if all of the following are true:

658 (a) The issuer is a reporting issuer in a foreign
659 jurisdiction designated by this subsection or by commission
660 rule, and the issuer has been subject to continuous reporting
661 requirements in such foreign jurisdiction for not less than 180
662 days before the transaction.

663 (b) The security is listed on the securities exchange
664 designated by this subsection or by commission rule, is a
665 security of the same issuer which is of senior or substantially
666 equal rank to the listed security, or is a warrant or right to
667 purchase or subscribe to any such security.

668
669 For purposes of this subsection, Canada, together with its
670 provinces and territories, is designated as a foreign
671 jurisdiction, and The Toronto Stock Exchange, Inc., is
672 designated as a securities exchange. If, after an administrative
673 hearing in compliance with ss. 120.569 and 120.57, the office
674 finds that revocation is necessary or appropriate in furtherance
675 of the public interest and for the protection of investors, it
676 may revoke the designation of a securities exchange under this
677 subsection.

678 (21) Other transactions exempted by commission rule upon a
679 finding by the office that the application of s. 517.07 to a

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680 particular transaction is not necessary or appropriate in
681 furtherance of the public interest and for the protection of
682 investors due to the small dollar amount of the securities
683 involved or the limited character of the offering. In
684 conjunction with its adoption by rule of such exemptions, the
685 commission may exempt persons selling or offering for sale
686 securities in such a transaction from the registration
687 requirements of s. 517.12. A rule adopted by the commission
688 under this subsection may not have the effect of narrowing or
689 limiting any exemption specified in this section.

690 Section 4. Section 517.0611, Florida Statutes, is amended
691 to read:

692 517.0611 The Florida Limited Offering Exemption ~~Intrastate~~
693 ~~crowdfunding.~~—

694 (1) This section may be cited as ~~the~~ "The Florida Limited
695 Offering ~~Intrastate Crowdfunding~~ Exemption."

696 (2) The registration provisions of s. 517.07 do not apply
697 to a securities transaction conducted in accordance with this
698 section; however, such transaction is subject to s. 517.301
699 ~~Notwithstanding any other provision of this chapter, an offer or~~
700 ~~sale of a security by an issuer is an exempt transaction under~~
701 ~~s. 517.061 if the offer or sale is conducted in accordance with~~
702 ~~this section. The exemption provided in this section may not be~~
703 ~~used in conjunction with any other exemption under s. 517.051 or~~
704 ~~s. 517.061.~~

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705 (3) The offer or sale of securities under this section
706 must be conducted in accordance with the requirements of the
707 federal exemption for intrastate offerings in s. 3(a)(11) of the
708 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, ~~and~~
709 ~~United States~~ Securities and Exchange Commission Rule 147, 17
710 C.F.R. s. 230.147, as amended, or Securities and Exchange
711 Commission Rule 147A, 17. C.F.R. s. 230.147A, as amended ~~adopted~~
712 ~~pursuant to the Securities Act of 1933.~~

713 (4) An issuer ~~must~~:

714 (a) Must be a for-profit business entity that maintains
715 ~~formed under the laws of the state, be registered with the~~
716 ~~Secretary of State, maintain~~ its principal place of business ~~in~~
717 ~~the state,~~ and derives ~~derive~~ its revenues primarily from
718 operations in this ~~the~~ state.

719 (b) Must conduct transactions for an ~~the~~ offering of \$2.5
720 million or more through a dealer registered with the office or
721 an intermediary registered under s. 517.12 ~~s. 517.12(19)~~. For an
722 offering of less than \$2.5 million, the issuer may, but is not
723 required to, use such a dealer or intermediary.

724 (c) May not be, ~~either~~ before or as a result of the
725 offering, an investment company as defined in s. 3 of the
726 Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended,
727 or subject to the reporting requirements of s. 13 or s. 15(d) of
728 the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s.
729 78o(d), as amended.

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730 (d) May not be a business entity that has ~~company with~~ an
731 undefined business operation, ~~a company that~~ lacks a business
732 plan, ~~a company that~~ lacks a stated investment goal for the
733 funds being raised, or ~~a company that~~ plans to engage in a
734 merger or acquisition with an unspecified business entity.

735 (e) May not be subject to a disqualification established
736 by the commission ~~or office~~ or a disqualification described in
737 s. 517.0616 or s. 517.1611 ~~or United States Securities and~~
738 ~~Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted~~
739 ~~pursuant to the Securities Act of 1933~~. Each director, officer,
740 manager, managing member, or general partner, or person
741 occupying a similar status or performing a similar function, or
742 person holding more than 20 percent of the equity interest
743 ~~shares~~ of the issuer, is subject to this paragraph requirement.

744 (f) Must deposit all funds received from investors in an
745 account in ~~Execute an escrow agreement with~~ a federally insured
746 financial institution authorized to do business in this the
747 state, and maintain all such funds in the account until the
748 target offering amount has been reached or the offering has been
749 terminated or has expired. If the target offering amount has not
750 been reached within the period specified by the issuer in the
751 disclosure statement provided to investors, or if the offering
752 is terminated or expires, the issuer must refund invested funds
753 to all investors within 10 business days after such occurrence
754 ~~for the deposit of investor funds, and ensure that all offering~~

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755 ~~proceeds are provided to the issuer only when the aggregate~~
756 ~~capital raised from all investors is equal to or greater than~~
757 ~~the target offering amount.~~

758 (g) Must use all funds in accordance with the use of
759 proceeds as disclosed to prospective investors ~~Allow investors~~
760 ~~to cancel a commitment to invest within 3 business days before~~
761 ~~the offering deadline, as stated in the disclosure statement,~~
762 ~~and issue refunds to all investors if the target offering amount~~
763 ~~is not reached by the offering deadline.~~

764 (5) The issuer must file a notice of the offering with the
765 office, in writing or in electronic form, in a format prescribed
766 by commission rule, together with a nonrefundable filing fee of
767 \$200. The filing fee must ~~shall~~ be deposited into the Regulatory
768 Trust Fund of the office. The commission may adopt rules
769 establishing procedures for the deposit of fees and the filing
770 of documents by electronic means if the procedures provide the
771 office with the information and data required by this section. A
772 notice is effective upon receipt, by the office, of the
773 completed form, filing fee, and an irrevocable written consent
774 to service of civil process, similar to that provided for in s.
775 517.101. The notice may be terminated by filing with the office
776 a notice of termination. The notice and offering expire 12
777 months after filing the notice with the office and are not
778 eligible for renewal. The notice must:

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779 (a) Be filed with the office at least 10 days before the
780 issuer commences an offering of securities or the offering is
781 displayed on a website of an intermediary in reliance upon the
782 exemption provided by this section.

783 (b) Indicate that the issuer is conducting an offering in
784 reliance upon the exemption provided by this section.

785 (c) Contain the name and contact information, including an
786 e-mail address, of the issuer.

787 (d) Identify any predecessors, owners, officers,
788 directors, general partners, managers, managing members, and
789 ~~control persons~~ or any person occupying a similar status or
790 performing a similar function of the issuer, including that
791 person's title, ~~his or her~~ status as a partner, trustee, or sole
792 proprietor or a similar role, and ~~his or her~~ ownership
793 percentage.

794 (e) Identify the federally insured financial institution
795 ~~into, authorized to do business in the state, in~~ which investor
796 funds will be deposited, ~~in accordance with the escrow~~
797 ~~agreement.~~

798 (f) ~~Require an attestation under oath that the issuer, its~~
799 ~~predecessors, affiliated issuers, directors, officers, and~~
800 ~~control persons, or any other person occupying a similar status~~
801 ~~or performing a similar function, are not currently and have not~~
802 ~~been within the past 10 years the subject of regulatory or~~
803 ~~criminal actions involving fraud or deceit.~~

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804 ~~(g) Include documentation verifying that the issuer is~~
805 ~~organized under the laws of the state and authorized to do~~
806 ~~business in the state.~~

807 ~~(h) If applicable,~~ include the intermediary's website
808 address where the issuer's securities will be offered.

809 ~~(g)(i) State~~ Include the target offering amount and the
810 date, not to exceed 365 days, by which the target amount must be
811 reached in order to avoid termination of the offering.

812 (6) The issuer must amend the notice form within 10
813 business ~~30~~ days after any material information contained in the
814 notice becomes inaccurate ~~for any reason~~. The commission may
815 require, by rule, an issuer who has filed a notice under this
816 section to file amendments with the office.

817 (7) The issuer may engage in general advertising and
818 general solicitation of the offering to prospective investors.
819 Any oral or written statements in advertising or solicitation of
820 the offering which contain a material misstatement, or which
821 fail to disclose material information, are subject to
822 enforcement under this chapter. Any general advertising or other
823 general announcement must state that the offering is limited and
824 open only to residents of this state.

825 (8) The issuer must provide a disclosure statement to
826 ~~investors and the dealer or intermediary, along with a copy to~~
827 ~~the office at the time that the notice is filed, and make~~
828 ~~available to potential investors through the dealer or~~

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829 intermediary, as applicable; to the office at the time that the
830 notice is filed; and to each prospective investor at least 3
831 days before the investor's commitment to purchase or payment of
832 any consideration. The~~7~~a disclosure statement must contain
833 ~~containing~~ material information about the issuer and the
834 offering, including all of the following:

835 (a) The name, legal status, physical address, e-mail
836 address, and website address of the issuer.

837 (b) The names of the directors, officers, managers,
838 managing members, and general partners and any person occupying
839 a similar status or performing a similar function, and the name
840 and ownership percentage of each person holding more than 20
841 percent of the issuer's equity interests ~~shares of the issuer.~~

842 (c) A description of the current business ~~of the issuer~~
843 and ~~the~~ anticipated business plan of the issuer.

844 (d) A description of the stated purpose and intended use
845 of the proceeds of the offering.

846 (e) The target offering amount and~~7~~ the deadline to reach
847 the target offering amount, ~~and regular updates regarding the~~
848 ~~progress of the issuer in meeting the target offering amount.~~

849 (f) The price to the public of the securities ~~or the~~
850 ~~method for determining the price. However, before the sale, each~~
851 ~~investor must receive in writing the final price and all~~
852 ~~required disclosures and have an opportunity to rescind the~~
853 ~~commitment to purchase the securities.~~

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854 (g) A description of the ownership and capital structure
855 of the issuer, including:

856 1. Terms of the securities being offered and each class of
857 security of the issuer, including how those terms may be
858 modified, and a summary of the differences between such
859 securities, including how the rights of the securities being
860 offered may be materially limited, diluted, or qualified by
861 rights of any other class of security of the issuer.

862 2. A description of how the exercise of the rights held by
863 the principal equity holders ~~shareholders~~ of the issuer could
864 negatively impact the purchasers of the securities being
865 offered.

866 ~~3. The name and ownership level of each existing~~
867 ~~shareholder who owns more than 20 percent of any class of the~~
868 ~~securities of the issuer.~~

869 ~~4. How the securities being offered are being valued, and~~
870 ~~examples of methods of how such securities may be valued by the~~
871 ~~issuer in the future, including during subsequent corporate~~
872 ~~actions.~~

873 ~~5. The risks to purchasers of the securities relating to~~
874 ~~minority ownership in the issuer, the risks associated with~~
875 ~~corporate action, including additional issuances of shares, a~~
876 ~~sale of the issuer or of assets of the issuer, or transactions~~
877 ~~with related parties.~~

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878 (h) A statement that the security being offered is not
879 registered under federal or state securities laws and that the
880 securities are subject to the limitation on resale contained in
881 Securities and Exchange Commission Rule 147 or Rule 147A.

882 (i) Any issuer plans, formal or informal, to offer
883 additional securities in the future.

884 (j) The risks to purchasers of the securities relating to
885 minority ownership in the issuer.

886 (k)~~(h)~~ A description of the financial condition of the
887 issuer.

888 1. For offerings that, in combination with all other
889 offerings of the issuer within the preceding 12-month period,
890 have ~~target~~ offering amounts of \$500,000 ~~\$100,000~~ or less, the
891 financial statements of the issuer may be, but are not required
892 to be, included description must include the most recent income
893 tax return filed by the issuer, if any, and a financial
894 statement that must be certified by the principal executive
895 officer of the issuer as true and complete in all material
896 respects.

897 2. For offerings that, in combination with all other
898 offerings of the issuer within the preceding 12-month period,
899 have offering amounts of more than \$500,000 ~~\$100,000~~, but not
900 more than \$2.5 million ~~\$500,000~~, the description must include
901 financial statements prepared in accordance with generally
902 accepted accounting principles and reviewed by a certified

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903 public accountant, as defined in s. 473.302, who is independent
904 of the issuer, using professional standards and procedures ~~for~~
905 ~~such review~~ or standards and procedures established by
906 commission the office, by rule, for such purpose.

907 3. For offerings that, in combination with all other
908 offerings of the issuer within the preceding 12-month period,
909 have ~~target~~ offering amounts of more than \$2.5 million ~~\$500,000~~,
910 the description must include audited financial statements
911 prepared in accordance with generally accepted accounting
912 principles by a certified public accountant, as defined in s.
913 473.302, who is independent of the issuer, and other
914 requirements as the commission may establish by rule.

915 (1)(i) The following statement in boldface, conspicuous
916 type on the front page of the disclosure statement:

917
918 Neither the Securities and Exchange Commission nor any
919 state securities commission has approved or
920 disapproved these securities or determined if this
921 disclosure statement is truthful or complete. Any
922 representation to the contrary is a criminal offense.

923
924 These securities are offered under, and will be sold
925 in reliance upon, an exemption from the registration
926 requirements of federal and Florida securities laws.
927 ~~Consequently,~~ Neither the Federal Government nor the

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928 State of Florida has reviewed the accuracy or
929 completeness of any offering materials. In making an
930 investment decision, investors must rely on their own
931 examination of the issuer and the terms of the
932 offering, including the merits and risks involved.
933 These securities are subject to restrictions on
934 transferability and resale and may not be transferred
935 or resold except as specifically authorized by
936 applicable federal and state securities laws.
937 Investing in these securities involves a speculative
938 risk, and investors should be able to bear the loss of
939 their entire investment.

940 ~~(8) The issuer shall provide to the office a copy of the~~
941 ~~escrow agreement with a financial institution authorized to~~
942 ~~conduct business in this state. All investor funds must be~~
943 ~~deposited in the escrow account. The escrow agreement must~~
944 ~~require that all offering proceeds be released to the issuer~~
945 ~~only when the aggregate capital raised from all investors is~~
946 ~~equal to or greater than the minimum target offering amount~~
947 ~~specified in the disclosure statement as necessary to implement~~
948 ~~the business plan, and that all investors will receive a full~~
949 ~~return of their investment commitment if that target offering~~
950 ~~amount is not raised by the date stated in the disclosure~~
951 ~~statement.~~

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952 (9) The sum of all cash and other consideration received
953 for sales of a security under this section may not exceed \$5 ~~\$1~~
954 million, less the aggregate amount received for all sales of
955 securities by the issuer within the 12 months preceding the
956 first offer or sale made in reliance upon this exemption. Offers
957 or sales to a person owning 20 percent or more of the
958 outstanding equity interests ~~shares~~ of any class or classes of
959 securities or to an officer, director, manager, managing member,
960 general partner, or trustee, or a person occupying a similar
961 status, do not count toward this limitation.

962 (10) Unless the investor is an accredited investor, or the
963 issuer reasonably believes that the investor is an accredited
964 investor ~~as defined by Rule 501 of Regulation D, adopted~~
965 ~~pursuant to the Securities Act of 1933,~~ the aggregate amount of
966 securities sold by an issuer to an investor ~~in transactions~~
967 ~~exempt from registration requirements under this subsection~~ in a
968 12-month period may not exceed \$10,000÷

969 ~~(a) The greater of \$2,000 or 5 percent of the annual~~
970 ~~income or net worth of such investor, if the annual income or~~
971 ~~the net worth of the investor is less than \$100,000.~~

972 ~~(b) Ten percent of the annual income or net worth of such~~
973 ~~investor, not to exceed a maximum aggregate amount sold of~~
974 ~~\$100,000, if either the annual income or net worth of the~~
975 ~~investor is equal to or exceeds \$100,000.~~

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976 ~~(11) The issuer shall file with the office and provide to~~
977 ~~investors free of charge an annual report of the results of~~
978 ~~operations and financial statements of the issuer within 45 days~~
979 ~~after the end of its fiscal year, until no securities under this~~
980 ~~offering are outstanding. The annual reports must meet the~~
981 ~~following requirements:~~

982 ~~(a) Include an analysis by management of the issuer of the~~
983 ~~business operations and the financial condition of the issuer,~~
984 ~~and disclose the compensation received by each director,~~
985 ~~executive officer, and person having an ownership interest of 20~~
986 ~~percent or more of the issuer, including cash compensation~~
987 ~~earned since the previous report and on an annual basis, and any~~
988 ~~bonuses, stock options, other rights to receive securities of~~
989 ~~the issuer, or any affiliate of the issuer, or other~~
990 ~~compensation received.~~

991 ~~(b) Disclose any material change to information contained~~
992 ~~in the disclosure statements which was not disclosed in a~~
993 ~~previous report.~~

994 ~~(11)(12)(a)~~ A notice-filing under this section must ~~shall~~
995 be summarily suspended by the office if:

996 (a) The payment for the filing is dishonored by the
997 financial institution upon which the funds are drawn. For
998 purposes of s. 120.60(6), failure to pay the required notice
999 filing fee constitutes an immediate and serious danger to the
1000 public health, safety, and welfare. The office shall enter a

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1001 final order revoking a notice-filing in which the payment for
1002 the filing is dishonored by the financial institution upon which
1003 the funds are drawn; ~~or-~~

1004 (b) ~~A notice-filing under this section shall be summarily~~
1005 ~~suspended by the office if~~ The issuer made a material false
1006 statement in the issuer's notice-filing. The summary suspension
1007 remains ~~shall remain~~ in effect until a final order is entered by
1008 the office. For purposes of s. 120.60(6), a material false
1009 statement made in the issuer's notice-filing constitutes an
1010 immediate and serious danger to the public health, safety, and
1011 welfare. If an issuer made a material false statement in the
1012 issuer's notice-filing, the office must ~~shall~~ enter a final
1013 order revoking the notice-filing, issue a fine as prescribed by
1014 s. 517.191(9) ~~s. 517.221(3)~~, and issue permanent bars under s.
1015 517.191(10) ~~s. 517.221(4)~~ to the issuer and all owners,
1016 officers, directors, general partners, and control persons, or
1017 any person occupying a similar status or performing a similar
1018 function of the issuer, including title; status as a partner,
1019 trustee, sole proprietor, or similar role; and ownership
1020 percentage.

1021 ~~(12)-(13)~~ If the issuer employs the services of an
1022 intermediary, the ~~An~~ intermediary must:

1023 (a) Take measures, as established by commission rule, to
1024 reduce the risk of fraud with respect to the transactions,
1025 ~~including verifying that the issuer is in compliance with the~~

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1026 ~~requirements of this section and, if necessary, denying an~~
1027 ~~issuer access to its platform if the intermediary believes it is~~
1028 ~~unable to adequately assess the risk of fraud of the issuer or~~
1029 ~~its potential offering.~~

1030 (b) Provide ~~basic~~ information on its website regarding the
1031 high risk of investment in and limitation on the resale of
1032 exempt securities and the potential for loss of an entire
1033 investment. The ~~basic~~ information must include, but need not be
1034 limited to, all of the following:

1035 1. A description of the financial institution into which
1036 investor funds will be deposited ~~escrow agreement that the~~
1037 ~~issuer has executed~~ and the conditions for the use ~~release~~ of
1038 such funds by ~~to~~ the issuer ~~in accordance with the agreement and~~
1039 ~~subsection (4).~~

1040 2. A description of whether financial information provided
1041 by the issuer has been audited by an independent certified
1042 public accountant, as defined in s. 473.302.

1043 (c) Obtain from each prospective investor a zip code or
1044 residence address, a copy of a driver license, and any other
1045 proof of residency in order for the issuer or intermediary to
1046 reasonably believe that the potential investor is a resident of
1047 this state. The commission may adopt rules authorizing
1048 additional forms of identification and prescribing the process
1049 for verifying any identification presented by the prospective
1050 investor.

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1051 (d) Obtain information sufficient for the issuer or
1052 intermediary to reasonably believe that a particular prospective
1053 investor is an accredited investor

1054 ~~(c) Obtain a zip code or residence address from each~~
1055 ~~potential investor who seeks to view information regarding~~
1056 ~~specific investment opportunities, in order to confirm that the~~
1057 ~~potential investor is a resident of the state.~~

1058 ~~(d) Obtain and verify a valid Florida driver license~~
1059 ~~number or Florida identification card number from each investor~~
1060 ~~before purchase of a security to confirm that the investor is a~~
1061 ~~resident of the state. The commission may adopt rules~~
1062 ~~authorizing additional forms of identification and prescribing~~
1063 ~~the process for verifying any identification presented by the~~
1064 ~~investor.~~

1065 ~~(e) Obtain an affidavit from each investor stating that~~
1066 ~~the investment being made by the investor is consistent with the~~
1067 ~~income requirements of subsection (10).~~

1068 ~~(f) Direct the release of investor funds in escrow in~~
1069 ~~accordance with subsection (4).~~

1070 ~~(g) Direct investors to transmit funds directly to the~~
1071 ~~financial institution designated in the escrow agreement to hold~~
1072 ~~the funds for the benefit of the investor.~~

1073 (e)(h) Provide a monthly update for each offering, after
1074 the first full month after the date of the offering. The update
1075 must be accessible on the intermediary's website and must

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1076 display the date and amount of each sale of securities, and each
1077 cancellation of commitment to invest, in the previous calendar
1078 month.

1079 ~~(i) Require each investor to certify in writing, including~~
1080 ~~as part of such certification his or her signature and his or~~
1081 ~~her initials next to each paragraph of the certification, as~~
1082 ~~follows:~~

1083 ~~I understand and acknowledge that:~~

1084 ~~I am investing in a high-risk, speculative business~~
1085 ~~venture. I may lose all of my investment, and I can afford the~~
1086 ~~loss of my investment.~~

1087 ~~This offering has not been reviewed or approved by any~~
1088 ~~state or federal securities commission or other regulatory~~
1089 ~~authority and no regulatory authority has confirmed the accuracy~~
1090 ~~or determined the adequacy of any disclosure made to me relating~~
1091 ~~to this offering.~~

1092 ~~The securities I am acquiring in this offering are illiquid~~
1093 ~~and are subject to possible dilution. There is no ready market~~
1094 ~~for the sale of the securities. It may be difficult or~~
1095 ~~impossible for me to sell or otherwise dispose of the~~
1096 ~~securities, and I may be required to hold the securities~~
1097 ~~indefinitely.~~

1098 ~~I may be subject to tax on my share of the taxable income~~
1099 ~~and losses of the issuer, whether or not I have sold or~~

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1100 ~~otherwise disposed of my investment or received any dividends or~~
1101 ~~other distributions from the issuer.~~

1102 ~~By entering into this transaction with the issuer, I am~~
1103 ~~affirmatively representing myself as being a Florida resident at~~
1104 ~~the time this contract is formed, and if this representation is~~
1105 ~~subsequently shown to be false, the contract is void.~~

1106 ~~If I resell any of the securities I am acquiring in this~~
1107 ~~offering to a person that is not a Florida resident within 9~~
1108 ~~months after the closing of the offering, my contract with the~~
1109 ~~issuer for the purchase of these securities is void.~~

1110 ~~(j) Require each investor to answer questions~~
1111 ~~demonstrating an understanding of the level of risk generally~~
1112 ~~applicable to investments in startups, emerging businesses, and~~
1113 ~~small issuers, and an understanding of the risk of illiquidity.~~

1114 ~~(f)(k) Take reasonable steps to protect personal~~
1115 ~~information collected from investors, as required by s. 501.171.~~

1116 ~~(g)(l) Prohibit its directors, and officers, managers,~~
1117 ~~managing members, general partners, employees, and agents from~~
1118 ~~having any financial interest in the issuer using its services.~~

1119 ~~(m) Implement written policies and procedures that are~~
1120 ~~reasonably designed to achieve compliance with federal and state~~
1121 ~~securities laws; comply with the anti-money laundering~~
1122 ~~requirements of 31 C.F.R. chapter X applicable to registered~~
1123 ~~brokers; and comply with the privacy requirements of 17 C.F.R.~~
1124 ~~part 248 relating to brokers.~~

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1125 ~~(13)-(14)~~ An intermediary not registered as a dealer under
1126 s. 517.12(5) may not:

1127 (a) Offer investment advice or recommendations. A refusal
1128 by an intermediary to post an offering that it deems not
1129 credible or that represents a potential for fraud may not be
1130 construed as an offer of investment advice or recommendation.

1131 (b) Solicit purchases, sales, or offers to buy securities
1132 offered or displayed on its website.

1133 (c) Compensate employees, agents, or other persons for the
1134 solicitation of, or based on the sale of, securities offered or
1135 displayed on its website.

1136 (d) Hold, manage, possess, or otherwise handle investor
1137 funds or securities.

1138 (e) Compensate promoters, finders, or lead generators for
1139 providing the intermediary with the personal identifying
1140 information of any prospective ~~potential~~ investor.

1141 (f) Engage in any other activities set forth by commission
1142 rule.

1143 (14) If the issuer does not employ a dealer or an
1144 intermediary for an offering pursuant to the exemption created
1145 under this section, the issuer must fulfill each of the
1146 obligations specified in paragraphs (12)(c)-(f).

1147 (15) Any sale made pursuant to the exemption created under
1148 this section is voidable by the purchaser within 3 days after
1149 the first tender of consideration is made by such purchaser to

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1150 the issuer by notifying the issuer that the purchaser expressly
1151 voids the purchase. The purchaser's notice to the issuer must be
1152 sent by e-mail to the issuer's e-mail address set forth in the
1153 disclosure statement that is provided to the purchaser or
1154 purchaser's representative or by certified mail or overnight
1155 delivery service with proof of delivery to the mailing address
1156 set forth in the disclosure statement ~~All funds received from~~
1157 ~~investors must be directed to the financial institution~~
1158 ~~designated in the escrow agreement to hold the funds and must be~~
1159 ~~used in accordance with representations made to investors by the~~
1160 ~~intermediary. If an investor cancels a commitment to invest, the~~
1161 ~~intermediary must direct the financial institution designated to~~
1162 ~~hold the funds to promptly refund the funds of the investor.~~

1163 Section 5. Section 517.0612, Florida Statutes, is created
1164 to read:

1165 517.0612 Florida Invest Local Exemption.-

1166 (1) This section may be cited as the "Florida Invest Local
1167 Exemption."

1168 (2) The registration provisions of s. 517.07 do not apply
1169 to a securities transaction conducted in accordance with this
1170 section; however, such transaction is subject to s. 517.301.

1171 (3) The offer or sale of securities under this section
1172 must meet the requirements of the federal exemption for
1173 intrastate offerings in s. 3(a)(11) of the Securities Act of

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1174 1933, Securities and Exchange Commission Rule 147, or Securities
1175 and Exchange Commission Rule 147A, as amended.

1176 (4) The issuer must be a for-profit business entity
1177 registered with the Department of State which has its principal
1178 place of business in this state. The issuer may not be, before
1179 or as a result of the offering:

1180 (a) An investment company as defined in the Investment
1181 Company Act of 1940, as amended;

1182 (b) Subject to the reporting requirements of the
1183 Securities and Exchange Act of 1934, as amended;

1184 (c) A business entity that has an undefined business
1185 operation, lacks a business plan, lacks a stated investment goal
1186 for the funds being raised, or plans to engage in a merger or
1187 acquisition with an unspecified business entity; or

1188 (d) Subject to a disqualification as provided in s.
1189 517.0616.

1190 (5) The sum of all cash and other consideration received
1191 from all sales of the securities in reliance upon the exemption
1192 under this section may not exceed \$500,000, less the aggregate
1193 amount received for all sales of securities by the issuer within
1194 the 12 months before the first offer or sale made in reliance on
1195 this exemption.

1196 (6) (a) The issuer may not accept more than \$10,000 from
1197 any single purchaser unless any of the following apply:

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1198 1. The issuer reasonably believes that the purchaser is an
1199 accredited investor.

1200 2. The purchaser is an officer, director, partner, or
1201 trustee, or an individual occupying a similar status or
1202 performing similar functions, of the issuer.

1203 3. The purchaser is an owner of 10 percent or more of the
1204 issuer's outstanding equity.

1205 (b) For purposes of this subsection, the following persons
1206 must be treated collectively as a single purchaser:

1207 1. Any spouse or child of the purchaser or any related
1208 family member who has the same primary residence as the
1209 purchaser.

1210 2. Any business entity of which the purchaser and any
1211 person related to the purchaser as provided in subparagraph 1.
1212 collectively own more than 50 percent of the equity interest.

1213 (7) The issuer may engage in general advertising and
1214 general solicitation of the offering. Any general advertising or
1215 other general announcement must state that the offer is limited
1216 and open only to residents of this state. Any oral or written
1217 statements in advertising or solicitation of the offer which
1218 contain a material misstatement, or which fail to disclose
1219 material information, are subject to enforcement under this
1220 chapter.

1221 (8) A purchaser must receive, at least 3 business days
1222 before any binding commitment to purchase or consideration paid,

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1223 a disclosure statement that provides material information
1224 regarding the issuer, including, but not limited to, all of the
1225 following information:

1226 (a) The issuer's name, type of entity, and contact
1227 information.

1228 (b) The name and contact information of each director,
1229 officer, or other manager of the issuer.

1230 (c) A description of the issuer's business.

1231 (d) A description of the security being offered.

1232 (e) The total amount of the offering.

1233 (f) The intended use of proceeds from the sale of the
1234 securities.

1235 (g) The target offering amount.

1236 (h) A statement that if the target offering amount is not
1237 obtained in cash or in the value of other tangible consideration
1238 received on a date that is no more than 180 days after the
1239 commencement of the offering, the offering will be terminated,
1240 and any funds or other consideration received from purchasers
1241 must be promptly returned.

1242 (i) A statement that the security being offered is not
1243 registered under federal or state securities laws and that the
1244 securities are subject to the limitation on resale contained in
1245 Securities and Exchange Commission Rule 147 or Rule 147A.

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1246 (j) The names and addresses of all persons who will be
1247 involved in the offer and sale of securities on behalf of the
1248 issuer.

1249 (k) The name of the bank or other depository institution
1250 into which investor funds will be deposited.

1251 (l) The following statement in boldface, conspicuous type:

1252
1253 Neither the Securities and Exchange Commission nor any
1254 state securities commission has approved or
1255 disapproved these securities or determined that this
1256 disclosure statement is truthful or complete. Any
1257 representation to the contrary is a criminal offense.

1258
1259 (9) All funds received from investors must be deposited
1260 into a bank or depository institution authorized to do business
1261 in this state. The issuer may not withdraw any amount of the
1262 offering proceeds unless the target offering amount has been
1263 received.

1264 (10) The issuer must file a notice of the offering with
1265 the office, in writing or in electronic form, in a format
1266 prescribed by commission rule, no less than 5 business days
1267 before the offering commences, along with the disclosure
1268 statement described in subsection (8). If there are any material
1269 changes to the information previously submitted, the issuer,

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1270 within 3 business days after such material change, must file an
1271 amended notice.

1272 (11) An individual, entity, or entity employee who acts as
1273 an agent for the issuer in the offer or sale of securities and
1274 is not registered as a dealer under this chapter may not do
1275 either of the following:

1276 (a) Receive compensation based upon the solicitation of
1277 purchases, sales, or offers to purchase the securities.

1278 (b) Take custody of investor funds or securities.

1279 (12) Any sale made pursuant to the exemption created under
1280 this section is voidable by the purchaser within 3 days after
1281 the first tender of consideration is made by such purchaser to
1282 the issuer by notifying the issuer that the purchaser expressly
1283 voids the purchase. The purchaser's notice to the issuer must be
1284 sent by e-mail to the issuer's e-mail address set forth in the
1285 disclosure statement that is provided to a purchaser or the
1286 purchaser's representative or by hand delivery, courier service,
1287 or other method by which written proof of delivery to the issuer
1288 of the purchaser's election to rescind the purchase is
1289 evidenced.

1290 Section 6. Section 517.0613, Florida Statutes, is created
1291 to read:

1292 517.0613 Failure to comply with a securities registration
1293 exemption.-

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1294 (1) Failure to meet the requirements for any exemption
1295 from securities registration does not preclude the issuer from
1296 claiming the availability of any other applicable state or
1297 federal exemption.

1298 (2) The exemptions created under ss. 517.061, 517.0611,
1299 and 517.0612 are not available to an issuer for any transaction
1300 or series of transactions that, although in technical compliance
1301 with the applicable provisions, is part of a plan or scheme to
1302 evade the registration provisions of s. 517.07, and registration
1303 under s. 517.07 is required in connection with such
1304 transactions.

1305 Section 7. Section 517.0614, Florida Statutes, is created
1306 to read:

1307 517.0614 Integration of offerings.—

1308 (1) If the safe harbors in subsection (2) do not apply, in
1309 determining whether two or more offerings are to be treated as
1310 one for the purpose of registration or qualifying for an
1311 exemption from registration under this chapter, offers and sales
1312 may not be integrated if, based on the particular facts and
1313 circumstances, the issuer can establish either that each
1314 offering complies with the registration requirements of this
1315 chapter, or that an exemption from registration is available for
1316 the particular offering, provided that any transaction or series
1317 of transactions that, although in technical compliance with this
1318 chapter, is part of a plan or scheme to evade the registration

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1319 requirements of this chapter will not have the effect of
1320 avoiding integration. In making this determination:

1321 (a) For an exempt offering prohibiting general
1322 solicitation, the issuer must have a reasonable belief, based on
1323 the facts and circumstances, with respect to each purchaser in
1324 the exempt offering prohibiting general solicitation, that the
1325 issuer or any person acting on the issuer's behalf:

1326 1. Did not solicit such purchaser through the use of
1327 general solicitation; or

1328 2. Established a substantive relationship with such
1329 purchaser before the commencement of the exempt offering
1330 prohibiting general solicitation, provided that a purchaser
1331 previously solicited through the use of general solicitation is
1332 not deemed to have been solicited through the use of general
1333 solicitation in the current offering if, during the 45 calendar
1334 days following such previous general solicitation:

1335 a. No offer or sale of the same or similar class of
1336 securities has been made by or on behalf of the issuer,
1337 including to such purchaser; and

1338 b. The issuer or any person acting on the issuer's behalf
1339 has not solicited such purchaser through the use of general
1340 solicitation for any other security.

1341 (b) For two or more concurrent exempt offerings permitting
1342 general solicitation, in addition to satisfying the requirements
1343 of the particular exemption relied on, general solicitation

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1344 offering materials for one offering that includes information
1345 about the material terms of a concurrent offering under another
1346 exemption may constitute an offer of securities in such other
1347 offering, and therefore the offer must comply with all the
1348 requirements for, and restrictions on, offers under the
1349 exemption being relied on for such other offering, including any
1350 legend requirements and communications restrictions.

1351 (2) The integration analysis required by subsection (1) is
1352 not required if any of the following nonexclusive safe harbors
1353 apply:

1354 (a) An offering commenced more than 30 calendar days
1355 before the commencement of any other offering, or more than 30
1356 calendar days after the termination or completion of any other
1357 offering, may not be integrated with such other offering,
1358 provided that for an exempt offering for which general
1359 solicitation is not permitted which follows by 30 calendar days
1360 or more an offering that allows general solicitation, paragraph
1361 (1)(a) applies.

1362 (b) Offers and sales made in compliance with any of the
1363 following provisions are not subject to integration with other
1364 offerings:

1365 1. Section 517.051 or s. 517.061, except s. 517.061(9),
1366 (10), or (11).

1367 2. Section 517.0611 or s. 517.0612.

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1368 Section 8. Section 517.0615, Florida Statutes, is created
1369 to read:

1370 517.0615 Solicitations of interest.-

1371 (1) A communication may not be deemed to constitute
1372 general solicitation or general advertising if the communication
1373 is made in connection with a seminar or meeting in which more
1374 than one issuer participates and which is sponsored by a
1375 college, a university, or another institution of higher
1376 education; a state or local government or an instrumentality
1377 thereof; a nonprofit chamber of commerce or other nonprofit
1378 organization; or an angel investor group, incubator, or
1379 accelerator, if all of the following apply:

1380 (a) Advertising for the seminar or meeting does not
1381 reference a specific offering of securities by the issuer.

1382 (b) The sponsor of the seminar or meeting does not do any
1383 of the following:

1384 1. Make investment recommendations or provide investment
1385 advice to attendees of the seminar or meeting.

1386 2. Engage in any investment negotiations between the
1387 issuer and investors attending the seminar or meeting.

1388 3. Charge attendees of the seminar or meeting any fees,
1389 other than reasonable administrative fees.

1390 4. Receive any compensation for making introductions
1391 between seminar or meeting attendees and issuers or for
1392 investment negotiations between such parties.

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1393 5. Receive any compensation with respect to the seminar or
1394 meeting, which compensation would require registration or
1395 notice-filing under this chapter, the Securities Exchange Act of
1396 1934, 15 U.S.C. ss. 78a et seq., as amended, or the Investment
1397 Advisers Act of 1940, 15 U.S.C. s. 80b-1 et seq., as amended.
1398 The sponsorship or participation in the seminar or meeting does
1399 not by itself require registration or notice-filing under this
1400 chapter.

1401 (c) The type of information regarding an offering of
1402 securities by the issuer which is communicated or distributed by
1403 or on behalf of the issuer in connection with the seminar or
1404 meeting is limited to a notification that the issuer is in the
1405 process of offering or planning to offer securities, the type
1406 and amount of securities being offered, the intended use of
1407 proceeds of the offering, and the unsubscribed amount in an
1408 offering.

1409 (d) If the event allows attendees to participate
1410 virtually, rather than in person, online participation in the
1411 event is limited to:

1412 1. Individuals that are members of, or otherwise
1413 associated with, the sponsor organization;

1414 2. Individuals that the sponsor reasonably believes are
1415 accredited investors; or

1416 3. Individuals that have been invited to the event by the
1417 sponsor based on industry or investment-related experience

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1418 reasonably selected by the sponsor in good faith and disclosed
1419 in the public communications about the event.

1420 (2) Before any offers or sales are made in connection with
1421 an offering, communications by an issuer or any person
1422 authorized to act on behalf of the issuer are not deemed to
1423 constitute general solicitation or general advertising if the
1424 communication is solely for the purpose of determining whether
1425 there is any interest in a contemplated securities offering.
1426 Requirements imposed under this chapter on written or oral
1427 statements made in the course of such communication may be
1428 enforced as provided in this chapter. The solicitation or
1429 acceptance of money or other consideration or of any commitment,
1430 binding or otherwise, from any person is prohibited.

1431 (a) The communication must state all of the following:

1432 1. Money or other consideration is not being solicited
1433 and, if sent in response, will not be accepted.

1434 2. Any offer to buy the securities will not be accepted,
1435 and no part of the purchase price will be accepted.

1436 3. A person's indication of interest does not involve
1437 obligation or commitment of any kind.

1438 (b) Any written communication under this subsection may
1439 include a means by which a person may indicate to the issuer
1440 that the person is interested in a potential offering. The
1441 issuer may require the name, address, telephone number, or e-

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1442 mail address in any response form included in the written
1443 communication under this paragraph.

1444 (c) A communication in accordance with this subsection is
1445 not subject to s. 501.059, regarding telephone solicitations.

1446 Section 9. Section 517.0616, Florida Statutes, is created
1447 to read:

1448 517.0616 Disqualification.—A registration exemption under
1449 s. 517.061(9), (10), and (11), s. 517.0611, or s. 517.0612 is
1450 not available to an issuer that would be disqualified under
1451 Securities and Exchange Commission Rule 506(d), 17 C.F.R. s.
1452 230.506(d), as amended, at the time the issuer makes an offer
1453 for the sale of a security.

1454 Section 10. Present subsections (4) through (8) of section
1455 517.081, Florida Statutes, are redesignated as subsections (6)
1456 through (10), respectively, new subsections (4) and (5) are
1457 added to that section, and subsection (2), paragraph (g) of
1458 subsection (3), and present subsection (7) of that section are
1459 amended, to read:

1460 517.081 Registration procedure.—

1461 (2) The office shall receive and act upon applications for
1462 the registration of to have securities registered, and the
1463 commission may prescribe forms on which it may require such
1464 applications to be submitted. Applications must ~~shall~~ be duly
1465 signed by the applicant, sworn to by any person having knowledge
1466 of the facts, and filed with the office. ~~The commission may~~

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1467 ~~establish, by rule, procedures for depositing fees and filing~~
1468 ~~documents by electronic means provided such procedures provide~~
1469 ~~the office with the information and data required by this~~
1470 ~~section.~~ An application may be made either by the issuer of the
1471 securities for which registration is applied or by any
1472 registered dealer desiring to sell such securities ~~the same~~
1473 within the state.

1474 (3) The office may require the applicant to submit to the
1475 office the following information concerning the issuer and such
1476 other relevant information as the office may in its judgment
1477 deem necessary to enable it to ascertain whether such securities
1478 shall be registered pursuant to the provisions of this section:

1479 (g)~~1.~~ A specimen copy of the securities certificate, if
1480 applicable, and a copy of any circular, prospectus,
1481 advertisement, or other description of such securities.

1482 ~~2. The commission shall adopt a form for a simplified~~
1483 ~~offering circular to register, under this section, securities~~
1484 ~~that are sold in offerings in which the aggregate offering price~~
1485 ~~in any consecutive 12-month period does not exceed the amount~~
1486 ~~provided in s. 3(b) of the Securities Act of 1933, as amended.~~
1487 ~~The following issuers shall not be eligible to submit a~~
1488 ~~simplified offering circular adopted pursuant to this~~
1489 ~~subparagraph:~~

1490 ~~a. An issuer seeking to register securities for resale by~~
1491 ~~persons other than the issuer.~~

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1492 ~~b. An issuer that is subject to any of the~~
1493 ~~disqualifications described in 17 C.F.R. s. 230.262, adopted~~
1494 ~~pursuant to the Securities Act of 1933, as amended, or that has~~
1495 ~~been or is engaged or is about to engage in an activity that~~
1496 ~~would be grounds for denial, revocation, or suspension under s.~~
1497 ~~517.111. For purposes of this subparagraph, an issuer includes~~
1498 ~~an issuer's director, officer, general partner, manager or~~
1499 ~~managing member, trustee, or equity owner who owns at least 10~~
1500 ~~percent of the ownership interests of the issuer, promoter, or~~
1501 ~~selling agent of the securities to be offered or any officer,~~
1502 ~~director, partner, or manager or managing member of such selling~~
1503 ~~agent.~~

1504 ~~e. An issuer that is a development-stage company that~~
1505 ~~either has no specific business plan or purpose or has indicated~~
1506 ~~that its business plan is to merge with an unidentified company~~
1507 ~~or companies.~~

1508 ~~d. An issuer of offerings in which the specific business~~
1509 ~~or properties cannot be described.~~

1510 ~~e. Any issuer the office determines is ineligible because~~
1511 ~~the form does not provide full and fair disclosure of material~~
1512 ~~information for the type of offering to be registered by the~~
1513 ~~issuer.~~

1514 ~~f. Any issuer that has failed to provide the office the~~
1515 ~~reports required for a previous offering registered pursuant to~~
1516 ~~this subparagraph.~~

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1517
1518 ~~As a condition precedent to qualifying for use of the simplified~~
1519 ~~offering circular, an issuer shall agree to provide the office~~
1520 ~~with an annual financial report containing a balance sheet as of~~
1521 ~~the end of the issuer's fiscal year and a statement of income~~
1522 ~~for such year, prepared in accordance with United States~~
1523 ~~generally accepted accounting principles and accompanied by an~~
1524 ~~independent accountant's report. If the issuer has more than 100~~
1525 ~~security holders at the end of a fiscal year, the financial~~
1526 ~~statements must be audited. Annual financial reports must be~~
1527 ~~filed with the office within 90 days after the close of the~~
1528 ~~issuer's fiscal year for each of the first 5 years following the~~
1529 ~~effective date of the registration.~~

1530 (4) The commission may, by rule:

1531 (a) Establish criteria relating to the issuance of equity
1532 securities, debt securities, insurance company securities, real
1533 estate investment trusts, oil and gas investments, and other
1534 investments. In establishing these criteria, the commission may
1535 consider the rules and regulations of the Securities and
1536 Exchange Commission and statements of policy by the North
1537 American Securities Administrators Association, Inc., relating
1538 to the registration of securities offerings. The criteria must
1539 include all of the following:

1540 1. The promoter's equity investment ratio.

1541 2. The financial condition of the issuer.

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1542 3. The voting rights of shareholders.

1543 4. The grant of options or warrants to underwriters and
1544 others.

1545 5. Loans and other transactions with affiliates of the
1546 issuer.

1547 6. The use, escrow, or refund of proceeds of the offering.

1548 (b) Prescribe forms requiring applications for the
1549 registration of securities to be submitted to the office,
1550 including a simplified offering circular to register, under this
1551 section, securities that are sold in offerings in which the
1552 aggregate offering price in any consecutive 12-month period does
1553 not exceed the amount provided in s. 3(b) of the Securities Act
1554 of 1933, as amended.

1555 (c) Establish procedures for depositing fees and filing
1556 documents by electronic means, provided that such procedures
1557 provide the office with the information and data required by
1558 this section.

1559 (d) Establish requirements and standards for the filing,
1560 content, and circulation of a preliminary, final, or amended
1561 prospectus, advertisements, and other sales literature. In
1562 establishing such requirements and standards, the commission
1563 shall consider the rules and regulations of the Securities and
1564 Exchange Commission relating to requirements for preliminary,
1565 final, or amended or supplemented prospectuses and the rules of

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1566 the Financial Industry Regulatory Authority relating to
1567 advertisements and sales literature.

1568 (5) All of the following issuers are not eligible to
1569 submit a simplified offering circular:

1570 (a) An issuer that is subject to any of the
1571 disqualifications described in Securities and Exchange
1572 Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that
1573 has been or is engaged or is about to engage in an activity that
1574 would be grounds for denial, revocation, or suspension under s.
1575 517.111. For purposes of this paragraph, an issuer includes an
1576 issuer's director, officer, general partner, manager or managing
1577 member, trustee, or a person owning at least 10 percent of the
1578 ownership interests of the issuer; a promoter or selling agent
1579 of the securities to be offered; or any officer, director,
1580 partner, or manager or managing member of such selling agent.

1581 (b) An issuer that is a development-stage company that
1582 either has no specific business plan or purpose or has indicated
1583 that its business plan is to merge with an unidentified business
1584 entity or entities.

1585 (c) An issuer of offerings in which the specific business
1586 or properties cannot be described.

1587 (d) An issuer that the office determines is ineligible
1588 because the simplified circular does not provide full and fair
1589 disclosure of material information for the type of offering to
1590 be registered by the issuer.

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1591 (9) (a) (7) The office shall record the registration of a
1592 security in the register of securities if, upon examination of
1593 an any application, it finds that all of the following
1594 requirements are met: the office

1595 1. The application is complete.

1596 2. The fee imposed in subsection (8) has been paid.

1597 3. The sale of the security would not be fraudulent and
1598 would not work or tend to work a fraud upon the purchaser.

1599 4. The terms of the sale of such securities would be fair,
1600 just, and equitable.

1601 5. The enterprise or business of the issuer is not based
1602 upon unsound business principles.

1603 (b) Upon registration, the security may be sold by the
1604 issuer or any registered dealer, subject, however, to the
1605 further order of the office shall find that the sale of the
1606 security referred to therein would not be fraudulent and would
1607 not work or tend to work a fraud upon the purchaser, that the
1608 terms of the sale of such securities would be fair, just, and
1609 equitable, and that the enterprise or business of the issuer is
1610 not based upon unsound business principles, it shall record the
1611 registration of such security in the register of securities; and
1612 thereupon such security so registered may be sold by any
1613 registered dealer, subject, however, to the further order of the
1614 office. In order to determine if an offering is fair, just, and
1615 equitable, the commission may by rule establish requirements and

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1616 ~~standards for the filing, content, and circulation of any~~
1617 ~~preliminary, final, or amended prospectus and other sales~~
1618 ~~literature and may by rule establish merit qualification~~
1619 ~~criteria relating to the issuance of equity securities, debt~~
1620 ~~securities, insurance company securities, real estate investment~~
1621 ~~trusts, and other traditional and nontraditional investments,~~
1622 ~~including, but not limited to, oil and gas investments. The~~
1623 ~~criteria may include such elements as the promoter's equity~~
1624 ~~investment ratio, the financial condition of the issuer, the~~
1625 ~~voting rights of shareholders, the grant of options or warrants~~
1626 ~~to underwriters and others, loans and other affiliated~~
1627 ~~transaction, the use or refund of proceeds of the offering, and~~
1628 ~~such other relevant criteria as the office in its judgment may~~
1629 ~~deem necessary to such determination.~~

1630 Section 11. Subsection (2) of section 517.101, Florida
1631 Statutes, is amended to read:

1632 517.101 Consent to service.—

1633 (2) Any such action must ~~shall~~ be brought either in the
1634 county of the plaintiff's residence or in the county in which
1635 the office has its official headquarters. The written consent
1636 must ~~shall~~ be authenticated by the seal of the ~~said~~ issuer, if
1637 it has a seal, and by the acknowledged signature of a director,
1638 manager, managing member, general partner, trustee, or officer
1639 of the issuer ~~member of the copartnership or company, or by the~~
1640 ~~acknowledged signature of any officer of the incorporated or~~

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1641 ~~unincorporated association, if it be an incorporated or~~
1642 ~~unincorporated association, duly authorized by resolution of the~~
1643 ~~board of directors, trustees, or managers of the corporation or~~
1644 ~~association, and must shall in such case be accompanied by a~~
1645 ~~duly certified copy of the resolution of the issuer's board of~~
1646 ~~directors, trustees, managers, managing members, or general~~
1647 ~~partners or managers of the corporation or association,~~
1648 ~~authorizing the signer to execute the consent ~~officers to~~~~
1649 ~~execute the same. In case any process or pleadings mentioned in~~
1650 ~~this chapter are served upon the office, service must ~~it shall~~~~
1651 ~~be by duplicate copies, one of which must ~~shall~~ be filed in the~~
1652 ~~office and the other ~~another~~ immediately forwarded by the office~~
1653 ~~by registered mail to the principal office of the issuer against~~
1654 ~~which the ~~said~~ process or pleadings are directed.~~

1655 Section 12. Section 517.131, Florida Statutes, is amended
1656 to read:

1657 517.131 Securities Guaranty Fund.—

1658 (1) As used in this section, the term "final judgment"
1659 includes an arbitration award confirmed by a court of competent
1660 jurisdiction.

1661 (2)(a) The Chief Financial Officer shall establish a
1662 Securities Guaranty Fund to provide monetary relief to victims
1663 of securities violations under this chapter who are entitled to
1664 monetary damages or restitution and cannot recover the full
1665 amount of such monetary damages or restitution from the

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1666 wrongdoer. An amount not exceeding 20 percent of all revenues
1667 received as assessment fees pursuant to s. 517.12(9) and (10)
1668 for dealers and investment advisers or s. 517.1201 for federal
1669 covered advisers and an amount not exceeding 10 percent of all
1670 revenues received as assessment fees pursuant to s. 517.12(9)
1671 and (10) for associated persons must ~~shall~~ be part of the
1672 regular registration license fee and must ~~shall~~ be transferred
1673 to or deposited in the Securities Guaranty Fund.

1674 (b) If the balance in the Securities Guaranty Fund at any
1675 time exceeds \$1.5 million, transfer of assessment fees to the
1676 ~~this~~ fund must ~~shall~~ be discontinued at the end of that
1677 registration license year, and transfer of such assessment fees
1678 may ~~shall~~ not resume ~~be resumed~~ unless the fund balance is
1679 reduced below \$1 million by disbursement made in accordance with
1680 s. 517.141.

1681 ~~(2) The Securities Guaranty Fund shall be disbursed as~~
1682 ~~provided in s. 517.141 to a person who is adjudged by a court of~~
1683 ~~competent jurisdiction to have suffered monetary damages as a~~
1684 ~~result of any of the following acts committed by a dealer,~~
1685 ~~investment adviser, or associated person who was licensed under~~
1686 ~~this chapter at the time the act was committed:~~

1687 ~~(a) A violation of s. 517.07.~~

1688 ~~(b) A violation of s. 517.301.~~

1689 (3) A Any person is eligible for payment ~~to seek recovery~~
1690 from the Securities Guaranty Fund if the person:

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1691 (a)1. Holds an unsatisfied final judgment in which a
1692 wrongdoer was found to have violated s. 517.07 or s. 517.301;

1693 2. Has applied any amount recovered from the judgment
1694 debtor or any other source to the damages awarded by the court
1695 or arbitrator;

1696 3. Is a natural person who was a resident of this state,
1697 or is a business entity that was domiciled in this state, at the
1698 time of the violation of s. 517.07 or s. 517.301; and

1699 4. The act for which recovery is sought occurred on or
1700 after October 1, 2024; or

1701 (b) Is a receiver appointed pursuant to s. 517.191(2) by a
1702 court of competent jurisdiction for a wrongdoer ordered to pay
1703 restitution under s. 517.191(3) as a result of a violation of s.
1704 517.07 or s. 517.301 which has requested payment from the
1705 Securities Guaranty Fund on behalf of a person eligible for
1706 payment under paragraph (a)

1707 ~~(a) Such person has received final judgment in a court of~~
1708 ~~competent jurisdiction in any action wherein the cause of action~~
1709 ~~was based on a violation of these sections referred to in~~
1710 ~~subsection (2).~~

1711 ~~(b) Such person has made all reasonable searches and~~
1712 ~~inquiries to ascertain whether the judgment debtor possesses~~
1713 ~~real or personal property or other assets subject to being sold~~
1714 ~~or applied in satisfaction of the judgment, and by her or his~~
1715 ~~search the person has discovered no property or assets; or she~~

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1716 ~~or he has discovered property and assets and has taken all~~
1717 ~~necessary action and proceedings for the application thereof to~~
1718 ~~the judgment, but the amount thereby realized was insufficient~~
1719 ~~to satisfy the judgment. To verify compliance with such~~
1720 ~~condition, the office may require such person to have a writ of~~
1721 ~~execution be issued upon such judgment, may require a showing~~
1722 ~~that no personal or real property of the judgment debtor liable~~
1723 ~~to be levied upon in complete satisfaction of the judgment can~~
1724 ~~be found, or may require an affidavit from the claimant setting~~
1725 ~~forth the reasonable searches and inquiries undertaken and the~~
1726 ~~result of those searches and inquiries.~~

1727 ~~(c) Such person has applied any amounts recovered from the~~
1728 ~~judgment debtor, or from any other source, to the damages~~
1729 ~~awarded by the court.~~

1730 ~~(d) The act for which recovery is sought occurred on or~~
1731 ~~after January 1, 1979.~~

1732 ~~(e) The office waives compliance with the requirements of~~
1733 ~~paragraph (a) or paragraph (b). The office may waive such~~
1734 ~~compliance if the dealer, investment adviser, or associated~~
1735 ~~person which is the subject of the claim filed with the office~~
1736 ~~is the subject of any proceeding in which a receiver has been~~
1737 ~~appointed by a court of competent jurisdiction. If the office~~
1738 ~~waives such compliance, the office may, upon petition by the~~
1739 ~~debtor or the court-appointed trustee, examiner, or receiver,~~
1740 ~~distribute funds from the Securities Guaranty Fund up to the~~

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1741 ~~amount allowed under s. 517.141. Any waiver granted pursuant to~~
1742 ~~this section shall be considered a judgment for purposes of~~
1743 ~~complying with the requirements of this section and of s.~~
1744 ~~517.141.~~

1745 (4) A person who has done any of the following is not
1746 eligible for payment from the Securities Guaranty Fund:

1747 (a) Participated or assisted in a violation of this
1748 chapter.

1749 (b) Attempted to commit or committed a violation of this
1750 chapter.

1751 (c) Profited from a violation of this chapter.

1752 (5) An eligible person, or a receiver on behalf of the
1753 eligible person, seeking payment from the Securities Guaranty
1754 Fund must file with the office a written application on a form
1755 that the commission may prescribe by rule. The commission may
1756 adopt by rule procedures for filing documents by electronic
1757 means, provided that such procedures provide the office with the
1758 information and data required by this section. The application
1759 must be filed with the office within 1 year after the date of
1760 the final judgment, the date on which a restitution order has
1761 been ripe for execution, or the date of any appellate decision
1762 thereon, and, at minimum, must contain all of the following
1763 information:

1764 (a) The eligible person's and, if applicable, the
1765 receiver's full name, address, and contact information.

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- 1766 (b) The person ordered to pay restitution.
- 1767 (c) If the eligible person is a business entity, the
1768 eligible person's type and place of organization and, as
1769 applicable, a copy, as amended, of its articles of
1770 incorporation, articles of organization, trust agreement, or
1771 partnership agreement.
- 1772 (d) Any final judgment and a copy thereof.
- 1773 (e) Any restitution order pursuant to s. 517.191(3), and a
1774 copy thereof.
- 1775 (f) An affidavit from the eligible person stating either
1776 one of the following:
- 1777 1. That the eligible person has made all reasonable
1778 searches and inquiries to ascertain whether the judgment debtor
1779 possesses real or personal property or other assets subject to
1780 being sold or applied in satisfaction of the final judgment and,
1781 by the eligible person's search, that the eligible person has
1782 not discovered any property or assets.
- 1783 2. That the eligible person has taken necessary action on
1784 the property and assets of the wrongdoers but the final judgment
1785 remains unsatisfied.
- 1786 (g) If the application is filed by the receiver, an
1787 affidavit from the receiver stating the amount of restitution
1788 owed to the eligible person on whose behalf the claim is filed;
1789 the amount of any money, property, or assets paid to the
1790 eligible person on whose behalf the claim is filed by the person

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1791 over whom the receiver is appointed; and the amount of any
1792 unsatisfied portion of any eligible person's order of
1793 restitution.

1794 (h) The eligible person's residence or domicile at the
1795 time of the violation of s. 517.07 or s. 517.301 which resulted
1796 in the eligible person's monetary damages.

1797 (i) The amount of any unsatisfied portion of the eligible
1798 person's final judgment.

1799 (j) Whether an appeal or motion to vacate an arbitration
1800 award has been filed.

1801 (6) If the office finds that a person is eligible for
1802 payment from the Securities Guaranty Fund and if the person has
1803 complied with this section and the rules adopted under this
1804 section, the office must approve payment to such person from the
1805 fund. Within 90 days after the office's receipt of a complete
1806 application, each eligible person or receiver must be given
1807 written notice, personally or by mail, that the office intends
1808 to approve or deny, or has approved or denied, the application
1809 for payment from the Securities Guaranty Fund.

1810 (7) Upon receipt by the eligible person or receiver of
1811 notice of the office's decision that the eligible person's or
1812 receiver's application for payment from the Securities Guaranty
1813 Fund is approved, and before any disbursement, the eligible
1814 person shall assign to the office on a form prescribed by
1815 commission rule all right, title, and interest in the final

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1816 judgment or order of restitution equal to the amount of such
1817 payment.

1818 (8) The office shall deem an application for payment from
1819 the Securities Guaranty Fund abandoned if the eligible person or
1820 receiver, or any person acting on behalf of the eligible person
1821 or receiver, fails to timely complete the application as
1822 prescribed by commission rule. The time period to complete an
1823 application must be tolled during the pendency of an appeal or
1824 motion to vacate an arbitration award.

1825 ~~(4) Any person who files an action that may result in the~~
1826 ~~disbursement of funds from the Securities Guaranty Fund pursuant~~
1827 ~~to the provisions of s. 517.141 shall give written notice by~~
1828 ~~certified mail to the office as soon as practicable after such~~
1829 ~~action has been filed. The failure to give such notice shall not~~
1830 ~~bar a payment from the Securities Guaranty Fund if all of the~~
1831 ~~conditions specified in subsection (3) are satisfied.~~

1832 ~~(5) The commission may adopt rules pursuant to ss.~~
1833 ~~120.536(1) and 120.54 specifying the procedures for complying~~
1834 ~~with subsections (2), (3), and (4), including rules for the form~~
1835 ~~of submission and guidelines for the sufficiency and content of~~
1836 ~~submissions of notices and claims.~~

1837 Section 13. Section 517.141, Florida Statutes, is amended
1838 to read:

1839 517.141 Payment from the fund.—

1840 (1) As used in this section, the term:

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1841 (a) "Claimant" means a person determined eligible for
1842 payment under s. 517.131 that is approved by the office for
1843 payment from the Securities Guaranty Fund.

1844 (b) "Final judgment" includes an arbitration award
1845 confirmed by a court of competent jurisdiction.

1846 (c) "Specified adult" has the same meaning as in s.
1847 517.34(1).

1848 (2) A claimant is entitled to disbursement from the
1849 Securities Guaranty Fund in the amount equal to the lesser of:

1850 (a) The unsatisfied portion of the claimant's final
1851 judgment or final order of restitution, but only to the extent
1852 that the final judgment or final order of restitution reflects
1853 actual or compensatory damages, excluding postjudgment interest,
1854 costs, and attorney fees; or

1855 (b)1. The sum of \$15,000; or

1856 2. If the claimant is a specified adult or if a specified
1857 adult is a beneficial owner or beneficiary of the claimant, the
1858 sum of \$25,000 ~~Any person who meets all of the conditions~~
1859 ~~prescribed in s. 517.131 may apply to the office for payment to~~
1860 ~~be made to such person from the Securities Guaranty Fund in the~~
1861 ~~amount equal to the unsatisfied portion of such person's~~
1862 ~~judgment or \$10,000, whichever is less, but only to the extent~~
1863 ~~and amount reflected in the judgment as being actual or~~
1864 ~~compensatory damages, excluding postjudgment interest, costs,~~
1865 ~~and attorney's fees.~~

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1866 (3)-(2) Regardless of the number of claims or claimants
1867 involved, payments for claims are ~~shall be~~ limited in the
1868 aggregate to \$250,000 ~~\$100,000~~ against any one ~~dealer,~~
1869 ~~investment adviser, or associated~~ person. If the total claim
1870 filed by a receiver on behalf of multiple claimants exceeds
1871 ~~claims exceed~~ the aggregate limit of \$250,000 ~~\$100,000~~, the
1872 office must ~~shall~~ prorate the payment to each claimant based
1873 upon the ratio that each claimant's individual ~~the person's~~
1874 claim bears to the total claim ~~claims~~ filed.

1875 (4) If at any time the balance in the Securities Guaranty
1876 Fund is insufficient to satisfy a valid claim or portion of a
1877 valid claim approved by the office, the office must satisfy the
1878 unpaid claim or portion of the valid claim as soon as a
1879 sufficient amount of money has been deposited into or
1880 transferred to the Securities Guaranty Fund. If more than one
1881 unsatisfied claim is outstanding, the claims must be paid in the
1882 sequence in which the claims were approved by final order of the
1883 office, which final order is not subject to an appeal or other
1884 pending proceeding.

1885 (5) All payments and disbursements made from the
1886 Securities Guaranty Fund must be made by the Chief Financial
1887 Officer, or his or her designee, upon authorization by the
1888 office. The office shall submit such authorization within 30
1889 days after the approval of an eligible person for payment from
1890 the Securities Guaranty Fund

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1891 ~~(3) No payment shall be made on any claim against any one~~
1892 ~~dealer, investment adviser, or associated person before the~~
1893 ~~expiration of 2 years from the date any claimant is found by the~~
1894 ~~office to be eligible for recovery pursuant to this section. If~~
1895 ~~during this 2-year period more than one claim is filed against~~
1896 ~~the same dealer, investment adviser, or associated person, or if~~
1897 ~~the office receives notice pursuant to s. 517.131(4) that an~~
1898 ~~action against the same dealer, investment adviser, or~~
1899 ~~associated person is pending, all such claims and notices of~~
1900 ~~pending claims received during this period against the same~~
1901 ~~dealer, investment adviser, or associated person may be handled~~
1902 ~~by the office as provided in this section. Two years after the~~
1903 ~~first claimant against that same dealer, investment adviser, or~~
1904 ~~associated person applies for payment pursuant to this section:~~

1905 ~~(a) The office shall determine those persons eligible for~~
1906 ~~payment or for potential payment in the event of a pending~~
1907 ~~action. All such persons may be entitled to receive their pro~~
1908 ~~rata shares of the fund as provided in this section.~~

1909 ~~(b) Those persons who meet all the conditions prescribed~~
1910 ~~in s. 517.131 and who have applied for payment pursuant to this~~
1911 ~~section will be entitled to receive their pro rata shares of the~~
1912 ~~total disbursement.~~

1913 ~~(c) Those persons who have filed notice with the office of~~
1914 ~~a pending claim pursuant to s. 517.131(4) but who are not yet~~
1915 ~~eligible for payment from the fund will be entitled to receive~~

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1916 ~~their pro rata shares of the total disbursement once they have~~
1917 ~~complied with subsection (1). However, in the event that the~~
1918 ~~amounts they are eligible to receive pursuant to subsection (1)~~
1919 ~~are less than their pro rata shares as determined under this~~
1920 ~~section, any excess shall be distributed pro rata to those~~
1921 ~~persons entitled to disbursement under this subsection whose pro~~
1922 ~~rata shares of the total disbursement were less than the amounts~~
1923 ~~of their claims.~~

1924 ~~(6)(4)~~ Individual claims filed by persons owning the same
1925 joint account, or claims arising ~~stemming~~ from any other type of
1926 account ~~maintained by a particular licensee~~ on which more than
1927 one name appears, must ~~shall~~ be treated as the claims of one
1928 eligible claimant with respect to payment from the Securities
1929 Guaranty Fund. If a claimant who has obtained a final judgment
1930 or final order of restitution that ~~which~~ qualifies for
1931 disbursement under s. 517.131 has maintained more than one
1932 account with the ~~dealer, investment adviser, or associated~~
1933 person who is the subject of the claims, for purposes of
1934 disbursement of the Securities Guaranty Fund, all such accounts,
1935 whether joint or individual, must ~~shall~~ be considered as one
1936 account and ~~shall~~ entitle such claimant to only one distribution
1937 from the fund ~~not to exceed the lesser of \$10,000 or the~~
1938 ~~unsatisfied portion of such claimant's judgment as provided in~~
1939 ~~subsection (1).~~ To the extent that a claimant obtains more than
1940 one final judgment or final order of restitution against a

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1941 ~~person dealer, investment adviser, or one or more associated~~
1942 ~~persons~~ arising out of the same transactions, occurrences, or
1943 conduct or out of such ~~the dealer's, investment adviser's, or~~
1944 ~~associated~~ person's handling of the claimant's account, the
1945 final such judgments or final orders of restitution must shall
1946 be consolidated for purposes of this section and ~~shall~~ entitle
1947 the claimant to only one disbursement from the fund ~~not to~~
1948 ~~exceed the lesser of \$10,000 or the unsatisfied portion of such~~
1949 ~~claimant's judgment as provided in subsection (1).~~

1950 (7)-(5) If the final judgment or final order of restitution
1951 that gave rise to the claim is overturned in any appeal or in
1952 any collateral proceeding, the claimant must shall reimburse the
1953 Securities Guaranty Fund all amounts paid from the fund to the
1954 claimant on the claim. If the claimant satisfies the final
1955 judgment or final order of restitution specified in s.
1956 ~~517.131(3)(a)~~, the claimant must shall reimburse the Securities
1957 Guaranty Fund all amounts paid from the fund to the claimant on
1958 the claim. Such reimbursement must shall be paid to the
1959 Department of Financial Services office within 60 days after the
1960 final resolution of the appellate or collateral proceedings or
1961 the satisfaction of the final judgment or order of restitution,
1962 with the 60-day period commencing on the date the final order or
1963 decision is entered in such proceedings.

1964 (8)-(6) If a claimant receives payments in excess of that
1965 which is permitted under this chapter, the claimant must shall

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1966 reimburse the Securities Guaranty Fund such excess within 60
1967 days after the claimant receives such excess payment or after
1968 the payment is determined to be in excess of that permitted by
1969 law, whichever is later.

1970 (9) A claimant who knowingly and willfully files or causes
1971 to be filed an application under s. 517.131 or documents
1972 supporting the application, any of which contain false,
1973 incomplete, or misleading information in any material aspect,
1974 forfeits all payments from the Securities Guaranty Fund and
1975 commits a violation of s. 517.301(1)(c).

1976 (10)-(7) The Department of Financial Services office may
1977 institute legal proceedings to enforce compliance with this
1978 section and with s. 517.131 to recover moneys owed to the
1979 Securities Guaranty Fund, and is shall be entitled to recover
1980 interest, costs, and attorney attorney's fees in any action
1981 brought pursuant to this section in which the department office
1982 prevails.

1983 ~~(8) If at any time the money in the Securities Guaranty~~
1984 ~~Fund is insufficient to satisfy any valid claim or portion of a~~
1985 ~~valid claim approved by the office, the office shall satisfy~~
1986 ~~such unpaid claim or portion of such valid claim as soon as a~~
1987 ~~sufficient amount of money has been deposited in or transferred~~
1988 ~~to the fund. When there is more than one unsatisfied claim~~
1989 ~~outstanding, such claims shall be paid in the order in which the~~

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1990 ~~claims were approved by final order of the office, which order~~
1991 ~~is not subject to an appeal or other pending proceeding.~~

1992 ~~(9) Upon receipt by the claimant of the payment from the~~
1993 ~~Securities Guaranty Fund, the claimant shall assign any~~
1994 ~~additional right, title, and interest in the judgment, to the~~
1995 ~~extent of such payment, to the office. If the provisions of s.~~
1996 ~~517.131(3) (c) apply, the claimant must assign to the office any~~
1997 ~~right, title, and interest in the debt to the extent of any~~
1998 ~~payment by the office from the Securities Guaranty Fund.~~

1999 ~~(10) All payments and disbursements made from the~~
2000 ~~Securities Guaranty Fund shall be made by the Chief Financial~~
2001 ~~Officer upon authorization signed by the director of the office,~~
2002 ~~or such agent as she or he may designate.~~

2003 Section 14. Section 517.191, Florida Statutes, is amended
2004 to read:

2005 517.191 Enforcement by the Office of Financial Regulation
2006 ~~Injunction to restrain violations; civil penalties; enforcement~~
2007 ~~by Attorney General.-~~

2008 (1) When it appears to the office, either upon complaint
2009 or otherwise, that a person has engaged or is about to engage in
2010 any act or practice constituting a violation of this chapter or
2011 a rule or order hereunder, the office may investigate; and
2012 whenever it shall believe from evidence satisfactory to it that
2013 any such person has engaged, is engaged, or is about to engage
2014 in any act or practice constituting a violation of this chapter

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2015 or a rule or order hereunder, the office may, in addition to any
2016 other remedies, bring action in the name and on behalf of the
2017 state against such person and any other person concerned in or
2018 in any way participating in or about to participate in such
2019 practices or engaging therein or doing any act or acts in
2020 furtherance thereof or in violation of this chapter to enjoin
2021 such person or persons from continuing such fraudulent practices
2022 or engaging therein or doing any act or acts in furtherance
2023 thereof or in violation of this chapter. In any such court
2024 proceedings, the office may apply for, and on due showing be
2025 entitled to have issued, the court's subpoena requiring
2026 forthwith the appearance of any defendant and her or his
2027 employees, associated persons, or agents and the production of
2028 documents, books, and records that may appear necessary for the
2029 hearing of such petition, to testify or give evidence concerning
2030 the acts or conduct or things complained of in such application
2031 for injunction. In such action, the ~~equity~~ courts shall have
2032 jurisdiction of the subject matter, and a judgment may be
2033 entered awarding such injunction as may be proper.

2034 (2) In addition to all other means provided by law for the
2035 enforcement of any temporary restraining order, temporary
2036 injunction, or permanent injunction issued in any such court
2037 proceedings, the court shall have the power and jurisdiction,
2038 upon application of the office, to impound and to appoint a
2039 receiver or administrator for the property, assets, and business

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2040 of the defendant, including, but not limited to, the books,
2041 records, documents, and papers appertaining thereto. Such
2042 receiver or administrator, when appointed and qualified, shall
2043 have all powers and duties as to custody, collection,
2044 administration, winding up, and liquidation of such ~~said~~
2045 property and business as may ~~shall from time to time~~ be
2046 conferred upon her or him by the court. In any such action, the
2047 court may issue orders and decrees staying all pending suits and
2048 enjoining any further suits affecting the receiver's or
2049 administrator's custody or possession of such ~~the said~~ property,
2050 assets, and business or, in its discretion, may with the consent
2051 of the presiding judge of the circuit require that all such
2052 suits be assigned to the circuit court judge appointing such ~~the~~
2053 ~~said~~ receiver or administrator.

2054 (3) In addition to, or in lieu of, any other remedies
2055 provided by this chapter, the office may apply to the court
2056 hearing the ~~this~~ matter for an order directing the defendant to
2057 make restitution of those sums shown by the office to have been
2058 obtained in violation of ~~any of the provisions of~~ this chapter.
2059 The office has standing to request such restitution on behalf of
2060 victims in cases brought by the office under this chapter,
2061 regardless of the appointment of an administrator or receiver
2062 under subsection (2) or an injunction under subsection (1).
2063 Further, such restitution must ~~shall~~, at the option of the
2064 court, be payable to the administrator or receiver appointed

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2065 pursuant to this section or directly to the persons whose assets
2066 were obtained in violation of this chapter.

2067 (4) In addition to any other remedies provided by this
2068 chapter, the office may apply to the court hearing the matter
2069 for, and the court has ~~shall have~~ jurisdiction to impose, a
2070 civil penalty against any person found to have violated ~~any~~
2071 ~~provision of~~ this chapter, any rule or order adopted by the
2072 commission or the office, or any written agreement entered into
2073 with the office in an amount not to exceed any of the following:

2074 (a) The greater of \$20,000 ~~\$10,000~~ for a natural person or
2075 \$25,000 for a business entity ~~any other person~~, or the gross
2076 amount of any pecuniary loss to investors or pecuniary gain to a
2077 natural person or business entity ~~such defendant~~ for each such
2078 violation, other than a violation of s. 517.301, plus the
2079 greater of \$50,000 for a natural person or \$250,000 for a
2080 business entity ~~any other person~~, or the gross amount of any
2081 pecuniary loss to investors or pecuniary gain to a natural
2082 person or business entity ~~such defendant~~ for each violation of
2083 s. 517.301.

2084 (b) Twice the amount of the civil penalty that would
2085 otherwise be imposed under this subsection if a specified adult,
2086 as defined in s. 517.34(1), is the victim of a violation of this
2087 chapter.

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2089 All civil penalties collected pursuant to this subsection must
2090 ~~shall~~ be deposited into the Anti-Fraud Trust Fund. The office
2091 may recover any costs and attorney fees related to its
2092 investigation or enforcement of this section. Notwithstanding
2093 any other law, such moneys recovered by the office must be
2094 deposited into the Anti-Fraud Trust Fund.

2095 (5) For purposes of any action brought by the office under
2096 this section, a control person who controls any person found to
2097 have violated this chapter or any rule adopted thereunder is
2098 jointly and severally liable with, and to the same extent as,
2099 the controlled person in any action brought by the office under
2100 this section unless the control person can establish by a
2101 preponderance of the evidence that he or she acted in good faith
2102 and did not directly or indirectly induce the act that
2103 constitutes the violation or cause of action.

2104 (6) For purposes of any action brought by the office under
2105 this section, a person who knowingly or recklessly provides
2106 substantial assistance to another person in violation of this
2107 chapter or any rule adopted thereunder is deemed to violate this
2108 chapter or the rule to the same extent as the person to whom
2109 such assistance is provided.

2110 (7) The office may issue and serve upon a person a cease
2111 and desist order if the office has reason to believe that the
2112 person violates, has violated, or is about to violate this

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2113 chapter, any commission or office rule or order, or any written
2114 agreement entered into with the office.

2115 (8) If the office finds that any conduct described in
2116 subsection (7) presents an immediate danger to the public,
2117 requiring an immediate final order, the office may issue an
2118 emergency cease and desist order reciting with particularity the
2119 facts underlying such findings. The emergency cease and desist
2120 order is effective immediately upon service of a copy of the
2121 order on the respondent named in the order and remains effective
2122 for 90 days after issuance. If the office begins nonemergency
2123 cease and desist proceedings under subsection (7), the emergency
2124 cease and desist order remains effective until the conclusion of
2125 the proceedings under ss. 120.569 and 120.57.

2126 (9) The office may impose and collect an administrative
2127 fine against any person found to have violated any provision of
2128 this chapter, any rule or order adopted by the commission or
2129 office, or any written agreement entered into with the office in
2130 an amount not to exceed the penalties provided in subsection
2131 (4). All fines collected under this subsection must be deposited
2132 into the Anti-Fraud Trust Fund.

2133 (10) The office may bar, permanently or for a specific
2134 period of time, any person found to have violated this chapter,
2135 any rule or order adopted by the commission or office, or any
2136 written agreement entered into with the office from submitting

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2137 an application or notification for a license or registration
2138 with the office.

2139 (11) In addition to all other means provided by law for
2140 enforcing ~~any of the provisions of~~ this chapter, when the
2141 Attorney General, upon complaint or otherwise, has reason to
2142 believe that a person has engaged or is engaged in any act or
2143 practice constituting a violation of s. 517.275 or, s. 517.301,
2144 ~~s. 517.311, or s. 517.312,~~ or any rule or order issued under
2145 such sections, the Attorney General may investigate and bring an
2146 action to enforce these provisions as provided in ss. 517.171,
2147 517.201, and 517.2015 after receiving written approval from the
2148 office. Such an action may be brought against such person and
2149 any other person in any way participating in such act or
2150 practice or engaging in such act or practice or doing any act in
2151 furtherance of such act or practice, to obtain injunctive
2152 relief, restitution, civil penalties, and any remedies provided
2153 for in this section. The Attorney General may recover any costs
2154 and attorney fees related to the Attorney General's
2155 investigation or enforcement of this section. Notwithstanding
2156 any other provision of law, moneys recovered by the Attorney
2157 General for costs, attorney fees, and civil penalties for a
2158 violation of s. 517.275 or, s. 517.301, ~~s. 517.311, or s.~~
2159 ~~517.312,~~ or any rule or order issued pursuant to such sections,
2160 must ~~shall~~ be deposited in the Legal Affairs Revolving Trust

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2161 Fund. The Legal Affairs Revolving Trust Fund may be used to
2162 investigate and enforce this section.

2163 ~~(12)-(6)~~ This section does not limit the authority of the
2164 office to bring an administrative action against any person that
2165 is the subject of a civil action brought pursuant to this
2166 section or limit the authority of the office to engage in
2167 investigations or enforcement actions with the Attorney General.
2168 However, a person may not be subject to both a civil penalty
2169 under subsection (4) and an administrative fine under subsection
2170 (9) ~~s. 517.221(3)~~ as the result of the same facts.

2171 ~~(13)-(7)~~ Notwithstanding s. 95.11(4)(f), an enforcement
2172 action brought under this section based on a violation of ~~any~~
2173 ~~provision of~~ this chapter or any rule or order issued under this
2174 chapter shall be brought within 6 years after the facts giving
2175 rise to the cause of action were discovered or should have been
2176 discovered with the exercise of due diligence, but not more than
2177 8 years after the date such violation occurred.

2178 (14) This chapter does not limit any statutory right of
2179 the state to punish a person for a violation of a law.

2180 (15) When not in conflict with the Constitution or laws of
2181 the United States, the courts of this state have the same
2182 jurisdiction over civil suits instituted in connection with the
2183 sale or offer of sale of securities under any laws of the United
2184 States as the courts of this state may have with regard to
2185 similar cases instituted under the laws of this state.

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2186 Section 15. Section 517.211, Florida Statutes, is amended
2187 to read:

2188 517.211 Private remedies available in cases of unlawful
2189 sale.—

2190 (1) Every sale made in violation of either s. 517.07 or s.
2191 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be
2192 rescinded at the election of the purchaser; however, ~~except~~ a
2193 sale made in violation of the provisions of s. 517.1202(3)
2194 relating to a renewal of a branch office notification or shall
2195 ~~not be subject to this section, and a sale made~~ in violation of
2196 the provisions of s. 517.12(12) relating to filing a change of
2197 address amendment is shall not be subject to this section. Each
2198 person making the sale and every director, officer, partner, or
2199 agent of or for the seller, if the director, officer, partner,
2200 or agent has personally participated or aided in making the
2201 sale, is jointly and severally liable to the purchaser in an
2202 action for rescission, if the purchaser still owns the security,
2203 or for damages, if the purchaser has sold the security. No
2204 purchaser otherwise entitled will have the benefit of this
2205 subsection who has refused or failed, within 30 days after ~~of~~
2206 receipt, to accept an offer made in writing by the seller, if
2207 the purchaser has not sold the security, to take back the
2208 security in question and to refund the full amount paid by the
2209 purchaser or, if the purchaser has sold the security, to pay the
2210 purchaser an amount equal to the difference between the amount

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2211 | paid for the security and the amount received by the purchaser
2212 | on the sale of the security, together, in either case, with
2213 | interest on the full amount paid for the security by the
2214 | purchaser at the legal rate, pursuant to s. 55.03, for the
2215 | period from the date of payment by the purchaser to the date of
2216 | repayment, less the amount of any income received by the
2217 | purchaser on the security.

2218 | (2) Any person purchasing or selling a security in
2219 | violation of s. 517.301, and every director, officer, partner,
2220 | or agent of or for the purchaser or seller, if the director,
2221 | officer, partner, or agent has personally participated or aided
2222 | in making the sale or purchase, is jointly and severally liable
2223 | to the person selling the security to or purchasing the security
2224 | from such person in an action for rescission, if the plaintiff
2225 | still owns the security, or for damages, if the plaintiff has
2226 | sold the security.

2227 | (3) For purposes of any action brought under this section,
2228 | a control person who controls any person found to have violated
2229 | any provision specified in subsection (1) is jointly and
2230 | severally liable with, and to the same extent as, such
2231 | controlled person in any action brought under this section
2232 | unless the control person can establish by a preponderance of
2233 | the evidence that he or she acted in good faith and did not
2234 | directly or indirectly induce the act that constitutes the
2235 | violation or cause of action.

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2236 (4) In an action for rescission:

2237 (a) A purchaser may recover the consideration paid for the
2238 security or investment, plus interest thereon at the legal rate
2239 from the date of purchase, less the amount of any income
2240 received by the purchaser on the security or investment upon
2241 tender of the security or investment.

2242 (b) A seller may recover the security upon tender of the
2243 consideration paid for the security, plus interest at the legal
2244 rate from the date of purchase, less the amount of any income
2245 received by the defendant on the security.

2246 (5)-(4) In an action for damages brought by a purchaser of
2247 a security or investment, the plaintiff must ~~shall~~ recover an
2248 amount equal to the difference between:

2249 (a) The consideration paid for the security or investment,
2250 plus interest thereon at the legal rate from the date of
2251 purchase; and

2252 (b) The value of the security or investment at the time it
2253 was disposed of by the plaintiff, plus the amount of any income
2254 received on the security or investment by the plaintiff.

2255 (6)-(5) In an action for damages brought by a seller of a
2256 security, the plaintiff shall recover an amount equal to the
2257 difference between:

2258 (a) The value of the security at the time of the
2259 complaint, plus the amount of any income received by the
2260 defendant on the security; and

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2261 (b) The consideration received for the security, plus
2262 interest at the legal rate from the date of sale.

2263 ~~(7)-(6)~~ In any action brought under this section, including
2264 an appeal, the court shall award reasonable attorney ~~attorneys'~~
2265 fees to the prevailing party unless the court finds that the
2266 award of such fees would be unjust.

2267 (8) This chapter does not limit any statutory or common-
2268 law right of a person to bring an action in a court for an act
2269 involved in the sale of securities or investments.

2270 (9) The same civil remedies provided by the laws of the
2271 United States for the purchasers or sellers of securities in
2272 interstate commerce also extend to purchasers or sellers of
2273 securities under this chapter.

2274 Section 16. Section 517.221, Florida Statutes, is
2275 repealed.

2276 Section 17. Section 517.241, Florida Statutes, is
2277 repealed.

2278 Section 18. Section 517.301, Florida Statutes, is amended
2279 to read:

2280 517.301 Fraudulent transactions; falsification or
2281 concealment of facts.—

2282 (1) It is unlawful and a violation of ~~the provisions of~~
2283 this chapter for a person:

2284 (a) In connection with the rendering of any investment
2285 advice or in connection with the offer, sale, or purchase of any

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2286 investment or security, including any security exempted under
2287 ~~the provisions of~~ s. 517.051 and including any security sold in
2288 a transaction exempted under ~~the provisions of~~ s. 517.061, s.
2289 517.0611, or s. 517.0612, directly or indirectly:

2290 1. To employ any device, scheme, or artifice to defraud;

2291 2. To obtain money or property by means of any untrue
2292 statement of a material fact or any omission to state a material
2293 fact necessary in order to make the statements made, in the
2294 light of the circumstances under which they were made, not
2295 misleading; or

2296 3. To engage in any transaction, practice, or course of
2297 business which operates or would operate as a fraud or deceit
2298 upon a person.

2299 (b) By use of any means, to publish, give publicity to, or
2300 circulate any notice, circular, advertisement, newspaper,
2301 article, letter, investment service, communication, or broadcast
2302 that, although ~~which, though~~ not purporting to offer a security
2303 for sale, describes such security for a consideration received
2304 or to be received directly or indirectly from an issuer,
2305 underwriter, or dealer, or from an agent or employee of an
2306 issuer, underwriter, or dealer, without fully disclosing the
2307 receipt, whether past or prospective, of such consideration and
2308 the amount of the consideration.

2309 (c) In any matter within the jurisdiction of the office,
2310 to knowingly and willfully falsify, conceal, or cover up, by any

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2311 | trick, scheme, or device, a material fact, make any false,
2312 | fictitious, or fraudulent statement or representation, or make
2313 | or use any false writing or document, knowing the same to
2314 | contain any false, fictitious, or fraudulent statement or entry.

2315 | (2) For purposes of ~~ss. 517.311 and 517.312~~ and this
2316 | section, the term "investment" means any commitment of money or
2317 | property principally induced by a representation that an
2318 | economic benefit may be derived from such commitment, except
2319 | that the term does not include a commitment of money or property
2320 | for:

2321 | (a) The purchase of a business opportunity, business
2322 | enterprise, or real property through a person licensed under
2323 | chapter 475 or registered under former chapter 498; or

2324 | (b) The purchase of tangible personal property through a
2325 | person not engaged in telephone solicitation, electronic mail,
2326 | text messages, social media, or other electronic means where
2327 | ~~said property is offered and sold in accordance with the~~
2328 | ~~following conditions:~~

2329 | ~~1. there are no specific representations or guarantees~~
2330 | ~~made by the offeror or seller as to the economic benefit to be~~
2331 | ~~derived from the purchase.~~

2332 | ~~2. The tangible property is delivered to the purchaser~~
2333 | ~~within 30 days after sale, except that such 30-day period may be~~
2334 | ~~extended by the office if market conditions so warrant; and~~

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2335 ~~3. The seller has offered the purchaser a full refund~~
2336 ~~policy in writing, exercisable by the purchaser within 10 days~~
2337 ~~of the date of delivery of such tangible personal property,~~
2338 ~~except that the amount of such refund may not exceed the bid~~
2339 ~~price in effect at the time the property is returned to the~~
2340 ~~seller. If the applicable sellers' market is closed at the time~~
2341 ~~the property is returned to the seller for a refund, the amount~~
2342 ~~of such refund shall be based on the bid price for such property~~
2343 ~~at the next opening of such market.~~

2344 (3) It is unlawful for a person in issuing or selling a
2345 security within this state, including a security exempted under
2346 s. 517.051 and including a transaction exempted under s.
2347 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such
2348 security or business entity has been guaranteed, sponsored,
2349 recommended, or approved by the state or an agency or officer of
2350 the state or by the United States or an agency or officer of the
2351 United States.

2352 (4) It is unlawful for a person registered or required to
2353 be registered, or subject to the notice requirements, under this
2354 chapter, including such persons and issuers who are subject to
2355 s. 517.051, s. 517.061, s. 517.0611, s. 517.0612, or s. 517.081,
2356 to misrepresent that such person has been sponsored,
2357 recommended, or approved, or that such person's abilities or
2358 qualifications have in any respect been approved, by the state

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2359 or an agency or officer of the state or by the United States or
2360 an agency or officer of the United States.

2361 (5) It is unlawful and a violation of this chapter for a
2362 person in connection with the offer or sale of an investment to
2363 obtain money or property by means of:

2364 (a) A misrepresentation that the investment offered or
2365 sold is guaranteed, sponsored, recommended, or approved by the
2366 state or an agency or officer of the state or by the United
2367 States or an agency or officer of the United States; or

2368 (b) A misrepresentation that such person is sponsored,
2369 recommended, or approved, or that such person's abilities or
2370 qualifications have in any respect been examined, by the state
2371 or an agency or officer of the state or by the United States or
2372 an agency or officer of the United States.

2373 (6) (a) Subsection (3) or subsection (4) may not be
2374 construed to prohibit a statement that a person or security is
2375 registered or has made a notice filing under this chapter if
2376 such statement is required by this chapter or rules promulgated
2377 thereunder and is true in fact and if the effect of such
2378 statement is not a misrepresentation.

2379 (b) A statement that a person is registered made in
2380 connection with the offer or sale of a security under this
2381 chapter must include the following disclaimer: "Registration
2382 does not imply that such person has been sponsored, recommended,
2383 or approved by the state or an agency or officer of the state or

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2384 by the United States or an agency or officer of the United
2385 States."

2386 1. If the statement of registration is made in writing,
2387 the disclaimer must immediately follow such statement and must
2388 be in the same size and style of print as the statement of
2389 registration.

2390 2. If the statement of registration is made orally, the
2391 disclaimer must be made or broadcast with the same force and
2392 effect as the statement of registration.

2393 (7) It is unlawful and a violation of this chapter for a
2394 person to directly or indirectly manage, supervise, control, or
2395 own, either alone or in association with others, a boiler room
2396 in this state which sells or offers for sale a security or
2397 investment in violation of subsection (1), subsection (3),
2398 subsection (4), subsection (5), or subsection (6).

2399 Section 19. Section 517.311, Florida Statutes, is
2400 repealed.

2401 Section 20. Section 517.312, Florida Statutes, is
2402 repealed.

2403 Section 21. Subsections (1), (2), and (3) of section
2404 517.072, Florida Statutes, are amended to read:

2405 517.072 Viatical settlement investments.—

2406 (1) The exemptions provided for by s. 517.051(6) and (11)
2407 ss. 517.051(6), (8), and (10) do not apply to a viatical
2408 settlement investment.

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2409 (2) The offering of a viatical settlement investment is
2410 not an exempt transaction under s. 517.061(10), (12), (13), and
2411 (18) s. 517.061(2), (3), (8), (11), and (18), regardless of
2412 whether the offering otherwise complies with the conditions of
2413 that section, unless such offering is to a qualified
2414 institutional buyer.

2415 (3) The registration provisions of ss. 517.07 and 517.12
2416 do not apply to any of the following transactions in viatical
2417 settlement investments; however, such transactions in viatical
2418 settlement investments are subject to s. 517.301 ~~the provisions~~
2419 ~~of ss. 517.301, 517.311, and 517.312:~~

2420 (a) The transfer or assignment of an interest in a
2421 previously viaticated policy from a natural person who transfers
2422 or assigns no more than one such interest in a single calendar
2423 year.

2424 (b) The provision of stop-loss coverage to a viatical
2425 settlement provider, financing entity, or related provider
2426 trust, as those terms are defined in s. 626.9911, by an
2427 authorized or eligible insurer.

2428 (c) The transfer or assignment of a viaticated policy from
2429 a licensed viatical settlement provider to another licensed
2430 viatical settlement provider, a related provider trust, a
2431 financing entity, or a special purpose entity, as those terms
2432 are defined in s. 626.9911, or to a contingency insurer,
2433 provided that such transfer or assignment is not the direct or

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2434 indirect promotion of any scheme or enterprise with the intent
2435 of violating or evading ~~any provision of~~ this chapter.

2436 (d) The transfer or assignment of a viaticated policy to a
2437 bank, trust company, savings institution, insurance company,
2438 dealer, investment company as defined in the Investment Company
2439 Act of 1940, as amended, pension or profit-sharing trust,
2440 qualified institutional buyer, or an accredited investor,
2441 provided such transfer or assignment is not for the direct or
2442 indirect promotion of any scheme or enterprise with the intent
2443 of violating or evading any provision of this chapter.

2444 (e) The transfer or assignment of a viaticated policy by a
2445 conservator of a viatical settlement provider appointed by a
2446 court of competent jurisdiction who transfers or assigns
2447 ownership of viaticated policies pursuant to that court's order.

2448 Section 22. Subsection (2), paragraph (a) of subsection
2449 (9), paragraph (j) of subsection (16), subsection (20), and
2450 paragraphs (b) and (c) of subsection (21) of section 517.12,
2451 Florida Statutes, are amended to read:

2452 517.12 Registration of dealers, associated persons,
2453 intermediaries, and investment advisers.—

2454 (2) The registration requirements of this section do not
2455 apply in a transaction exempted by s. 517.061(1)-(6), (8), (9),
2456 (12), and (13) ~~s. 517.061(1)-(10), (12), (14), and (15)~~.

2457 (9)(a) An applicant for registration shall pay an
2458 assessment fee of \$200, in the case of a dealer or investment

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2459 | adviser, or \$50, in the case of an associated person. An
2460 | associated person may be assessed an additional fee to cover the
2461 | cost for the fingerprints to be processed by the office. Such
2462 | fee shall be determined by rule of the commission. Such fees
2463 | become the revenue of the state, except for those assessments
2464 | provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time
2465 | as the Securities Guaranty Fund satisfies the statutory limits,
2466 | and are not returnable in the event that registration is
2467 | withdrawn or not granted.

2468 | (16)

2469 | (j) All fees collected under this subsection become the
2470 | revenue of the state, except those assessments provided for
2471 | under s. 517.131(2) ~~s. 517.131(1)~~, until the Securities Guaranty
2472 | Fund has satisfied the statutory limits. Such fees are not
2473 | returnable if a notice-filing is withdrawn.

2474 | (20) The registration requirements of this section do not
2475 | apply to any general lines insurance agent or life insurance
2476 | agent licensed under chapter 626, with regard to ~~for~~ the sale of
2477 | a security as defined in s. 517.021(25)(g) ~~s. 517.021(23)(g)~~, if
2478 | the individual is directly authorized by the issuer to offer or
2479 | sell the security on behalf of the issuer and the issuer is a
2480 | federally chartered savings bank subject to regulation by the
2481 | Federal Deposit Insurance Corporation. Actions under this
2482 | subsection ~~shall~~ constitute activity under the insurance agent's
2483 | license for purposes of ss. 626.611 and 626.621.

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2484 (21)

2485 (b) Prior to the completion of any securities transaction
2486 described in s. 517.061(7) ~~s. 517.061(22)~~, a merger and
2487 acquisition broker must receive written assurances from the
2488 control person with the largest percentage of ownership for both
2489 the buyer and seller engaged in the transaction that:

2490 1. After the transaction is completed, any person who
2491 acquires securities or assets of the eligible privately held
2492 company, acting alone or in concert, will be a control person of
2493 the eligible privately held company or will be a control person
2494 for the business conducted with the assets of the eligible
2495 privately held company; and

2496 2. If any person is offered securities in exchange for
2497 securities or assets of the eligible privately held company,
2498 such person will, before becoming legally bound to complete the
2499 transaction, receive or be given reasonable access to the most
2500 recent year-end financial statements of the issuer of the
2501 securities offered in exchange. The most recent year-end
2502 financial statements shall be customarily prepared by the
2503 issuer's management in the normal course of operations. If the
2504 financial statements of the issuer are audited, reviewed, or
2505 compiled, the most recent year-end financial statements must
2506 include any related statement by the independent certified
2507 public accountant; a balance sheet dated not more than 120 days
2508 before the date of the exchange offer; and information

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2509 | pertaining to the management, business, results of operations
2510 | for the period covered by the foregoing financial statements,
2511 | and material loss contingencies of the issuer.

2512 | (c) A merger and acquisition broker engaged in a
2513 | transaction exempt under s. 517.061(7) ~~s. 517.061(22)~~ is exempt
2514 | from registration under this section unless the merger and
2515 | acquisition broker:

2516 | 1. Directly or indirectly, in connection with the transfer
2517 | of ownership of an eligible privately held company, receives,
2518 | holds, transmits, or has custody of the funds or securities to
2519 | be exchanged by the parties to the transaction;

2520 | 2. Engages on behalf of an issuer in a public offering of
2521 | any class of securities which is registered, or which is
2522 | required to be registered, with the United States Securities and
2523 | Exchange Commission under the Securities Exchange Act of 1934,
2524 | 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;
2525 | or for which the issuer files, or is required to file, periodic
2526 | information, documents, and reports under s. 15(d) of the
2527 | Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

2528 | 3. Engages on behalf of any party in a transaction
2529 | involving a public shell company;

2530 | 4. Is subject to a suspension or revocation of
2531 | registration under s. 15(b)(4) of the Securities Exchange Act of
2532 | 1934, 15 U.S.C. s. 78o(b)(4);

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2533 5. Is subject to a statutory disqualification described in
2534 s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s.
2535 78c(a)(39);

2536 6. Is subject to a disqualification under the United
2537 States Securities and Exchange Commission Rule 506(d), 17 C.F.R.
2538 s. 230.506(d); or

2539 7. Is subject to a final order described in s. 15(b)(4)(H)
2540 of the Securities Exchange Act of 1934, 15 U.S.C. s.
2541 78o(b)(4)(H).

2542 Section 23. Subsection (6) of section 517.1201, Florida
2543 Statutes, is amended to read:

2544 517.1201 Notice filing requirements for federal covered
2545 advisers.—

2546 (6) All fees collected under this section become the
2547 revenue of the state, except for those assessments provided for
2548 under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the
2549 Securities Guaranty Fund satisfies the statutory limits, and are
2550 not returnable in the event that a notice filing is withdrawn.

2551 Section 24. Subsections (4) and (8) of section 517.1202,
2552 Florida Statutes, are amended to read:

2553 517.1202 Notice-filing requirements for branch offices.—

2554 (4) A branch office notice-filing under this section shall
2555 be summarily suspended by the office if the notice-filer fails
2556 to provide to the office, within 30 days after a written request
2557 by the office, all of the information required by this section

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2558 and the rules adopted under this section. The summary suspension
2559 shall be in effect for the branch office until such time as the
2560 notice-filer submits the requested information to the office,
2561 pays a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and a
2562 final order is entered. At such time, the suspension shall be
2563 lifted. For purposes of s. 120.60(6), failure to provide all
2564 information required by this section and the underlying rules
2565 constitutes immediate and serious danger to the public health,
2566 safety, and welfare. If the notice-filer fails to provide all of
2567 the requested information within a period of 90 days, the
2568 notice-filing shall be revoked by the office.

2569 (8) All fees collected under this section become the
2570 revenue of the state, except for those assessments provided for
2571 under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the
2572 Securities Guaranty Fund satisfies the statutory limits, and are
2573 not returnable in the event that a branch office notice-filing
2574 is withdrawn.

2575 Section 25. Subsection (2) of section 517.302, Florida
2576 Statutes, is amended to read:

2577 517.302 Criminal penalties; alternative fine; Anti-Fraud
2578 Trust Fund; time limitation for criminal prosecution.—

2579 (2) Any person who violates s. 517.301 ~~the provisions of~~
2580 ~~s. 517.312(1)~~ by obtaining money or property of an aggregate
2581 value exceeding \$50,000 from five or more persons is guilty of a

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2582 felony of the first degree, punishable as provided in s.
2583 775.082, s. 775.083, or s. 775.084.
2584 Section 26. This act shall take effect October 1, 2024.

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2588

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

2589

Remove everything before the enacting clause and insert:

2590

A bill to be entitled

2591

An act relating to securities; amending s. 517.021,

2592

F.S.; revising definitions; defining the terms "angel

2593

investor group" and "business entity"; amending s.

2594

517.051, F.S.; revising the list of securities that

2595

are exempt from registration requirements under

2596

certain provisions; amending s. 517.061, F.S.;

2597

revising the list of transactions that are exempt from

2598

registration requirements under certain provisions;

2599

amending s. 517.0611, F.S.; revising a short title;

2600

revising provisions relating to a certain registration

2601

exemption for certain securities transactions;

2602

updating the federal laws or regulations with which

2603

the offer or sale of securities must be in compliance;

2604

revising requirements for issuers relating to the

2605

registration exemption; revising requirements for the

2606

notice of offering that must be filed by the issuer

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2607 under certain circumstances; specifying the timeframe
2608 within which issuers may amend such notice after any
2609 material information contained in the notice becomes
2610 inaccurate; authorizing the issuer to engage in
2611 general advertising and general solicitation under
2612 certain circumstances; specifying requirements for
2613 such advertising and solicitation; requiring the
2614 issuer to provide a disclosure statement to certain
2615 entities and persons within a specified timeframe;
2616 revising requirements for such statement; deleting
2617 requirements for the escrow agreement; conforming
2618 provisions to changes made by the act; revising the
2619 amount that may be received for sales of certain
2620 securities; providing a limit on securities that may
2621 be sold by an issuer to an investor; deleting the
2622 requirement that an issuer file and provide a certain
2623 annual report; conforming cross-references; revising
2624 the duties of intermediaries under certain
2625 circumstances; providing obligations of issuers under
2626 certain circumstances; providing that certain sales
2627 are voidable within a specified timeframe; providing
2628 requirements for purchasers' notices to issuers to
2629 void purchases; deleting provisions relating to funds
2630 received from investors; creating s. 517.0612, F.S.;
2631 providing a short title; providing applicability;

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2632 requiring that offers and sales of securities be in
2633 accordance with certain federal laws and rules;
2634 specifying certain requirements for issuers relating
2635 to the registration exemption; specifying a limitation
2636 on the amount of cash and other consideration that may
2637 be received from sales of certain securities made
2638 within a specified timeframe; prohibiting an issuer
2639 from accepting more than a specified amount from a
2640 single purchaser under certain circumstances;
2641 authorizing the issuer to engage in general
2642 advertising and general solicitation of the offering
2643 under certain circumstances; specifying that a certain
2644 prohibition is enforceable under ch. 517, F.S.;

2645 requiring that the purchaser receive a disclosure
2646 statement within a specified timeframe; specifying the
2647 requirements for such statement; requiring certain
2648 funds to be deposited into certain bank and depository
2649 institutions; prohibiting the issuer from withdrawing
2650 any amount of the offering proceeds until the target
2651 offering amount has been received; requiring the
2652 issuer to file a notice of the offering in a certain
2653 format within a specified timeframe; requiring the
2654 issuer to file an amended notice within a specified
2655 timeframe under certain circumstances; prohibiting
2656 agents of issuers from engaging in certain acts under

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2657 certain circumstances; providing that sales made under
2658 the exemption are voidable within a specified
2659 timeframe; providing requirements for purchasers'
2660 notices to issuers to void purchases; creating s.
2661 517.0613, F.S.; providing construction; providing that
2662 registration exemptions under certain provisions are
2663 not available to issuers for certain transactions
2664 under specified circumstances; providing registration
2665 requirements; creating s. 517.0614, F.S.; specifying
2666 criteria for determining integration of offerings for
2667 the purpose of registration or qualifying for a
2668 registration exemption; specifying certain
2669 requirements for the integration of offerings for an
2670 exempt offering for which general solicitation is
2671 prohibited; specifying certain requirements for the
2672 integration of offerings for two or more exempt
2673 offerings that allow general solicitation; specifying
2674 the circumstances under which integration analysis is
2675 not required; creating s. 517.0615, F.S.; specifying
2676 that certain communications are not deemed to
2677 constitute general solicitation or general advertising
2678 under specified circumstances; creating s. 517.0616,
2679 F.S.; providing that registration exemptions under
2680 certain provisions are not available to certain
2681 issuers under a specified circumstance; amending s.

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2682 517.081, F.S.; revising the duties and authority of
2683 the Financial Services Commission; authorizing the
2684 commission to establish certain criteria relating to
2685 the issuance of certain securities, trusts, and
2686 investments; authorizing the commission to prescribe
2687 certain forms and establish procedures for depositing
2688 fees and filing documents and requirements and
2689 standards relating to prospectuses, advertisements,
2690 and other sales literature; revising the list of
2691 issuers that are ineligible to submit simplified
2692 offering circulars; deleting provisions that require
2693 issuers to provide certain documents to the Office of
2694 Financial Regulation under certain circumstances;
2695 revising the requirements that must be met before the
2696 office must record the registration of a security;
2697 amending s. 517.101, F.S.; revising requirements for
2698 written consent to service in certain suits,
2699 proceedings, and actions; amending s. 517.131, F.S.;
2700 defining the term "final judgment"; specifying the
2701 purpose of the Securities Guaranty Fund; making
2702 technical changes; revising eligibility for payment
2703 from the fund; requiring eligible persons or receivers
2704 seeking payment from the fund to file a certain
2705 application with the office on a certain form;
2706 authorizing the commission to adopt rules regarding

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2707 | electronic filing of such application; specifying the
2708 | timeframe within which certain eligible persons or
2709 | receivers must file such application; providing
2710 | requirements for such applications; requiring the
2711 | office to approve applications for payment under
2712 | certain circumstances and to provide applicants with
2713 | certain notices within a specified timeframe;
2714 | requiring eligible persons or receivers to assign to
2715 | the office all rights, titles, and interests in final
2716 | judgments and orders of restitution equal to a
2717 | specified amount under certain circumstances;
2718 | requiring the office to deem an application for
2719 | payment abandoned under certain circumstances;
2720 | requiring that the time period to complete
2721 | applications be tolled under certain circumstances;
2722 | deleting provisions relating to specified notices to
2723 | the office and to rulemaking authority; amending s.
2724 | 517.141, F.S.; defining terms; revising the Securities
2725 | Guaranty Fund disbursement amounts to which eligible
2726 | persons are entitled; revising provisions regarding
2727 | payment of aggregate claims; providing for the
2728 | satisfaction of claims in the event of an insufficient
2729 | balance in the fund; requiring payments and
2730 | disbursements from the Securities Guaranty Fund to be
2731 | made by the Chief Financial Officer or his or her

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2732 authorized designee, upon authorization by the office;
2733 requiring such authorization to be submitted within a
2734 certain timeframe; deleting provisions regarding
2735 requirements for payment of claims; conforming
2736 provisions to changes made by the act; specifying the
2737 circumstances under which a claimant must reimburse
2738 the fund for payments received from the fund;
2739 providing penalties; authorizing the Department of
2740 Financial Services, rather than the office, to
2741 institute legal proceedings for certain compliance
2742 enforcement and to recover certain interests, costs,
2743 and fees; amending s. 517.191, F.S.; deleting an
2744 obsolete term; revising the civil penalty amounts for
2745 certain violations; authorizing the office to recover
2746 certain costs and attorney fees; requiring that moneys
2747 recovered be deposited in a specified trust fund;
2748 specifying the liability of control persons; providing
2749 an exception; specifying circumstances under which
2750 certain persons are deemed to have violated ch. 517,
2751 F.S.; authorizing the office to issue and serve cease
2752 and desist orders and emergency cease and desist
2753 orders under certain circumstances; authorizing the
2754 office to impose and collect administrative fines for
2755 certain violations; specifying the disposition of such
2756 fines; authorizing the office to bar applications or

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2757 notifications for licenses and registrations under
2758 certain circumstances; conforming cross-references;
2759 providing construction; specifying jurisdiction of the
2760 courts relating to the sale or offer of certain
2761 securities; making technical changes; amending s.
2762 517.211, F.S.; providing for joint and several
2763 liability of control persons in certain circumstances
2764 for the purposes of specified actions; specifying the
2765 date on which certain interest begins accruing in an
2766 action for rescission; providing construction;
2767 specifying that certain civil remedies extend to
2768 purchasers or sellers of securities; making technical
2769 changes; repealing s. 517.221, F.S., relating to cease
2770 and desist orders; repealing s. 517.241, F.S.,
2771 relating to remedies; amending s. 517.301, F.S.;
2772 revising the circumstances under which certain
2773 activities are considered unlawful and violations of
2774 law; conforming provisions to changes made by the act;
2775 revising the definition of the term "investment";
2776 specifying that certain misrepresentations by persons
2777 issuing or selling securities are unlawful; specifying
2778 that certain misrepresentations by persons registered
2779 or required to be registered under certain provisions
2780 or subject to certain requirements are unlawful;
2781 specifying that obtaining money or property in

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2782 connection with the offer or sale of an investment is
2783 unlawful under certain conditions; providing
2784 construction; requiring disclaimers for certain
2785 statements; making technical changes; repealing s.
2786 517.311, F.S., relating to false representations,
2787 deceptive words, and enforcement; repealing s.
2788 517.312, F.S., relating to securities, investments,
2789 and boiler rooms, prohibited practices, and remedies;
2790 amending ss. 517.072 and 517.12, F.S.; conforming
2791 cross-references and making technical changes;
2792 amending ss. 517.1201 and 517.1202, F.S.; conforming
2793 cross-references; amending s. 517.302, F.S.;
2794 conforming a provision to changes made by the act and
2795 making a technical change; providing an effective
2796 date.
2797

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 611 Public Deposits
SPONSOR(S): Botana
TIED BILLS: **IDEN./SIM. BILLS:** SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Unless exempted by law, state and local governments are required to deposit public funds in a qualified public depository (QPD) pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act). The Act is administered by the Chief Financial Officer (CFO) and the Department of Financial Services (DFS).

Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD. Currently, banks, savings banks, and savings associations are the only types of financial institutions eligible to be a QPD or a custodian for another QPD's pledged collateral.

The bill:

- Allows state-chartered and federally-chartered credit unions to become QPDs and custodians for another QPD's pledged collateral;
- Provides criteria a credit union must meet before the CFO can designate the credit union as a QPD;
- Requires credit union QPDs to make the same attestations required of other QPDs;
- Creates separate mutual responsibility and contingent liability provisions for credit union QPDs to prevent banks from sharing liability with credit unions in the event of a credit union QPD's default or insolvency, and vice versa; and
- Requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any banks, savings bank, or savings association.

The bill has a significant fiscal impact. See *Fiscal Impact on State Government* section. Further, the bill does not include an appropriation to fund DFS's implementation and ongoing maintenance of credit unions as QPDs. The bill has an indeterminate fiscal impact on local governments and private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Depositories

Pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act), and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).¹ A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended;²
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the Act; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.³

Upon approval from the CFO, these banks, savings banks, and savings associations may accept “public deposits” from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of “qualified public depository.” As of December 1, 2023, there are approximately 117 active QPDs in this state.⁴

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.⁵ The Act’s collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD’s insolvency or default.⁶ Losses are satisfied first through the standard maximum federal deposit insurance of \$250,000,⁷ and then through the CFO’s demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO’s authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.⁸

A “custodian” can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public deposits.⁹ Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;¹⁰
- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;¹¹

¹ S. 280.03(1)(b), F.S.

² 12 U.S.C. ss. 1811 *et seq.*

³ S. 280.02(26), F.S.

⁴ Email from Parker Powell, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 3 Attestations (Dec. 1, 2023).

⁵ S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.

⁶ S. 280.041(6), F.S.

⁷ 12 U.S.C. § 1821(a)(1)(E).

⁸ S. 280.07, F.S.

⁹ Ss. 280.02(10) and 280.041(1)(a), F.S.

¹⁰ S. 280.041(1)(a), F.S.

¹¹ S. 280.041(1)(b), F.S.

- CFO's custody arrangement for collateral deposited in the CFO's name, subject to certain requirements;¹²
- Federal Home Loan Bank letter of credit arrangement for collateral issued with the CFO as beneficiary, subject to certain requirements.¹³

DFS oversees the Act's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.¹⁴ The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.¹⁵ In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.¹⁶

Required Attestation

Under the Act, QPDs are required to attest, under penalty of perjury and on a form prescribed by the CFO, whether the entity is in compliance with s. 280.02(26)(e) and (f).¹⁷ Specifically, QPDs must attest that:

- The QPD makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member;¹⁸ and
- The QPD does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:
 - The person's political opinions, speech, or affiliations;
 - Except as otherwise provided in law, the person's religious beliefs, religious exercise, or religious affiliations;
 - Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or
 - The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain enumerated factors.¹⁹

Regulation of Credit Unions

Like banks, savings banks, and savings associations, credit union accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.²⁰ The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."²¹ State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934²² and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit

¹² S. 280.041(1)(c), F.S.

¹³ S. 280.041(1)(d), F.S.

¹⁴ Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

¹⁵ S. 280.05, F.S.

¹⁶ *Id.* at (10).

¹⁷ S. 280.025, F.S.

¹⁸ S. 280.02(26)(e), F.S.

¹⁹ S. 280.02(26)(f), F.S.

²⁰ Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

²¹ S. 657.003, F.S.

²² Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq.*

unions.²³ All state-chartered credit unions operating in Florida must carry NCUSIF insurance.²⁴ The standard maximum share insurance amount is \$250,000.²⁵

Effect of the Bill

The bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral. Specifically, the bill creates s. 280.042, F.S., which provides criteria that a credit union must meet before the CFO can designate a credit union as a QPD. These criteria are designed to protect public deposits.

Attestation Required

Beginning July 1, 2024, the bill requires credit union QPDs to make the same attestations required of other QPDs relating to the provision of services based on risk factors unique to each customer and the unsafe and unsound practice of denying or canceling services on the basis of environmental, social, or governance factors.

Collateral Agreements

The bill requires a credit union QPD to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

- The credit union must submit a signed statement from a public depositor (i.e., a state or local government) indicating that, if the credit union is designated as a QPD, the public depositor intends to deposit public funds with the credit union; and
- There are at least four other credit unions that are designated as QPDs or have applied to be designated as QPDs and have submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public depositor of intent to deposit public funds with the credit union.

The CFO must withdraw from a collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as QPDs and the number of eligible credit unions applying to be designated as QPDs is less than five. As a result of the CFO's withdrawal, the credit union loses its designation as a QPD, and must within 10 days after the CFO's notification of such withdrawal, return all public deposits that the credit union holds to the public depositor who deposited the funds. Additionally, the CFO may limit the amount of public deposits any one credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

Shared Contingent Liability

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs.

In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess QPDs, subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

²³ Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, *How Your Accounts Are Federally Insured*, <https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf> (last visited Jan. 5, 2024).

²⁴ Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.

²⁵ NCUA, *supra* note 20.

Segregation of Penalties; Public Deposit Program

The bill requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any bank, savings bank, or savings association. Subject to this segregation of funds requirement, the CFO is authorized to pay any losses to public depositors from the Public Deposits Trust Fund.

Lastly, the bill makes conforming changes to allow credit unions to participate in the public deposit program and to subject credit union QPDs to the regulatory oversight of the CFO.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 17.68, F.S., relating to Financial Literacy Program for Individuals with Developmental Disabilities.
- Section 2.** Amends s. 280.02, F.S., relating to definitions.
- Section 3.** Amends s. 280.025, F.S., relating to attestation required.
- Section 4.** Amends s. 280.03, F.S., relating to public deposits to be secured; prohibitions; exemptions.
- Section 5.** Creates s. 280.042, F.S., relating to credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.
- Section 6.** Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.
- Section 7.** Amends s. 280.052, F.S., relating to order of suspension or disqualification; procedure.
- Section 8.** Amends s. 280.053, F.S., relating to period of suspension or disqualification; obligations during period; reinstatement.
- Section 9.** Amends s. 280.055, F.S., relating to cease and desist order; corrective order; administrative penalty.
- Section 10.** Amends s. 280.07, F.S., relating to mutual responsibility and contingent liability.
- Section 11.** Amends s. 280.08, F.S., relating to procedure for payment of losses.
- Section 12.** Amends s. 280.085, F.S., relating to notice to claimants.
- Section 13.** Amends s. 280.09, F.S., relating to Public Deposits Trust Fund.
- Section 14.** Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.
- Section 15.** Amends s. 280.13, F.S., relating to eligible collateral.
- Section 16.** Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.
- Sections 17-36.** Reenacts various sections of statutes to incorporate amendments to ch. 280, F.S.
- Section 37.** Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DFS, allowing credit unions to be QPDs will require \$269,828 for workload and programming costs:²⁶

- \$188,650 in non-recurring expenditures for DFS's Office of Information Technology (OIT) to make:
 - Significant programming changes to the Collateral Administration Program (CAP), a computer application used to administer Florida's public deposits program.
 - Modifications to the Florida Planning Accounting, and Ledger Management (PALM) system to accommodate the required segregated accounting of collateral proceeds, assessments, or administrative penalties attributable to credit unions.
- \$5,728 in recurring expenditures for independent ranking service data on credit unions.
- \$75,450 in recurring expenditures for one additional Financial Examiner/Analyst II FTE, class code 1564, pay grade 023.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill's impact on local government revenues is indeterminate. However, a 2014 study by the Office of Program Policy Analysis and Government Accountability explained the potential positive impact to local government public depositors:

Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.²⁷

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowing credit unions to accept public deposits may generate additional income for the credit unions and provide more options for the public depositors. It is unclear what impact the bill will have on existing QPDs (banks, savings banks, or savings associations). The bill's impact on the private sector is indeterminate due to the number of variables involved in determining such impact.

D. FISCAL COMMENTS:

None.

²⁶ Email from Austin Stowers, Director of Legislative Affairs, Florida Department of Financial Services, RE: HB 987 – Public Deposits (Mar. 23, 2023). A bill analysis for the 2024 version of the bill has been requested from DFS.

²⁷ Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The CFO has rulemaking authority to administer ch. 280, F.S. To add credit unions as QPDs, rulemaking is necessary to amend ch. 69C-2, F.A.C., and several forms incorporated by reference in the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to public deposits; amending s. 17.68,
3 F.S.; conforming provisions to changes made by the
4 act; amending s. 280.02, F.S.; revising definitions;
5 adding credit unions to a list of financial
6 institutions that are eligible to be qualified public
7 depositories; amending s. 280.025, F.S.; providing
8 applicability of qualified public depository
9 provisions to credit unions; amending s. 280.03, F.S.;
10 conforming a provision to changes made by the act;
11 creating s. 280.042, F.S.; prohibiting the Chief
12 Financial Officer from designating credit unions as
13 qualified public depositories unless certain
14 conditions are met; requiring the Chief Financial
15 Officer to withdraw from a collateral agreement with a
16 credit union under certain circumstances; specifying a
17 requirement for and a restriction on a credit union
18 that is a party to a withdrawn collateral agreement;
19 authorizing the Chief Financial Officer to limit the
20 amount of public deposits a credit union may hold;
21 amending ss. 280.05, 280.052, 280.053, and 280.055,
22 F.S.; providing applicability of qualified public
23 depository provisions to credit unions; amending s.
24 280.07, F.S.; specifying the losses against which
25 certain solvent banks, savings banks, savings

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26 associations, and credit unions must guarantee public
27 depositors; amending ss. 280.08 and 280.085, F.S.;
28 conforming provisions to changes made by the act;
29 amending s. 280.09, F.S.; requiring the Chief
30 Financial Officer to segregate and separately account
31 for proceeds, assessments, and administrative
32 penalties attributable to a credit union from those
33 attributable to other specified financial
34 institutions; revising a condition for the payment of
35 losses to public depositors; amending s. 280.10, F.S.;
36 conforming provisions to changes made by the act;
37 amending s. 280.13, F.S.; providing that a specified
38 limit on securities eligible to be pledged as
39 collateral apply to qualified public depositories,
40 rather than to banks and savings associations;
41 amending s. 280.17, F.S.; conforming a provision to
42 changes made by the act; reenacting ss. 280.17(1)(a),
43 17.57(7)(a), 24.114(1), 125.901(3)(e), 136.01,
44 159.608(11), 175.301, 175.401(8), 185.30, 185.50(8),
45 190.007(3), 191.006(16), 215.34(2), 218.415(16)(c),
46 (17)(c), and (23)(a), 255.502(4)(h), 280.051(15),
47 280.18(1), 331.309(1) and (2), 373.553(2), 631.221,
48 and 723.06115(3)(c), F.S., relating to requirements
49 for public depositors; deposits and investments of
50 state money; bank deposits and control of lottery

51 transactions; children's services and independent
 52 special districts; county depositories; powers of
 53 housing finance authorities; depositories for pension
 54 funds; retiree health insurance subsidies;
 55 depositories for retirement funds; retiree health
 56 insurance subsidies; boards of supervisors; general
 57 powers; state funds and noncollectible items; local
 58 government investment policies; definitions; grounds
 59 for suspension or disqualification of a qualified
 60 public depository; protection of public depositors and
 61 liability of the state; treasurer, depositories, and
 62 fiscal agent for Space Florida; treasurer of the
 63 board, payment of funds, and depositories; deposit of
 64 moneys collected; and the Florida Mobile Home
 65 Relocation Trust Fund, respectively, to incorporate
 66 the amendments made by this act to s. 280.02, F.S., in
 67 references thereto; providing an effective date.

68
 69 Be It Enacted by the Legislature of the State of Florida:

70
 71 Section 1. Subsection (4) of section 17.68, Florida
 72 Statutes, is amended to read:

73 17.68 Financial Literacy Program for Individuals with
 74 Developmental Disabilities.—

75 (4) Within 90 days after the department establishes the

76 | website clearinghouse and publishes the brochure, each bank,
 77 | credit union, savings association, and savings bank that is a
 78 | qualified public depository as defined in s. 280.02 shall:

79 | (a) Make copies of the department's brochures available,
 80 | upon the request of the consumer, at its principal place of
 81 | business and each branch office located in this state which has
 82 | in-person teller services by having copies of the brochure
 83 | available or having the capability to print a copy of the
 84 | brochure from the department's website. Upon request, the
 85 | department shall provide copies of the brochure to a bank,
 86 | credit union, savings association, or savings bank.

87 | (b) Provide on its website a hyperlink to the department's
 88 | website clearinghouse. If the department changes the website
 89 | address for the clearinghouse, the bank, credit union, savings
 90 | association, or savings bank must update the hyperlink within 90
 91 | days after notification by the department of such change.

92 | Section 2. Subsections (6), (10), (21), (23), and (26) of
 93 | section 280.02, Florida Statutes, are amended to read:

94 | 280.02 Definitions.—As used in this chapter, the term:

95 | (6) "Capital account" or "tangible equity capital" means
 96 | total equity capital, as defined on the balance-sheet portion of
 97 | the Consolidated Reports of Condition and Income (call report),
 98 | or net worth, as described in the National Credit Union
 99 | Administration 5300 Call Report, less intangible assets, as
 100 | submitted to the regulatory financial banking authority.

101 (10) "Custodian" means the Chief Financial Officer or a
 102 bank, credit union, savings association, or trust company that:

103 (a) Is organized and existing under the laws of this
 104 state, any other state, or the United States;

105 (b) Has executed all forms required under this chapter or
 106 any rule adopted hereunder;

107 (c) Agrees to be subject to the jurisdiction of the courts
 108 of this state, or of the courts of the United States which are
 109 located within this state, for the purpose of any litigation
 110 arising out of this chapter; and

111 (d) Has been approved by the Chief Financial Officer to
 112 act as a custodian.

113 (21) "Pool figure" means the total average monthly
 114 balances of public deposits held by all banks, savings banks, or
 115 savings associations or held separately by all credit unions
 116 ~~qualified public depositories~~ during the immediately preceding
 117 12-month period.

118 (23) "Public deposit" means the moneys of the state or of
 119 any state university, county, school district, community college
 120 district, special district, metropolitan government, or
 121 municipality, including agencies, boards, bureaus, commissions,
 122 and institutions of any of the foregoing, or of any court, and
 123 includes the moneys of all county officers, including
 124 constitutional officers, which are placed on deposit in a bank,
 125 credit union, savings bank, or savings association. This

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126 includes, but is not limited to, time deposit accounts, demand
127 deposit accounts, and nonnegotiable certificates of deposit.
128 Moneys in deposit notes and in other nondeposit accounts such as
129 repurchase or reverse repurchase operations are not public
130 deposits. Securities, mutual funds, and similar types of
131 investments are not public deposits and are not subject to this
132 chapter.

133 (26) "Qualified public depository" means a bank, credit
134 union, savings bank, or savings association that:

135 (a) Is organized and exists under the laws of the United
136 States, ~~or~~ the laws of this state, or the laws of any other
137 state or territory of the United States.

138 (b) Has its principal place of business in this state or
139 has a branch office in this state which is authorized under the
140 laws of this state or of the United States to receive deposits
141 in this state.

142 (c) Is insured by the Federal Deposit Insurance
143 Corporation or the National Credit Union Share Insurance Fund
144 ~~Has deposit insurance pursuant to the Federal Deposit Insurance~~
145 ~~Act, as amended, 12 U.S.C. ss. 1811 et seq.~~

146 (d) Has procedures and practices for accurate
147 identification, classification, reporting, and collateralization
148 of public deposits.

149 (e) Makes determinations about the provision of services
150 or the denial of services based on an analysis of risk factors

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151 unique to each customer or member. This paragraph does not
152 restrict a qualified public depository that claims a religious
153 purpose from making such determinations based on the religious
154 beliefs, religious exercise, or religious affiliations of a
155 customer or member.

156 (f) Does not engage in the unsafe and unsound practice of
157 denying or canceling its services to a person, or otherwise
158 discriminating against a person in making available such
159 services or in the terms or conditions of such services, on the
160 basis of:

161 1. The person's political opinions, speech, or
162 affiliations;

163 2. Except as provided in paragraph (e), the person's
164 religious beliefs, religious exercise, or religious
165 affiliations;

166 3. Any factor if it is not a quantitative, impartial, and
167 risk-based standard, including any such factor related to the
168 person's business sector; or

169 4. The use of any rating, scoring, analysis, tabulation,
170 or action that considers a social credit score based on factors
171 including, but not limited to:

172 a. The person's political opinions, speech, or
173 affiliations.

174 b. The person's religious beliefs, religious exercise, or
175 religious affiliations.

- 176 c. The person's lawful ownership of a firearm.
- 177 d. The person's engagement in the lawful manufacture,
- 178 distribution, sale, purchase, or use of firearms or ammunition.
- 179 e. The person's engagement in the exploration, production,
- 180 utilization, transportation, sale, or manufacture of fossil
- 181 fuel-based energy, timber, mining, or agriculture.
- 182 f. The person's support of the state or Federal Government
- 183 in combating illegal immigration, drug trafficking, or human
- 184 trafficking.
- 185 g. The person's engagement with, facilitation of,
- 186 employment by, support of, business relationship with,
- 187 representation of, or advocacy for any person described in this
- 188 subparagraph.
- 189 h. The person's failure to meet or commit to meet, or
- 190 expected failure to meet, any of the following as long as such
- 191 person is in compliance with applicable state or federal law:
- 192 (I) Environmental standards, including emissions
- 193 standards, benchmarks, requirements, or disclosures;
- 194 (II) Social governance standards, benchmarks, or
- 195 requirements, including, but not limited to, environmental or
- 196 social justice;
- 197 (III) Corporate board or company employment composition
- 198 standards, benchmarks, requirements, or disclosures based on
- 199 characteristics protected under the Florida Civil Rights Act of
- 200 1992; or

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201 (IV) Policies or procedures requiring or encouraging
 202 employee participation in social justice programming, including,
 203 but not limited to, diversity, equity, or inclusion training.

204 (g) Meets all the requirements of this chapter.

205 (h) Has been designated by the Chief Financial Officer as
 206 a qualified public depository.

207 Section 3. Subsection (1) of section 280.025, Florida
 208 Statutes, is amended to read:

209 280.025 Attestation required.—

210 (1) Beginning July 1, 2024 ~~2023~~, the following entities
 211 must attest, under penalty of perjury, on a form prescribed by
 212 the Chief Financial Officer, whether the entity is in compliance
 213 with s. 280.02(26)(e) and (f):

214 (a) A bank, savings bank, credit union, or savings
 215 association, upon application or reapplication for designation
 216 as a qualified public depository.

217 (b) A qualified public depository, upon filing the report
 218 required by s. 280.16(1)(d).

219 Section 4. Paragraph (a) of subsection (3) of section
 220 280.03, Florida Statutes, is amended to read:

221 280.03 Public deposits to be secured; prohibitions;
 222 exemptions.—

223 (3) The following are exempt from the requirements of, and
 224 protection under, this chapter:

225 (a) Public deposits deposited in a bank, credit union, or

226 savings association by a trust department or trust company which
 227 are fully secured under trust business laws.

228 Section 5. Section 280.042, Florida Statutes, is created
 229 to read:

230 280.042 Credit union designations as qualified public
 231 depositories; withdrawal by the Chief Financial Officer from
 232 collateral agreements; limits on public deposits.—

233 (1) The Chief Financial Officer may not designate a credit
 234 union as a qualified public depository unless, at the time the
 235 credit union submits its agreement of contingent liability and
 236 its collateral agreement:

237 (a) The credit union submits a signed statement from a
 238 public depositor indicating that if the credit union is
 239 designated as a qualified public depository, the public
 240 depositor intends to deposit public funds with the credit union.

241 (b) The combined total of the numbers in subparagraphs 1.
 242 and 2. is at least four:

243 1. The number of credit unions designated as qualified
 244 public depositories.

245 2. The number of credit unions that meet all of the
 246 following requirements:

247 a. Apply to be designated as qualified public
 248 depositories.

249 b. Meet the requirements in paragraph (a).

250 (2) The Chief Financial Officer must withdraw from a

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251 collateral agreement previously entered into with a credit union
252 if, during any 90 calendar days, the combined total of the
253 number of credit unions designated as qualified public
254 depositories and the number of eligible credit unions applying
255 to be designated as qualified public depositories is less than
256 five.

257 (3) A credit union that is a party to a collateral
258 agreement from which the Chief Financial Officer withdraws in
259 accordance with subsection (2) may no longer be designated as a
260 qualified public depository. Within 10 business days after the
261 Chief Financial Officer notifies the credit union that the Chief
262 Financial Officer has withdrawn from the collateral agreement,
263 the credit union must return all public deposits that the credit
264 union holds to the public depositor who deposited the funds. The
265 notice provided for in this subsection may be sent to a credit
266 union by regular mail or by e-mail.

267 (4) The Chief Financial Officer may limit the amount of
268 public deposits that a credit union may hold in order to make
269 sure that no single credit union holds an amount of public
270 deposits that might adversely affect the integrity of the public
271 deposits program.

272 Section 6. Subsection (11) of section 280.05, Florida
273 Statutes, is amended to read:

274 280.05 Powers and duties of the Chief Financial Officer.—
275 In fulfilling the requirements of this act, the Chief Financial

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276 Officer has the power to take the following actions he or she
277 deems necessary to protect the integrity of the public deposits
278 program:

279 (11) Sell securities for the purpose of paying losses to
280 public depositors not covered by deposit or share insurance.

281 Section 7. Subsection (1) of section 280.052, Florida
282 Statutes, is amended to read:

283 280.052 Order of suspension or disqualification;
284 procedure.—

285 (1) The suspension or disqualification of a bank, credit
286 union, or savings association as a qualified public depository
287 must be by order of the Chief Financial Officer and must be
288 mailed to the qualified public depository by registered or
289 certified mail.

290 Section 8. Paragraph (c) of subsection (1) and paragraph
291 (c) of subsection (2) of section 280.053, Florida Statutes, are
292 amended to read:

293 280.053 Period of suspension or disqualification;
294 obligations during period; reinstatement.—

295 (1)

296 (c) Upon expiration of the suspension period, the bank, credit
297 union, or savings association may, by order of the Chief
298 Financial Officer, be reinstated as a qualified public
299 depository, unless the cause of the suspension has not been
300 corrected or the bank, credit union, or savings association is

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301 otherwise not in compliance with this chapter or any rule
 302 adopted pursuant to this chapter.

303 (2)

304 (c) Upon expiration of the disqualification period, the
 305 bank, credit union, or savings association may reapply for
 306 qualification as a qualified public depository. If a
 307 disqualified bank, credit union, or savings association is
 308 purchased or otherwise acquired by new owners, it may reapply to
 309 the Chief Financial Officer to be a qualified public depository
 310 before ~~prior to~~ the expiration date of the disqualification
 311 period. Redesignation as a qualified public depository may occur
 312 only after the Chief Financial Officer has determined that all
 313 requirements for holding public deposits under the law have been
 314 met.

315 Section 9. Section 280.055, Florida Statutes, is amended
 316 to read:

317 280.055 Cease and desist order; corrective order;
 318 administrative penalty.—

319 (1) The Chief Financial Officer may issue a cease and
 320 desist order and a corrective order upon determining that:

321 (a) A qualified public depository has requested and
 322 obtained a release of pledged collateral without approval of the
 323 Chief Financial Officer;

324 (b) A bank, credit union, savings association, or other
 325 financial institution is holding public deposits without a

326 certificate of qualification issued by the Chief Financial
 327 Officer;

328 (c) A qualified public depository pledges, deposits, or
 329 arranges for the issuance of unacceptable collateral;

330 (d) A custodian has released pledged collateral without
 331 approval of the Chief Financial Officer;

332 (e) A qualified public depository or a custodian has not
 333 furnished to the Chief Financial Officer, when the Chief
 334 Financial Officer requested, a power of attorney or bond power
 335 or bond assignment form required by the bond agent or bond
 336 trustee for each issue of registered certificated securities
 337 pledged and registered in the name, or nominee name, of the
 338 qualified public depository or custodian;

339 (f) A qualified public depository; a bank, credit union,
 340 savings association, or other financial institution; or a
 341 custodian has committed any other violation of this chapter or
 342 any rule adopted pursuant to this chapter that the Chief
 343 Financial Officer determines may be remedied by a cease and
 344 desist order or corrective order; or

345 (g) A qualified public depository no longer meets the
 346 definition of a qualified public depository under s. 280.02.

347 (2) Any qualified public depository or other bank, credit
 348 union, savings association, or financial institution or
 349 custodian that violates a cease and desist order or corrective
 350 order of the Chief Financial Officer is subject to an

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351 administrative penalty not exceeding \$1,000 for each violation
 352 of the order. Each day the violation of the order continues
 353 constitutes a separate violation.

354 Section 10. Section 280.07, Florida Statutes, is amended
 355 to read:

356 280.07 Mutual responsibility and contingent liability.—

357 (1) A Any bank, savings bank, or savings association that
 358 is designated as a qualified public depository and that is not
 359 insolvent shall guarantee public depositors against loss caused
 360 by the default or insolvency of other banks, savings banks, or
 361 savings associations that are designated as qualified public
 362 depositories.

363 (2) A credit union that is designated as a qualified
 364 public depository and that is not insolvent shall guarantee
 365 public depositors against loss caused by the default or
 366 insolvency of other credit unions that are designated as
 367 qualified public depositories.

368
 369 Each qualified public depository shall execute a form prescribed
 370 by the Chief Financial Officer for such guarantee which must
 371 ~~shall~~ be approved by the board of directors and must ~~shall~~
 372 become an official record of the institution.

373 Section 11. Subsections (1) and (3) of section 280.08,
 374 Florida Statutes, are amended to read:

375 280.08 Procedure for payment of losses.—When the Chief

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376 Financial Officer determines that a default or insolvency has
377 occurred, he or she shall provide notice as required in s.
378 280.085 and implement the following procedures:

379 (1) The Division of Treasury, in cooperation with the
380 Office of Financial Regulation of the Financial Services
381 Commission or the receiver of the qualified public depository in
382 default, shall ascertain the amount of funds of each public
383 depositor on deposit at such depository and the amount of
384 deposit or share insurance applicable to such deposits.

385 (3)(a) The loss to public depositors shall be satisfied,
386 insofar as possible, first through any applicable deposit or
387 share insurance and then through demanding payment under letters
388 of credit or the sale of collateral pledged or deposited by the
389 defaulting depository. The Chief Financial Officer may assess
390 qualified public depositories as provided in paragraph (b) ,
391 subject to the segregation of contingent liability in s. 280.07,
392 for the total loss if the demand for payment or sale of
393 collateral cannot be accomplished within 7 business days.

394 (b) The Chief Financial Officer shall provide coverage of
395 any remaining loss by assessment against the other qualified
396 public depositories. The Chief Financial Officer shall determine
397 such assessment for each qualified public depository by
398 multiplying the total amount of any remaining loss to all public
399 depositors by a percentage which represents the average monthly
400 balance of public deposits held by each qualified public

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401 depository during the previous 12 months divided by the total
402 average monthly balances of public deposits held by all
403 qualified public depositories, excluding the defaulting
404 depository, during the same period. The assessment calculation
405 must ~~shall~~ be computed to six decimal places.

406 Section 12. Subsection (4) of section 280.085, Florida
407 Statutes, is amended, and subsection (1) of that section is
408 republished, to read:

409 280.085 Notice to claimants.—

410 (1) Upon determining the default or insolvency of a
411 qualified public depository, the Chief Financial Officer shall
412 notify, by first-class mail, all public depositors that have
413 complied with s. 280.17 of such default or insolvency. The
414 notice must direct all public depositors having claims or
415 demands against the Public Deposits Trust Fund occasioned by the
416 default or insolvency to file their claims with the Chief
417 Financial Officer within 30 days after the date of the notice.

418 (4) The notice required in subsection (1) is not required
419 if the default or insolvency of a qualified public depository is
420 resolved in a manner in which all Florida public deposits are
421 acquired by another insured bank, credit union, savings bank, or
422 savings association.

423 Section 13. Section 280.09, Florida Statutes, is amended
424 to read:

425 280.09 Public Deposits Trust Fund.—

426 (1) In order to facilitate the administration of this
 427 chapter, there is created the Public Deposits Trust Fund,
 428 hereafter in this section designated "the fund." The proceeds
 429 from the sale of securities or draw on letters of credit held as
 430 collateral or from any assessment pursuant to s. 280.08 must
 431 ~~shall~~ be deposited into the fund. The Chief Financial Officer
 432 must segregate and separately account for any collateral
 433 proceeds, assessments, or administrative penalties attributable
 434 to a credit union from any collateral proceeds, assessments, or
 435 administrative penalties attributable to any bank, savings bank,
 436 or savings association. Any administrative penalty collected
 437 pursuant to this chapter shall be deposited into the Treasury
 438 Administrative and Investment Trust Fund.

439 (2) The Chief Financial Officer is authorized to pay any
 440 losses to public depositors from the fund, subject to the
 441 limitations provided in subsection (1), and there are hereby
 442 appropriated from the fund such sums as may be necessary from
 443 time to time to pay the losses. The term "losses," for purposes
 444 of this chapter, must ~~shall~~ also include losses of interest or
 445 other accumulations to the public depositor as a result of
 446 penalties for early withdrawal required by Depository
 447 Institution Deregulatory Commission Regulations or applicable
 448 successor federal laws or regulations because of suspension or
 449 disqualification of a qualified public depository by the Chief
 450 Financial Officer pursuant to s. 280.05 or because of withdrawal

451 from the public deposits program pursuant to s. 280.11. In that
 452 event, the Chief Financial Officer is authorized to assess
 453 against the suspended, disqualified, or withdrawing public
 454 depository, in addition to any amount authorized by any other
 455 provision of this chapter, an administrative penalty equal to
 456 the amount of the early withdrawal penalty and to pay that
 457 amount over to the public depositor as reimbursement for such
 458 loss. Any money in the fund estimated not to be needed for
 459 immediate cash requirements shall be invested pursuant to s.
 460 17.61.

461 Section 14. Subsections (1) and (3) of section 280.10,
 462 Florida Statutes, are amended to read:

463 280.10 Effect of merger, acquisition, or consolidation;
 464 change of name or address.—

465 (1) When a qualified public depository is merged into,
 466 acquired by, or consolidated with a bank, credit union, savings
 467 bank, or savings association that is not a qualified public
 468 depository:

469 (a) The resulting institution shall automatically become a
 470 qualified public depository subject to the requirements of the
 471 public deposits program.

472 (b) The contingent liability of the former institution
 473 shall be a liability of the resulting institution.

474 (c) The public deposits and associated collateral of the
 475 former institution shall be public deposits and collateral of

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476 the resulting institution.

477 (d) The resulting institution shall, within 90 calendar
478 days after the effective date of the merger, acquisition, or
479 consolidation, deliver to the Chief Financial Officer:

480 1. Documentation in its name as required for participation
481 in the public deposits program; or

482 2. Written notice of intent to withdraw from the program
483 as provided in s. 280.11 and a proposed effective date of
484 withdrawal which shall be within 180 days after the effective
485 date of the acquisition, merger, or consolidation of the former
486 institution.

487 (e) If the resulting institution does not meet
488 qualifications to become a qualified public depository or does
489 not submit required documentation within 90 calendar days after
490 the effective date of the merger, acquisition, or consolidation,
491 the Chief Financial Officer shall initiate mandatory withdrawal
492 actions as provided in s. 280.11 and shall set an effective date
493 of withdrawal that is within 180 days after the effective date
494 of the acquisition, merger, or consolidation of the former
495 institution.

496 (3) If the default or insolvency of a qualified public
497 depository results in acquisition of all or part of its Florida
498 public deposits by a bank, credit union, savings bank, or
499 savings association that is not a qualified public depository,
500 the bank, credit union, savings bank, or savings association

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501 acquiring the Florida public deposits is subject to subsection
 502 (1).

503 Section 15. Subsection (1) of section 280.13, Florida
 504 Statutes, is amended to read:

505 280.13 Eligible collateral.—

506 (1) Securities eligible to be pledged as collateral by
 507 qualified public depositories ~~banks and savings associations~~
 508 shall be limited to:

509 (a) Direct obligations of the United States Government.

510 (b) Obligations of any federal agency that are fully
 511 guaranteed as to payment of principal and interest by the United
 512 States Government.

513 (c) Obligations of the following federal agencies:

514 1. Farm credit banks.

515 2. Federal land banks.

516 3. The Federal Home Loan Bank and its district banks.

517 4. Federal intermediate credit banks.

518 5. The Federal Home Loan Mortgage Corporation.

519 6. The Federal National Mortgage Association.

520 7. Obligations guaranteed by the Government National
 521 Mortgage Association.

522 (d) General obligations of a state of the United States,
 523 or of Puerto Rico, or of a political subdivision or municipality
 524 thereof.

525 (e) Obligations issued by the Florida State Board of

526 Education under authority of the State Constitution or
 527 applicable statutes.

528 (f) Tax anticipation certificates or warrants of counties
 529 or municipalities having maturities not exceeding 1 year.

530 (g) Public housing authority obligations.

531 (h) Revenue bonds or certificates of a state of the United
 532 States or of a political subdivision or municipality thereof.

533 (i) Corporate bonds of any corporation that is not an
 534 affiliate or subsidiary of the qualified public depository.

535 Section 16. Paragraph (b) of subsection (4) of section
 536 280.17, Florida Statutes, is amended, and, for the purpose of
 537 incorporating the amendment made by this act to section 280.02,
 538 Florida Statutes, in a reference thereto, paragraph (a) of
 539 subsection (1) of section 280.17, Florida Statutes, is
 540 reenacted, to read:

541 280.17 Requirements for public depositors; notice to
 542 public depositors and governmental units; loss of protection.—In
 543 addition to any other requirement specified in this chapter,
 544 public depositors shall comply with the following:

545 (1)(a) Each official custodian of moneys that meet the
 546 definition of a public deposit under s. 280.02 shall ensure such
 547 moneys are placed in a qualified public depository unless the
 548 moneys are exempt under the laws of this state.

549 (4) If public deposits are in a qualified public
 550 depository that has been declared to be in default or insolvent,

551 each public depositor shall:

552 (b) Submit to the Chief Financial Officer for each public
 553 deposit, within 30 days after the date of official notification
 554 from the Chief Financial Officer, the following:

555 1. A claim form and agreement, as prescribed by the Chief
 556 Financial Officer, executed under oath, accompanied by proof of
 557 authority to execute the form on behalf of the public depositor.

558 2. A completed public deposit identification and
 559 acknowledgment form, as described in subsection (2).

560 3. Evidence of the insurance afforded the deposit pursuant
 561 to the Federal Deposit Insurance Act or the Federal Credit Union
 562 Act, as appropriate.

563 Section 16. For the purpose of incorporating the amendment
 564 made by this act to section 280.02, Florida Statutes, in a
 565 reference thereto, paragraph (a) of subsection (7) of section
 566 17.57, Florida Statutes, is reenacted to read:

567 17.57 Deposits and investments of state money.—

568 (7) In addition to the deposits authorized under this
 569 section and notwithstanding any other provisions of law, funds
 570 that are not needed to meet the disbursement needs of the state
 571 may be deposited by the Chief Financial Officer in accordance
 572 with the following conditions:

573 (a) The funds are initially deposited in a qualified
 574 public depository, as defined in s. 280.02, selected by the
 575 Chief Financial Officer.

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576 Section 17. For the purpose of incorporating the amendment
 577 made by this act to section 280.02, Florida Statutes, in a
 578 reference thereto, subsection (1) of section 24.114, Florida
 579 Statutes, is reenacted to read:

580 24.114 Bank deposits and control of lottery transactions.—

581 (1) All moneys received by each retailer from the
 582 operation of the state lottery, including, but not limited to,
 583 all ticket sales, interest, gifts, and donations, less the
 584 amount retained as compensation for the sale of the tickets and
 585 the amount paid out as prizes, shall be remitted to the
 586 department or deposited in a qualified public depository, as
 587 defined in s. 280.02, as directed by the department. The
 588 department shall have the responsibility for all administrative
 589 functions related to the receipt of funds. The department may
 590 also require each retailer to file with the department reports
 591 of the retailer's receipts and transactions in the sale of
 592 lottery tickets in such form and containing such information as
 593 the department may require. The department may require any
 594 person, including a qualified public depository, to perform any
 595 function, activity, or service in connection with the operation
 596 of the lottery as it may deem advisable pursuant to this act and
 597 rules of the department, and such functions, activities, or
 598 services shall constitute lawful functions, activities, and
 599 services of such person.

600 Section 18. For the purpose of incorporating the amendment

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601 made by this act to section 280.02, Florida Statutes, in a
602 reference thereto, paragraph (e) of subsection (3) of section
603 125.901, Florida Statutes, is reenacted to read:

604 125.901 Children's services; independent special district;
605 council; powers, duties, and functions; public records
606 exemption.—

607 (3)

608 (e)1. All moneys received by the council on children's
609 services shall be deposited in qualified public depositories, as
610 defined in s. 280.02, with separate and distinguishable accounts
611 established specifically for the council and shall be withdrawn
612 only by checks signed by the chair of the council and
613 countersigned by either one other member of the council on
614 children's services or by a chief executive officer who shall be
615 so authorized by the council.

616 2. Upon entering the duties of office, the chair and the
617 other member of the council or chief executive officer who signs
618 its checks shall each give a surety bond in the sum of at least
619 \$1,000 for each \$1 million or portion thereof of the council's
620 annual budget, which bond shall be conditioned that each shall
621 faithfully discharge the duties of his or her office. The
622 premium on such bond may be paid by the district as part of the
623 expense of the council. No other member of the council shall be
624 required to give bond or other security.

625 3. No funds of the district shall be expended except by

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626 check as aforesaid, except expenditures from a petty cash
627 account which shall not at any time exceed \$100. All
628 expenditures from petty cash shall be recorded on the books and
629 records of the council on children's services. No funds of the
630 council on children's services, excepting expenditures from
631 petty cash, shall be expended without prior approval of the
632 council, in addition to the budgeting thereof.

633 Section 19. For the purpose of incorporating the amendment
634 made by this act to section 280.02, Florida Statutes, in a
635 reference thereto, section 136.01, Florida Statutes, is
636 reenacted to read:

637 136.01 County depositories.—Each county depository shall
638 be a qualified public depository as defined in s. 280.02 for the
639 following funds: county funds; funds of all county officers,
640 including constitutional officers; funds of the school board;
641 and funds of the community college district board of trustees.
642 This enumeration of funds is made not by way of limitation, but
643 of illustration; and it is the intent hereof that all funds of
644 the county, the board of county commissioners or the several
645 county officers, the school board, or the community college
646 district board of trustees be included.

647 Section 20. For the purpose of incorporating the amendment
648 made by this act to section 280.02, Florida Statutes, in a
649 reference thereto, subsection (11) of section 159.608, Florida
650 Statutes, is reenacted to read:

651 159.608 Powers of housing finance authorities.—A housing
 652 finance authority shall constitute a public body corporate and
 653 politic, exercising the public and essential governmental
 654 functions set forth in this act, and shall exercise its power to
 655 borrow only for the purpose as provided herein:

656 (11) To invest and reinvest surplus funds of the housing
 657 finance authority in accordance with s. 218.415. However, in
 658 addition to the investments expressly authorized in s.
 659 218.415(16)(a)-(g) and (17)(a)-(d), a housing finance authority
 660 may invest surplus funds in interest-bearing time deposits or
 661 savings accounts that are fully insured by the Federal Deposit
 662 Insurance Corporation regardless of whether the bank or
 663 financial institution in which the deposit or investment is made
 664 is a qualified public depository as defined in s. 280.02. This
 665 subsection is supplementary to and may not be construed as
 666 limiting any powers of a housing finance authority or providing
 667 or implying a limiting construction of any other statutory
 668 provision.

669 Section 21. For the purpose of incorporating the amendment
 670 made by this act to section 280.02, Florida Statutes, in a
 671 reference thereto, section 175.301, Florida Statutes, is
 672 reenacted to read:

673 175.301 Depository for pension funds.—For any
 674 municipality, special fire control district, chapter plan, local
 675 law municipality, local law special fire control district, or

676 local law plan under this chapter, all funds of the
 677 firefighters' pension trust fund of any chapter plan or local
 678 law plan under this chapter may be deposited by the board of
 679 trustees with the treasurer of the municipality or special fire
 680 control district, acting in a ministerial capacity only, who
 681 shall be liable in the same manner and to the same extent as he
 682 or she is liable for the safekeeping of funds for the
 683 municipality or special fire control district. However, any
 684 funds so deposited with the treasurer of the municipality or
 685 special fire control district shall be kept in a separate fund
 686 by the treasurer or clearly identified as such funds of the
 687 firefighters' pension trust fund. In lieu thereof, the board of
 688 trustees shall deposit the funds of the firefighters' pension
 689 trust fund in a qualified public depository as defined in s.
 690 280.02, which depository with regard to such funds shall conform
 691 to and be bound by all of the provisions of chapter 280.

692 Section 22. For the purpose of incorporating the amendment
 693 made by this act to section 280.02, Florida Statutes, in
 694 references thereto, subsection (8) of section 175.401, Florida
 695 Statutes, is reenacted to read:

696 175.401 Retiree health insurance subsidy.—For any
 697 municipality, special fire control district, chapter plan, local
 698 law municipality, local law special fire control district, or
 699 local law plan under this chapter, under the broad grant of home
 700 rule powers under the State Constitution and chapter 166,

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701 municipalities have the authority to establish and administer
702 locally funded health insurance subsidy programs. In addition,
703 special fire control districts may, by resolution, establish and
704 administer locally funded health insurance subsidy programs.

705 Pursuant thereto:

706 (8) DEPOSIT OF HEALTH INSURANCE SUBSIDY FUNDS.—All funds
707 of the health insurance subsidy fund may be deposited by the
708 board of trustees with the treasurer of the municipality or
709 special fire control district, acting in a ministerial capacity
710 only, who shall be liable in the same manner and to the same
711 extent as he or she is liable for the safekeeping of funds for
712 the municipality or special fire control district. Any funds so
713 deposited shall be segregated by the treasurer in a separate
714 fund, clearly identified as funds of the health insurance
715 subsidy fund. In lieu thereof, the board of trustees shall
716 deposit the funds of the health insurance subsidy fund in a
717 qualified public depository as defined in s. 280.02, which shall
718 conform to and be bound by the provisions of chapter 280 with
719 regard to such funds. In no case shall the funds of the health
720 insurance subsidy fund be deposited in any financial
721 institution, brokerage house trust company, or other entity that
722 is not a public depository as provided by s. 280.02.

723 Section 23. For the purpose of incorporating the amendment
724 made by this act to section 280.02, Florida Statutes, in a
725 reference thereto, section 185.30, Florida Statutes, is

726 reenacted to read:

727 185.30 Depository for retirement fund.—For any
 728 municipality, chapter plan, local law municipality, or local law
 729 plan under this chapter, all funds of the municipal police
 730 officers' retirement trust fund of any municipality, chapter
 731 plan, local law municipality, or local law plan under this
 732 chapter may be deposited by the board of trustees with the
 733 treasurer of the municipality acting in a ministerial capacity
 734 only, who shall be liable in the same manner and to the same
 735 extent as he or she is liable for the safekeeping of funds for
 736 the municipality. However, any funds so deposited with the
 737 treasurer of the municipality shall be kept in a separate fund
 738 by the municipal treasurer or clearly identified as such funds
 739 of the municipal police officers' retirement trust fund. In lieu
 740 thereof, the board of trustees shall deposit the funds of the
 741 municipal police officers' retirement trust fund in a qualified
 742 public depository as defined in s. 280.02, which depository with
 743 regard to such funds shall conform to and be bound by all of the
 744 provisions of chapter 280.

745 Section 24. For the purpose of incorporating the amendment
 746 made by this act to section 280.02, Florida Statutes, in
 747 references thereto, subsection (8) of section 185.50, Florida
 748 Statutes, is reenacted to read:

749 185.50 Retiree health insurance subsidy.—For any
 750 municipality, chapter plan, local law municipality, or local law

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751 plan under this chapter, under the broad grant of home rule
752 powers under the State Constitution and chapter 166,
753 municipalities have the authority to establish and administer
754 locally funded health insurance subsidy programs. Pursuant
755 thereto:

756 (8) DEPOSIT OF PENSION FUNDS.—All funds of the health
757 insurance subsidy fund may be deposited by the board of trustees
758 with the treasurer of the municipality, acting in a ministerial
759 capacity only, who shall be liable in the same manner and to the
760 same extent as he or she is liable for the safekeeping of funds
761 for the municipality. Any funds so deposited shall be segregated
762 by said treasurer in a separate fund, clearly identified as
763 funds of the health insurance subsidy fund. In lieu thereof, the
764 board of trustees shall deposit the funds of the health
765 insurance subsidy fund in a qualified public depository as
766 defined in s. 280.02, which shall conform to and be bound by the
767 provisions of chapter 280 with regard to such funds. In no case
768 shall the funds of the health insurance subsidy fund be
769 deposited in any financial institution, brokerage house trust
770 company, or other entity that is not a public depository as
771 provided by s. 280.02.

772 Section 25. For the purpose of incorporating the amendment
773 made by this act to section 280.02, Florida Statutes, in a
774 reference thereto, subsection (3) of section 190.007, Florida
775 Statutes, is reenacted to read:

776 190.007 Board of supervisors; general duties.—

777 (3) The board is authorized to select as a depository for
 778 its funds any qualified public depository as defined in s.
 779 280.02 which meets all the requirements of chapter 280 and has
 780 been designated by the Chief Financial Officer as a qualified
 781 public depository, upon such terms and conditions as to the
 782 payment of interest by such depository upon the funds so
 783 deposited as the board may deem just and reasonable.

784 Section 26. For the purpose of incorporating the amendment
 785 made by this act to section 280.02, Florida Statutes, in a
 786 reference thereto, subsection (16) of section 191.006, Florida
 787 Statutes, is reenacted to read:

788 191.006 General powers.—The district shall have, and the
 789 board may exercise by majority vote, the following powers:

790 (16) To select as a depository for its funds any qualified
 791 public depository as defined in s. 280.02 which meets all the
 792 requirements of chapter 280 and has been designated by the Chief
 793 Financial Officer as a qualified public depository, upon such
 794 terms and conditions as to the payment of interest upon the
 795 funds deposited as the board deems just and reasonable.

796 Section 27. For the purpose of incorporating the amendment
 797 made by this act to section 280.02, Florida Statutes, in a
 798 reference thereto, subsection (2) of section 215.34, Florida
 799 Statutes, is reenacted to read:

800 215.34 State funds; noncollectible items; procedure.—

801 (2) Whenever a check, draft, or other order for the
 802 payment of money is returned by the Chief Financial Officer, or
 803 by a qualified public depository as defined in s. 280.02, to a
 804 state officer, a state agency, or the judicial branch for
 805 collection, the officer, agency, or judicial branch shall add to
 806 the amount due a service fee of \$15 or 5 percent of the face
 807 amount of the check, draft, or order, whichever is greater. An
 808 agency or the judicial branch may adopt a rule which prescribes
 809 a lesser maximum service fee, which shall be added to the amount
 810 due for the dishonored check, draft, or other order tendered for
 811 a particular service, license, tax, fee, or other charge, but in
 812 no event shall the fee be less than \$15. The service fee shall
 813 be in addition to all other penalties imposed by law, except
 814 that when other charges or penalties are imposed by an agency
 815 related to a noncollectible item, the amount of the service fee
 816 shall not exceed \$150. Proceeds from this fee shall be deposited
 817 in the same fund as the collected item. Nothing in this section
 818 shall be construed as authorization to deposit moneys outside
 819 the State Treasury unless specifically authorized by law.

820 Section 28. For the purpose of incorporating the amendment
 821 made by this act to section 280.02, Florida Statutes, in
 822 references thereto, paragraph (c) of subsection (16), paragraph
 823 (c) of subsection (17), and paragraph (a) of subsection (23) of
 824 section 218.415, Florida Statutes, are reenacted to read:

825 218.415 Local government investment policies.—Investment

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826 activity by a unit of local government must be consistent with a
 827 written investment plan adopted by the governing body, or in the
 828 absence of the existence of a governing body, the respective
 829 principal officer of the unit of local government and maintained
 830 by the unit of local government or, in the alternative, such
 831 activity must be conducted in accordance with subsection (17).
 832 Any such unit of local government shall have an investment
 833 policy for any public funds in excess of the amounts needed to
 834 meet current expenses as provided in subsections (1)-(16), or
 835 shall meet the alternative investment guidelines contained in
 836 subsection (17). Such policies shall be structured to place the
 837 highest priority on the safety of principal and liquidity of
 838 funds. The optimization of investment returns shall be secondary
 839 to the requirements for safety and liquidity. Each unit of local
 840 government shall adopt policies that are commensurate with the
 841 nature and size of the public funds within its custody.

842 (16) AUTHORIZED INVESTMENTS; WRITTEN INVESTMENT POLICIES.—
 843 Those units of local government electing to adopt a written
 844 investment policy as provided in subsections (1)-(15) may by
 845 resolution invest and reinvest any surplus public funds in their
 846 control or possession in:

847 (c) Interest-bearing time deposits or savings accounts in
 848 qualified public depositories as defined in s. 280.02.

849 (17) AUTHORIZED INVESTMENTS; NO WRITTEN INVESTMENT
 850 POLICY.—Those units of local government electing not to adopt a

851 written investment policy in accordance with investment policies
 852 developed as provided in subsections (1)-(15) may invest or
 853 reinvest any surplus public funds in their control or possession
 854 in:

855 (c) Interest-bearing time deposits or savings accounts in
 856 qualified public depositories, as defined in s. 280.02.

857
 858 The securities listed in paragraphs (c) and (d) shall be
 859 invested to provide sufficient liquidity to pay obligations as
 860 they come due.

861 (23) AUTHORIZED DEPOSITS.—In addition to the investments
 862 authorized for local governments in subsections (16) and (17)
 863 and notwithstanding any other provisions of law, a unit of local
 864 government may deposit any portion of surplus public funds in
 865 its control or possession in accordance with the following
 866 conditions:

867 (a) The funds are initially deposited in a qualified
 868 public depository, as defined in s. 280.02, selected by the unit
 869 of local government.

870 Section 29. For the purpose of incorporating the amendment
 871 made by this act to section 280.02, Florida Statutes, in a
 872 reference thereto, paragraph (h) of subsection (4) of section
 873 255.502, Florida Statutes, is reenacted to read:

874 255.502 Definitions; ss. 255.501-255.525.—As used in this
 875 act, the following words and terms shall have the following

876 meanings unless the context otherwise requires:

877 (4) "Authorized investments" means and includes without
878 limitation any investment in:

879 (h) Savings accounts in, or certificates of deposit of,
880 qualified public depositories as defined in s. 280.02, in an
881 amount that does not exceed 15 percent of the net worth of the
882 institution, or a lesser amount as determined by rule by the
883 State Board of Administration, provided such savings accounts
884 and certificates of deposit are secured in the manner prescribed
885 in chapter 280.

886
887 Investments in any security authorized in this subsection may be
888 under repurchase agreements or reverse repurchase agreements.

889 Section 30. For the purpose of incorporating the amendment
890 made by this act to section 280.02, Florida Statutes, in a
891 reference thereto, subsection (15) of section 280.051, Florida
892 Statutes, is reenacted to read:

893 280.051 Grounds for suspension or disqualification of a
894 qualified public depository.—A qualified public depository may
895 be suspended or disqualified or both if the Chief Financial
896 Officer determines that the qualified public depository has:

897 (15) No longer meets the definition of a qualified public
898 depository under s. 280.02.

899 Section 31. For the purpose of incorporating the amendment
900 made by this act to section 280.02, Florida Statutes, in a

901 reference thereto, subsection (1) of section 280.18, Florida
 902 Statutes, is reenacted to read:

903 280.18 Protection of public depositors; liability of the
 904 state.—

905 (1) When public deposits are made in accordance with this
 906 chapter, there shall be protection from loss to public
 907 depositors, as defined in s. 280.02, in the absence of
 908 negligence, malfeasance, misfeasance, or nonfeasance on the part
 909 of the public depositor or on the part of his or her agents or
 910 employees.

911 Section 32. For the purpose of incorporating the amendment
 912 made by this act to section 280.02, Florida Statutes, in
 913 references thereto, subsections (1) and (2) of section 331.309,
 914 Florida Statutes, are reenacted to read:

915 331.309 Treasurer; depositories; fiscal agent.—

916 (1) The board shall designate an individual who is a
 917 resident of the state, or a qualified public depository as
 918 defined in s. 280.02, as treasurer of Space Florida, who shall
 919 have charge of the funds of Space Florida. Such funds shall be
 920 disbursed only upon the order of or pursuant to the resolution
 921 of the board by warrant, check, authorization, or direct deposit
 922 pursuant to s. 215.85, signed or authorized by the treasurer or
 923 his or her representative or by such other persons as may be
 924 authorized by the board. The board may give the treasurer such
 925 other or additional powers and duties as the board may deem

926 appropriate and shall establish the treasurer's compensation.
 927 The board may require the treasurer to give a bond in such
 928 amount, on such terms, and with such sureties as may be deemed
 929 satisfactory to the board to secure the performance by the
 930 treasurer of his or her powers and duties. The board shall audit
 931 or have audited the books of the treasurer at least once a year.

932 (2) The board is authorized to select as depositories in
 933 which the funds of the board and of Space Florida shall be
 934 deposited any qualified public depository as defined in s.
 935 280.02, upon such terms and conditions as to the payment of
 936 interest by such depository upon the funds so deposited as the
 937 board may deem just and reasonable. The funds of Space Florida
 938 may be kept in or removed from the State Treasury upon written
 939 notification from the chair of the board to the Chief Financial
 940 Officer.

941 Section 33. For the purpose of incorporating the amendment
 942 made by this act to section 280.02, Florida Statutes, in a
 943 reference thereto, subsection (2) of section 373.553, Florida
 944 Statutes, is reenacted to read:

945 373.553 Treasurer of the board; payment of funds;
 946 depositories.—

947 (2) The board is authorized to select as depositories in
 948 which the funds of the board and of the district shall be
 949 deposited in any qualified public depository as defined in s.
 950 280.02, and such deposits shall be secured in the manner

951 provided in chapter 280.

952 Section 34. For the purpose of incorporating the amendment
 953 made by this act to section 280.02, Florida Statutes, in a
 954 reference thereto, section 631.221, Florida Statutes, is
 955 reenacted to read:

956 631.221 Deposit of moneys collected.—The moneys collected
 957 by the department in a proceeding under this chapter shall be
 958 deposited in a qualified public depository as defined in s.
 959 280.02, which depository with regards to such funds shall
 960 conform to and be bound by all the provisions of chapter 280, or
 961 invested with the Chief Financial Officer pursuant to chapter
 962 18. For the purpose of accounting for the assets and
 963 transactions of the estate, the receiver shall use such
 964 accounting books, records, and systems as the court directs
 965 after it hears and considers the recommendations of the
 966 receiver.

967 Section 35. For the purpose of incorporating the amendment
 968 made by this act to section 280.02, Florida Statutes, in a
 969 reference thereto, paragraph (c) of subsection (3) of section
 970 723.06115, Florida Statutes, is reenacted to read:

971 723.06115 Florida Mobile Home Relocation Trust Fund.—

972 (3) The department shall distribute moneys in the Florida
 973 Mobile Home Relocation Trust Fund to the Florida Mobile Home
 974 Relocation Corporation in accordance with the following:

975 (c) Funds transferred from the trust fund to the

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976 | corporation shall be transferred electronically and shall be
977 | transferred to and maintained in a qualified public depository
978 | as defined in s. 280.02 which is specified by the corporation.

979 | Section 36. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817 Authorized Agents of Tax Collectors

SPONSOR(S): Duggan

TIED BILLS: **IDEN./SIM. BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herrera	Lloyd
2) Appropriations Committee			
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

County tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMV) authorized agents for titling and registering motor vehicles, motor homes, and vessels. When processing these transactions, tax collectors charge and collect fees specified in state law, which are remitted to the state. However, chs. 319, 320, and 328, F.S., also require tax collectors to retain certain statutorily prescribed service fees and charges.

Each tax collector is authorized to enter into contracts with private third-party license plate agents (LPAs) for the titling and registration of motor vehicles, mobile homes, and vessels. LPAs are granted online computer access to DHSMV systems and are supplied with title paper, registration decals, and license plates by the tax collector.

The bill authorizes a licensed general lines insurance agency holding an insurer appointment to write motor vehicle insurance in Florida to petition a tax collector for appointment, and requires the tax collector to make such appointment, as an authorized agent of the tax collector for the purpose of issuing registration certificates, registration license plates, validation stickers, and mobile home stickers

Also, the bill permits these insurance agencies to offer applicants the option to register emergency contact information and the choice to be contacted with information about state and federal benefits available as a result of military service, subject to the requirements of law and in accordance with the rules of the DHSMV.

Further, the bill mandates that a general lines insurance agency appointed by a tax collector:

- Must file a performance bond of \$2 million with the DHSMV.
- Must provide the DHSMVs with audited financial statements, prepared by a certified public accountant licensed in Florida, for each of the two previous years, demonstrating that the agency has produced policy premiums in excess of \$500 million in each of the two previous years.
- Is not obligated to provide services to the general public and may choose to offer services only to its customers in the normal course of business.
- Must offer such services at no more than five locations in each county where the agency has a branch office.
- Must be authorized by the tax collector to access the DHSMV's electronic filing system.
- Is subject to all provisions of the law, as if the insurance agency were a private tag agency, except where the context indicates otherwise.

The bill may have an indeterminate positive impact on state government revenues and a negative fiscal impact on state government expenditures. It has no impact on local government revenues or expenses and may have a positive impact on the private sector.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

County tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMV) authorized agents for titling and registering motor vehicles, motor homes, and vessels.¹ When processing these transactions, tax collectors charge and collect fees specified in state law,² which are remitted to the state. However, chs. 319, 320, and 328, F.S., also require tax collectors to retain certain statutorily prescribed service fees and charges.³

Currently, 65 counties have elected tax collectors who are constitutional officers, while Broward and Miami-Dade Counties have appointed tax collectors under each county's charter government. However, pursuant to s. 1(d), Article VIII of the State Constitution, these counties will have elected tax collectors effective January 7, 2025.⁴

Each tax collector is authorized to enter into contracts with private third-party license plate agents (LPAs) for the titling and registration of motor vehicles, mobile homes, and vessels. LPAs are granted online computer access to DHSMV systems and are supplied with title paper, registration decals, and license plates by the tax collector.

Sixteen counties have, or until recently had, contracts with privately owned LPAs to operate 57 offices⁵, primarily in Miami Dade and Broward County, to perform title and registration services for motor vehicles, mobile homes, and vessels. In counties with elected tax collectors, LPAs only charge the fees for those services as expressly authorized in statute. In these counties, the LPAs may retain all or a portion of the statutorily authorized service fee that tax collectors are allowed to collect for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and the tax collector.⁶ The LPAs in Broward and Miami-Dade County charge fees⁷ for motor vehicle, mobile home, and vessel title and registration fees *in addition* to the statutory fees authorized in chs. 319, 320, and 328, F.S. The additional fees levied in Broward and Miami-Dade Counties are levied pursuant to county ordinance and are retained by the LPAs.⁸

DHSMV has transitioned its driver license services from DHSMV-owned facilities to elected county tax collectors. Florida law required DHSMV to completely transition all driver license issuance services to tax collectors who are constitutional officers under s. 1(d), Article VIII of the State Constitution with this transition completed on June 30, 2015. The transition of services to appointed charter county tax collectors may occur on a limited basis as directed by DHSMV.⁹

Driver License Issuance Systems

DHSMV's Florida Driver License Information System (FDLIS) is the legacy driver license issuance system that will be completely replaced by 2025 with the newly launched Online Registration and

¹ Ch. 320 and 328, F.S. County tax collectors are expressly made agents of the state with respect to motor vehicle registration in s. 320.03(1), F.S., and with respect to vessel registration in s. 328.73(1), F.S.

² See s. 319.32, F.S., for motor vehicle title fees, s. 320.03, for motor vehicle registration fees, s. 320.04, F.S., as to motor vehicle service charges, and s. 328.72, F.S., as to vessel registration fees.

³ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 SB 342, p 2. (January 14, 2021).

⁴ *Id.* Art. VIII, s. 1(d), Fla. Const.

⁵ *Id.*

⁶ *Id.*

⁷ Formerly the LPAs in Volusia County charged fees. An elected county tax collector took office on January 5, 2021, and the LPA offices closed by February 4, 2021. *Id.*

⁸ *Id.*

⁹ Section 322.02(1), F.S.

Identity Operating Network (ORION) database application.¹⁰ ORION will be used to conduct all driver license and identification card issuances. ORION provides real-time access to extensive information on every driver, including driving history, vehicle insurance information, and personal identity information and documents.

FDLIS/ORION is installed in 195 tax collector offices in 63 counties in Florida and in the 15 driver license offices DHSMV operates in Broward and Miami-Dade counties.

Only DHSMV and elected tax collectors have access to FDLIS/ORION. Access to these systems is governed by individual memoranda of understanding (MOUs) between DHSMV and each tax collector.

County tax collectors are required to charge a \$6.25 service fee for providing driver license services.¹¹

Division of Insurance Agent and Agency Services

The DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.¹²

No person may be, act as, or advertise, or hold himself/herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.¹³ There are several types of insurance representatives. These include:

- General lines agents,
- Life insurance agents,
- Health insurance agents,
- Title insurance agents,
- Personal lines agents, and
- Unaffiliated insurance agents.¹⁴

General Lines Agent

A general lines agent¹⁵ is one who sells the following lines of insurance: property;¹⁶ casualty,¹⁷ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,¹⁸ or a workers' compensation self-insurance fund;¹⁹ surety;²⁰ health;²¹ and, marine.²² The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.²³ Motor vehicle insurance is a type of casualty insurance.²⁴

Effect of the Bill

Tax Collector Appointment of Insurance Agency

¹⁰ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2024 HB 817, p 7. (December 22, 2023). S. 322.135(1)(c), F.S.

¹¹ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 613, p. 5-6. (Mar. 5, 2021).

¹² Ch. 626, parts I, II, III, IV, V, VI, VIII, IX, and XIII, F.S.

¹³ S. 626.112, F.S.

¹⁴ S. 626.015, F.S.

¹⁵ S. 626.015(5), F.S.

¹⁶ S. 624.604, F.S.

¹⁷ S. 624.605, F.S.

¹⁸ As defined in s. 624.462, F.S.

¹⁹ Pursuant to s. 624.4621, F.S.

²⁰ S. 626.606, F.S.

²¹ Ss. 624.603 and 627.6482, F.S.

²² S. 624.607, F.S.

²³ S. 626.829, F.S.

²⁴ S. 624.605, F.S.

The bill authorizes a licensed general lines insurance agency holding an insurer appointment to write motor vehicle insurance in Florida to petition a tax collector for appointment, and requires the tax collector to make such appointment, as an authorized agent of the tax collector for the purpose of issuing:

- Registration certificates;
- Registration license plates;
- Validation stickers; and
- Mobile home stickers

Also, the bill permits these insurance agencies to offer applicants the option to register emergency contact information and the choice to be contacted with information about state and federal benefits available as a result of military service, subject to the requirements of law and in accordance with the rules of the DHSMV.

Insurance Agency Requirements

The bill mandates that a general lines insurance agency appointed by a tax collector:

- Must file a performance bond of \$2 million with the DHSMV.
- Must provide the DHSMVs with audited financial statements, prepared by a certified public accountant licensed in Florida, for each of the two previous years, demonstrating that the agency has produced policy premiums in excess of \$500 million in each of the two previous years.
- Is not obligated to provide services to the general public and may choose to offer services only to its customers in the normal course of business.
- Must offer such services at no more than five locations in each county where the agency has a branch office.
- Must be authorized by the tax collector to access the DHSMV's electronic filing system.
- Is subject to all provisions of the law, as if the insurance agency were a private tag agency, except where the context indicates otherwise.

B. SECTION DIRECTORY:

Section 1. Amends s. 320.03, F.S., relating to registration; duties of tax collectors; international registration plan.

Section 2. Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DHSMV estimates the bill will produce indeterminate positive revenues.²⁵

2. Expenditures:

According to the DHSMV, there will be a significant cost associated with providing equipment such as computers, printers, servers, ports, cabling, and software, as well as registration inventory, including license plates and decals, to insurance agencies.²⁶ Additionally, the DHSMV would require additional staff to ensure that the bill is implemented properly.²⁷ For instance, DHSMV will likely need to hire more employees in the Tax Collection Liaison Unit to oversee the proper collection of motor vehicle registration fees by insurance agencies.²⁸

²⁵ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2024 HB 817, p 5. (December 22, 2023).

²⁶ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2024 HB 817, p 3. (December 22, 2023).

²⁷ *Id.* at 4.

²⁸ *Id.*

Specifically, DHSMV projects a first-year cost of \$12,965,840, followed by recurring cost of \$4,603,955 for each of the following four fiscal years. In the fifth year, DHSMV estimates a cost of \$9,377,997.²⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Eligible general lines agencies that are appointed for this purpose may experience increased revenues.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants the DHSMV the authority to adopt rules, including those that establish the information required in the petition submitted by an insurance agent to a tax collector to offer services, the necessary details within the audited financial statements that an insurance agency must submit to the DHSMV, and the enforcement authority for noncompliance.

The rulemaking authority related to DHSMV establishing enforcement authority for noncompliance may be an invalid delegation of legislative authority as it provides no guidelines or limitations for such enforcement.

Since neither the general lines agency nor the tax collectors are licensees of DHSMV, it is unclear how DHSMV will be able to effectively discipline either for noncompliance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In their agency bill analysis, DHSMV suggests multiple amendments to: 1) delay the effective date until January 1, 2026, to allow it to be implemented after the rollout of ORION and avoid the cost of reprogramming the soon to be phased out FRVIS, 2) remove surplus language related to issuance of

²⁹ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2024 HB 817, p 5. (December 22, 2023).

titles, which is not within the scope of work for general lines agencies proposed by the bill, and 3) revise language to exclude the issuance of International Registration Plan registrations and permits.³⁰

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

³⁰ Department of Highway Safety and Motor Vehicles, Agency Analysis of 2024 HB 817, p 7. (December 22, 2023).
STORAGE NAME: h0817.IBS
DATE: 1/9/2024

HB 817

2024

1 A bill to be entitled

2 An act relating to authorized agents of tax
3 collectors; amending s. 320.03, F.S.; requiring a tax
4 collector, upon petition, to appoint a general lines
5 insurance agency as an authorized agent of the tax
6 collector for the purpose of issuing registration
7 certificates, registration license plates, validation
8 stickers, and mobile home stickers; requiring the
9 agency to file a performance bond with the Department
10 of Highway Safety and Motor Vehicles; requiring the
11 agency to provide audited financial statements to the
12 department; authorizing the agency to provide services
13 solely to its customers; limiting the number of
14 locations at which the agency may offer services;
15 requiring the tax collector to authorize the agency to
16 access the electronic filing system; specifying
17 provisions of law to which the agency is subject;
18 authorizing the department to adopt rules; providing
19 an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (11) is added to section 320.03,
24 Florida Statutes, to read:

25 320.03 Registration; duties of tax collectors;

HB817

2024

26 International Registration Plan.—

27 (11) (a) Upon petition by the agent in charge of a general
28 lines insurance agency licensed under chapter 626 and appointed
29 to write motor vehicle insurance, each tax collector must
30 appoint such agency as an authorized agent of the tax collector
31 for the purpose of issuing registration certificates,
32 registration license plates, validation stickers, and mobile
33 home stickers to applicants and providing to applicants for each
34 the option to register emergency contact information and the
35 option to be contacted with information about state and federal
36 benefits available as a result of military service, subject to
37 the requirements of law, in accordance with rules of the
38 department.

39 (b) A general lines insurance agency appointed as an
40 authorized agent of a tax collector under this subsection:

41 1. Must file a performance bond of \$2 million with the
42 department.

43 2. Must provide to the department audited financial
44 statements, prepared by a certified public accountant licensed
45 to practice in this state, for each of the previous 2 years
46 demonstrating that the agency has produced policy premium in
47 excess of \$500 million in each of the previous 2 years.

48 3. Is not required to provide services described in
49 paragraph (a) to the general public and may choose to provide
50 such services solely to its customers in the normal course of

51 business.

52 4. May offer such services at no more than five locations
 53 in each county in which the agency has a branch office.

54 5. Must be authorized by the tax collector pursuant to
 55 paragraph (10) (c) to access the electronic filing system.

56 6. Is subject to all provisions of law as though such
 57 agent were a private tag agency or agent, except where the
 58 context clearly indicates otherwise.

59 (c) The department may adopt rules to administer this
 60 subsection, including, but not limited to, rules establishing
 61 information that must be contained in the petition to offer
 62 services under this subsection, information that must be
 63 contained in the audited financial statements required under
 64 subparagraph (b)2., and enforcement authority for noncompliance.

65 Section 2. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 817 by Rep. Duggan
Insurance

AMENDMENT SUMMARY January 11, 2024

Amendment 1 by Rep. Duggan (Line 31-33): The amendment:

- Authorizes a general lines insurance agency to issue titles, in addition to registration certificates, registration license plates, validation stickers, and mobile home stickers, as proposed by the bill.
- Clarifies that insurance agencies are not authorized to handle International Registration Plan transactions.

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Duggan offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 31-33 and insert:

7 for the purpose of issuing titles, registration certificates,
 8 registration license plates, validation stickers, and mobile
 9 home stickers to applicants, excluding issuance of registration
 10 or trip permits pursuant to s. 320.0715, and providing to
 11 applicants for each

12

13

14

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

15 Remove line 6 and insert:

16 collector for purpose of issuing titles, registration