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# **Insurance & Banking Subcommittee**

**Thursday, January 18, 2024  
9:00 AM - 12:00 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 18, 2024

9:00 am – 12:00 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 605 Asset Protection Products by Tramont
  - HB 625 Property Insurance Coverage by Buchanan
  - HB 637 Treatment by a Medical Specialist by Yeager
  - HB 943 Pub. Rec./My Safe Florida Home Program by LaMarca

Consideration of the following proposed committee substitute(s):

- PCS for HB 311 – Securities
  - PCS for HB 939 -- Consumer Protection
- V. Closing Remarks
  - VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 605 Asset Protection Products

**SPONSOR(S):** Tramont

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 902

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

### SUMMARY ANALYSIS

Under the Motor Vehicle Sales Finance Act, individuals, excluding banks, trust companies, savings and loan associations, or credit unions authorized to operate in Florida, must obtain a license from the Office of Financial Regulations (OFR) to conduct motor vehicle retail installment transactions.

Once an entity receives its licensing it is authorized to offer a retail installment contract. A retail installment contract refers to an agreement where a seller retains or acquires a title or lien on a motor vehicle as security, wholly or partially, for the buyer's obligations. When entering into a new retail installment contract, loan contract, or lease agreement for a motor vehicle, a motor vehicle retail installment seller, sales finance company, retail lessor, or any assignee may offer optional guaranteed asset protection products for a fee or otherwise. The term guaranteed asset protection product refers to a provision in a loan, lease, or retail installment contract, or a modification or addendum to such contracts, wherein a creditor agrees to exempt a customer from liability for payment of any or all of the amount exceeding the collateral's value. Vehicle Value Protection Agreement Act (VVPA) and excess wear agreements are not currently regulated by statute.

The bill makes changes related to asset protection products, including:

- **Guaranteed Asset Protection Products:** Limits coverage to cases of total damage or theft. Permits benefits such as waiving a part of the purchase price or providing credit for a replacement vehicle, with the option to offer these benefits at no additional cost. Changes to retail installment contracts include refunding buyers for terminated products, subject to a 90-day notification period and administrative fees. The bill also allows cancellation or noncancellation of products after a 30-day free look period, with refunds paid directly to the vehicle holder in specific circumstances.
- **VVPA:** Establishes a statutory framework for Vehicle Value Protection Agreements (VVPAs), defining them as agreements offering benefits to reduce finance agreement deficiency balances or facilitate the acquisition of replacement motor vehicles or services in adverse events. VVPAs are not considered insurance under the Florida Insurance Code and have specific financial security requirements. The bill imposes requirements for offering VVPAs, ensuring transparent pricing and non-contingent terms on credit extensions or motor vehicle transactions. Providers must adhere to insurance and financial reserve standards. Disclosure requirements include identifying information, agreement terms, cancellation details, and the non-conditionality of credit or vehicle sale/lease terms on VVPA purchase. The bill mandates specific terms in VVPAs, including cancellation conditions and refund details, with penalties for intentional violations outlined.
- **Excess Wear and Use Waiver:** Establishes that an excess wear and use waiver is a contractual agreement within a motor vehicle lease where the lessor, with or without an extra charge, agrees to cancel or waive amounts due under the lease for excessive wear, use, or mileage. Disclosure requirements include total charge, limitations, and cancellation terms with a possible administrative fee capped at \$75.

The bill has no fiscal impact on local government, an indeterminate positive impact on state government revenues and an indeterminate negative effect on expenditures, and an indeterminate economic impact on the private sector.

This bill provides an effective date as of October 1, 2024.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0605.IBS

**DATE:** 1/16/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Office of Financial Regulation

OFR is the regulatory authority for Florida's financial services industry.<sup>1</sup> OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.<sup>2</sup> OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.<sup>3</sup>

##### *Regulation of Consumer Finance*

The Division of Consumer Finance is responsible for licensing and overseeing different facets of non-depository financial services sectors.<sup>4</sup> This includes the regulation of motor vehicle retail installment sellers, governed by Chapter 520 of the Florida Statutes.<sup>5</sup> According to Chapter 520, Florida Statutes, it is imperative for individuals to hold a license before engaging in the motor vehicle retail installment seller business or operating a branch thereof.<sup>6</sup>

##### Florida Motor Vehicle Retail Sales Finance Act

Under the Motor Vehicle Sales Finance Act, individuals, excluding banks, trust companies, savings and loan associations, or credit unions authorized to operate in Florida, must obtain a license from the OFR to conduct motor vehicle retail installment transactions.<sup>7</sup> Florida's Motor Vehicle Retail Sales Finance Act<sup>8</sup> is administered by the Financial Services Commission.<sup>9</sup>

To obtain a license, an application must be submitted to the Office of Financial Regulation of the Financial Services Commission, adhering to the prescribed form.<sup>10</sup> The Commission may request information essential for assessing eligibility, including details about officers, directors, control persons, members, partners, joint ventures, or individuals with a 10% or greater interest in the applicant.<sup>11</sup> The Office may seek various information, such as names, age, social security numbers, residential history, qualifications, educational and business background, and disciplinary and criminal history. If approved, the license, valid for up to two years, will be issued.<sup>12</sup> An initial application fee is required, and it is nonrefundable.<sup>13</sup>

A licensed entity must transact business as a motor vehicle retail installment seller solely under its licensed name.<sup>14</sup> Licenses granted under this act are neither transferable nor assignable.<sup>15</sup>

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<sup>1</sup> Florida Office of Financial Regulation, About Our Agency, <https://flofr.gov/sitePages/AboutOFR.htm> (last visited Jan. 16, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Florida Office of Financial Regulations, Agency Analysis of 2024 SB 902, p. 2 (Jan. 16, 2024).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> S. 520.03(1), F.S.

<sup>8</sup> S. 520.01, F.S.

<sup>9</sup> *Id.* at (2). As to the regulations relating to motor vehicle sales finance, see Fla. Admin. Code R. 69V-50.001 to 69V-50.085. The FSC is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S.

<sup>10</sup> S.520.03(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> S.520.03(4), F.S.

<sup>15</sup> *Id.*

## *Retail Installment Contracts*

Once an entity receives its licensing it is authorized to offer a retail installment contract. A retail installment contract refers to an agreement where a seller retains or acquires a title or lien on a motor vehicle as security, wholly or partially, for the buyer's obligations.<sup>16</sup> This includes conditional sales contracts and contracts for the bailment or leasing of a motor vehicle, where the bailee or lessee agrees to pay compensation equivalent to or exceeding the vehicle's value, with the option to become the owner upon full compliance with the contract's provisions.<sup>17</sup>

The contract must include, among other things, specific details such as a statement on the absence of liability insurance coverage for bodily injury and property damage, the names and addresses of the seller and buyer, a detailed description of the motor vehicle, including make, year, model, and identification number, as well as financial information like the amount financed, finance charge, total payments, total sale price, and the number, amount, and date of scheduled payments.<sup>18</sup>

Moreover, the seller is required to provide a separate written breakdown of the amount financed, disclosing the cash price, down payment, the difference between cash price and down payment, amounts for insurance and other benefits, and any taxes and official fees not covered in the cash price.<sup>19</sup> This breakdown may be presented on a separate disclosure statement or within the same document as the contract, provided it is clearly and prominently segregated.<sup>20</sup>

## *Guaranteed Asset Protection Products*

When entering into a new retail installment contract, loan contract, or lease agreement for a motor vehicle, a motor vehicle retail installment seller, sales finance company, retail lessor, or any assignee may offer optional guaranteed asset protection products for a fee or otherwise.<sup>21</sup> The term guaranteed asset protection product refers to a provision in a loan, lease, or retail installment contract, or a modification/addendum to such contracts, wherein a creditor agrees to exempt a customer from liability for payment of any or all of the amount exceeding the collateral's value.<sup>22</sup> It is important to note that this product does not fall under the category of insurance as defined by the Florida Insurance Code.<sup>23</sup> This subsection is applicable to all guaranteed asset protection products issued before October 1, 2008.<sup>24</sup>

To offer guaranteed asset protection products, the motor vehicle retail installment seller, sales finance company, retail lessor, or assignee must adhere to the following<sup>25</sup>:

- The cost of any guaranteed asset protection product should not exceed the amount of the indebtedness.<sup>26</sup>
- A guaranteed asset protection product is considered an obligation of any person acquiring the loan contract covering the product.<sup>27</sup>
- Entities providing guaranteed asset protection products must offer clear and understandable disclosures detailing eligibility requirements, conditions, refunds, and exclusions. The purchase of the product must be optional, and the disclosures should be in plain language and easily readable.<sup>28</sup>
- The entity must provide a copy of the executed guaranteed asset protection product contract to the buyer, with the entity bearing the burden of proving the contract was provided.<sup>29</sup>

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<sup>16</sup> S. 520.02(17), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> S. 520.07, F.S.

<sup>19</sup> S. 520.07(3), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S.520.07(11), F.S.

<sup>22</sup> S. 520.02(7), F.S.

<sup>23</sup> Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. See also s. 624.01, F.S.

<sup>24</sup> S. 520.02(7), F.S.

<sup>25</sup> S. 520.07(11), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

- Contracts for guaranteed asset protection products cannot include terms allowing the entity to unilaterally modify the contract unless the modification benefits the buyer without additional charges or the buyer is notified of any proposed changes and provided a reasonable opportunity to cancel without penalty before the changes take effect.<sup>30</sup>
- If a contract for a guaranteed asset protection product is terminated, the entity must refund any unearned fees paid by the buyer unless the contract specifies otherwise. To receive a refund, the buyer must notify the entity of the termination event within 90 days and request a refund. An entity may offer a contract without a refund provision only if a bona fide option for a comparable contract with a refund provision is also offered to the buyer.<sup>31</sup>

### *Vehicle Value Protection Agreement*

A vehicle value protection agreement (agreement) is a contractual arrangement offering benefits when a vehicle owner replaces the vehicle during trade-in, in case of theft, or after an adverse event affecting the vehicle's value.<sup>32</sup> An agreement that complies with the act is not considered insurance and is exempt from regulatory oversight as insurance.<sup>33</sup> Vehicle Value Protection agreements is not currently regulated in Florida.

### *Excess Wear and Use Coverage*

Excess wear and use coverage can be added to a lease agreement to protect lessees from incurring additional charges related to damages or excessive wear on the leased vehicle.<sup>34</sup> The liability under most open-end leases is influenced by the vehicle's wear, significantly impacting financial obligations. Excessive wear and tear, as defined in a lease agreement, refers to wear surpassing stipulated standards, often explicitly outlined and required to be reasonable. Similar to excess mileage, excessive wear and tear invariably diminishes the vehicle's value, whether leased or purchased.<sup>35</sup>

The assumed residual value in the lease is based on the expectation that the vehicle will be returned in a specified condition. This additional coverage typically addresses various issues such as dents, scratches, tire wear, interior stains, and more. It offers reassurance by relieving lessees of financial responsibility for the typical wear and tear on the vehicle.<sup>36</sup> Excess wear and use coverage is not currently regulated in Florida.

## **Effect of the Bill**

### Guaranteed Asset Protection Products

The bill limits guaranteed asset protection products covering a purchaser's responsibility for paying the debt exceeding the collateral value in cases of total damage or unrecovered theft. It allows the product to offer benefits like waiving a part of the purchase price or providing a credit for a replacement motor vehicle. It also specifies that such agreements and benefits may be offered with or without additional cost to the purchaser.

The bill introduces changes to retail installment contracts, including:

- Refunding buyers for terminated guaranteed asset protection products, unless the contract specifies otherwise. No refund is due if the buyer has received a benefit, and a 90-day notification period is required.
- Authorizing an administrative fee to be deducted from refunds of up to \$75, except for refunds following a 30-day free look period.

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Colo. Rev. Stat. S. 42-21-101 (2023)

<sup>33</sup> *Id.*

<sup>34</sup> Board of Governors of the Federal Reserve System, *More Information about Excessive Wear-and-Tear Charges*, [https://www.federalreserve.gov/pubs/leasing/resource/consider/endopen\\_info10.htm](https://www.federalreserve.gov/pubs/leasing/resource/consider/endopen_info10.htm) (last visited Jan. 16, 2024).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

- Allowing cancellation or noncancellation of guaranteed asset protection products after a minimum 30-day free look period, provided no benefits are provided.
- Directly paying refunds to the vehicle holder or its assignee for terminations due to default, repossession, or contract termination, unless the retail installment contract is paid in full.

### Vehicle Value Protection Agreement Act (VPPA)

The bill creates a statutory framework for VPPA. It provides relevant definitions for administrator, commercial, commission, contract holder, finance agreement, motor vehicle, provider, and vehicle value protection agreement. The bill defines VPPA as an agreement that provides:

- benefits for reducing the current finance agreement deficiency balance of the contract holder; or
- facilitating the acquisition or leasing of a replacement motor vehicle or motor vehicle services in case of adverse events such as loss, theft, damage, obsolescence, diminished value, or depreciation.

VPPAs are not insurance subject to the Florida Insurance Code and are not subject to financial security requirements except as specified in the bill.

Further, the bill creates requirements for offering VPPA for personal use vehicles. VPPA can be offered, sold, or given to consumers as long as:

- Any amount charged or financed is clearly stated for the VPPA and is not considered a finance charge or interest.
- The extension of credit, terms of credit, and terms of the related motor vehicle sale or lease are not contingent upon the consumer's payment for or financing of any charge for a VPPA. However, these agreements may be discounted or provided at no charge with the purchase of noncredit-related goods or services.
- VPPAs are sold only after providing the contract holder with access to a copy of the agreement.

Additionally, the sale of VPPA is prohibited if the coverage duplicates another VPPA for the same vehicle or a guaranteed asset protection product.

- Providers are required to:
  - Insure all VPPA liabilities under a policy from an authorized insurer.
  - Maintain a reserve account not less than 40 percent of gross consideration received, less claims paid, for in-force contracts in the state.
  - Maintain a net worth or stockholders' equity directly or via the worth of its parent company of \$100 million, providing financial statements upon request.

The bill requires all VPPA to disclose the following:

- Identifying information of the provider, purchaser, and administrator;
- Explicit terms of the agreement, including purchase price, eligibility criteria, coverage conditions, and exclusions;
- Notification that the contract is cancelable within a minimum 30-day free look period, with a full refund if canceled during this time and no benefits have been provided;
- Procedure for obtaining benefits, cancellation conditions, and refund details; and
- Credit extension or vehicle sale/lease terms is not conditioned on VPPA purchase.

The bill requires that all VPPA must incorporate the following terms:

- Precise terms and conditions for cancellation by either the provider or contract holder;
- Requirement for the provider to give a 5-day written notice before cancellation, stating the effective date and reason, except in specific circumstances;
- Full refund by the provider if the agreement is canceled for reasons other than nonpayment, deducting any claims paid if coverage continues after a claim; and
- Allowance for a reasonable administrative fee, not exceeding \$75, by the provider.



The bill specifies that any provider, administrators, or any individual intentionally violating Part II of ch. 520, F.S., relating to VVPAs may be subject to fines not to exceed \$500 per violation and no more than \$10,000 for all violations of a similar nature.

### Excess Wear and Use Waiver

The bill authorizes an excess wear and use waiver is a contractual agreement within a motor vehicle lease where the lessor, with or without an extra charge, agrees to cancel or waive amounts due under the lease for excessive wear, use, or mileage but the waiver agreement must disclose the following:

- The total charge for the waiver.
- Any exclusions or limitations on the amount of excess wear and use that the waiver covers.
- Terms, restrictions, and conditions for canceling the waiver before its termination or expiration, including a potential administrative fee not exceeding \$75.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 520.02, F.S., relating to definitions.
- Section 2:** Amends s. 520.07, F.S., relating to requirements and prohibitions as to retail installment contracts.
- Section 3:** Redesignates parts II through VI of Ch. 520 as parts III through VII.
- Section 4:** Creates Part II of Ch. 520, F.S., relating to Vehicle Value Protection Agreements.
- Section 5:** Amends s. 521.003, F.S., relating to definitions.
- Section 6:** Creates s. 521.007, F.S., relating to extended wear and use waiver.
- Section 7:** Amends s. 24.118, F.S., relating to other prohibited acts; penalties.
- Section 8:** Amends s. 501.604, F.S., relating to exemptions.
- Section 9:** Amends s. 671.304, F.S., relating to laws not repealed; precedence where code provisions in conflict with other laws; certain statutory remedies retained.
- Section 10:** Providing an effective date of October 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

State governments may experience a rise in revenue due to new penalty collections.

##### 2. Expenditures:

State governments may face increased expenditures due to new administrative and enforcement costs.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Since GAP products will be limited to total loss cases, consumers may experience increased cost to obtain full coverage by now having to purchase a second product; i.e., both a GAP and a VVPA.

Purchasers may experience savings where the products authorized by the bill cover losses that have not previously been provided for by an authorized product.

**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:

The retroactive application to "related products" raises constitutional concerns, particularly regarding fairness and due process. Applying regulations retroactively without accompanying findings may infringe on individuals' rights to fair notice and protection against arbitrary government actions, posing potential constitutional issues.

**B. RULE-MAKING AUTHORITY:**

None provided by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Several concerns arise in the current draft of the bill. Questions surround the necessity and advisability of retroactively applying the sentence in lines 47-49 to "related products" without accompanying findings. Additionally, the definition of "holder" is provided on line 98, while "administrator" remains undefined; this prompts consideration for a parallel definition or potential removal. Ambiguity exists regarding the required license for issuing VVPAs or Excess Wear and Tear. Aligning the term "provider" in Part II to specify authorized licensees may enhance clarity. Inconsistencies between 520 Part I and Part II arise with the definition of "holder," necessitating alignment for consistency. The disclosure in 520.1504 introduces a 30-day free look cancellation not found in 520.1503, suggesting a need for inclusion in Part II for coherence. Clarity is needed on the intended period of application for the \$10,000 limit in lines 276-283. Consider revisiting the titles of Chapter 521 to better reflect the addition of Motor Vehicle Lease Agreements. Finally, the provision in lines 374-383 could either expressly complement the 521.004 disclosure or be relocated for improved organization and coherence.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
2           An act relating to asset protection products; amending  
3           s. 520.02, F.S.; revising the definition of the term  
4           "guaranteed asset protection product"; amending s.  
5           520.07, F.S.; providing that an entity may offer a  
6           buyer a contract that does not provide for a refund  
7           only if the entity also offers that buyer a bona fide  
8           option to purchase a comparable contract that provides  
9           for a refund; providing requirements for guaranteed  
10          asset protection products; creating a new part II of  
11          chapter 520, F.S., entitled "Vehicle Value Protection  
12          Agreements"; creating s. 520.1501, F.S.; providing a  
13          short title; creating s. 520.1502, F.S.; providing  
14          definitions; creating s. 520.1503, F.S.; providing  
15          requirements for offering vehicle value protection  
16          agreements for personal use vehicles; creating s.  
17          520.1504, F.S.; providing disclosure requirements;  
18          creating s. 520.1505, F.S.; exempting certain  
19          commercial transactions; creating s. 520.1506, F.S.;  
20          providing penalties for violations; amending s.  
21          521.003, F.S.; defining the term "excess wear and use  
22          waiver"; creating s. 521.007, F.S.; providing for  
23          extended wear and use waivers in motor vehicle lease  
24          agreements; providing requirements; amending ss.  
25          24.118, 501.604, and 671.304, F.S.; conforming

HB 605

2024

26 provisions to changes made by the act; providing an  
27 effective date.

28  
29 Be It Enacted by the Legislature of the State of Florida:

30  
31 Section 1. Subsection (7) of section 520.02, Florida  
32 Statutes, is amended to read:

33 520.02 Definitions.—In this act, unless the context or  
34 subject matter otherwise requires:

35 (7) "Guaranteed asset protection product" means a loan,  
36 lease, or retail installment contract term, or modification or  
37 addendum to a loan, lease, or retail installment contract, under  
38 which a creditor agrees with or without a separate charge, to  
39 cancel or waive a customer's liability for payment of some or  
40 all of the amount by which the debt exceeds the value of the  
41 collateral that has incurred total physical damage or is the  
42 subject of an unrecovered theft. A guaranteed asset protection  
43 product may also provide, with or without a separate charge, a  
44 benefit that waives a portion of, or provides a customer with a  
45 credit towards, the purchase of a replacement motor vehicle.

46 Such a product is not insurance for purposes of the Florida  
47 Insurance Code. This subsection also applies to all guaranteed  
48 asset protection and related products issued before October 1,  
49 2008.

50 Section 2. Paragraph (g) of subsection (11) of section

51 520.07, Florida Statutes, is amended, and paragraphs (h) and (i)  
52 are added to that subsection, to read:

53 520.07 Requirements and prohibitions as to retail  
54 installment contracts.—

55 (11) In conjunction with entering into any new retail  
56 installment contract or contract for a loan, a motor vehicle  
57 retail installment seller as defined in s. 520.02, a sales  
58 finance company as defined in s. 520.02, or a retail lessor as  
59 defined in s. 521.003, and any assignee of such an entity, may  
60 offer, for a fee or otherwise, optional guaranteed asset  
61 protection products in accordance with this chapter. The motor  
62 vehicle retail installment seller, sales finance company, retail  
63 lessor, or assignee may not require the purchase of a guaranteed  
64 asset protection product as a condition for making the loan. In  
65 order to offer any guaranteed asset protection product, a motor  
66 vehicle retail installment seller, sales finance company, or  
67 retail lessor, and any assignee of such an entity, shall comply  
68 with the following:

69 (g) If a contract for a guaranteed asset protection  
70 product is terminated, the entity shall refund to the buyer any  
71 unearned fees paid for the contract unless the contract provides  
72 otherwise. A refund is not due to a consumer who receives a  
73 benefit under such product. In order to receive a refund, the  
74 buyer must notify the entity of the event terminating the  
75 contract and request a refund within 90 days after the

76 occurrence of the event terminating the contract. An entity may  
77 offer a buyer a contract that does not provide for a refund only  
78 if the entity also offers that buyer a bona fide option to  
79 purchase a comparable contract that provides for a refund. An  
80 entity may offer a buyer a contract that does not provide for a  
81 refund only if the entity also offers that buyer a bona fide  
82 option to purchase a comparable contract that provides for a  
83 refund. Except for refunds pursuant to paragraph (h), an  
84 administrative fee deducted from a refund under this section may  
85 not exceed \$75.

86 (h) Guaranteed asset protection products may be cancelable  
87 or noncancelable after a free look period, which is the period  
88 of time from the effective date of the contract until the date  
89 the contract may be canceled by the buyer without penalty, fees,  
90 or costs, so long as no benefits have been provided. This period  
91 may not be less than 30 days.

92 (i) If the termination of the guaranteed asset protection  
93 product occurs because of a default under the retail installment  
94 contract or contract for a loan, or the repossession of the  
95 motor vehicle associated with the retail installment contract or  
96 contract for a loan, or any other termination of the retail  
97 installment contract or contract for a loan, any refund due may  
98 be paid directly to the holder or administrator and applied as a  
99 reduction of the amount owed under the retail installment  
100 contract or contract for a loan, unless the buyer can show that

101 the retail installment contract has been paid in full.

102 Section 3. Parts II through VI of chapter 520, Florida  
 103 Statutes, are redesignated as parts III through VII,  
 104 respectively.

105 Section 4. Part II of chapter 520, Florida Statutes,  
 106 consisting of ss. 520.1501-520.1506, F.S., is created to read:

107 Part II

108 Vehicle Value Protection Agreements

109 520.1501 Florida Vehicle Value Protection Agreements Act.—

110 This part may be cited as the "Vehicle Value Protection  
 111 Agreements Act."

112 520.1502 Definitions.—As used in this part, the term:

113 (1) "Administrator" means the person responsible for the  
 114 administrative or operational function of vehicle value  
 115 protection agreements, including, but not limited to, the  
 116 adjudication of claims or benefit requests by contract holders.

117 (2) "Commercial" means a transaction wherein the motor  
 118 vehicle will be primarily used for business or commercial  
 119 purposes.

120 (3) "Commission" means the Financial Services Commission.

121 (4) "Contract holder" means a person who is the purchaser  
 122 or holder of a vehicle value protection agreement.

123 (5) "Finance agreement" means a loan, retail installment  
 124 sales contract, or lease for the purchase, refinancing, or lease  
 125 of a motor vehicle.

126 (6) "Motor vehicle" has the same meaning as in s. 316.003.

127 (7) "Provider" means a person that is obligated to provide  
 128 a benefit under a vehicle value protection agreement. A provider  
 129 may perform as an administrator or retain the services of a  
 130 third-party administrator.

131 (8) "Vehicle value protection agreement" includes a  
 132 contractual agreement that provides a benefit towards either the  
 133 reduction of some or all of the contract holder's current  
 134 finance agreement deficiency balance or the purchase or lease of  
 135 a replacement motor vehicle or motor vehicle services, upon the  
 136 occurrence of an adverse event to the motor vehicle, including,  
 137 but not limited to, loss, theft, damage, obsolescence,  
 138 diminished value, or depreciation. The agreements do not include  
 139 guaranteed asset protection products as described in s.  
 140 520.07(11) (h). Such an agreement is not insurance for the  
 141 purposes of the Florida Insurance Code.

142 520.1503 Requirements for offering vehicle value  
 143 protection agreements for personal use vehicles.—

144 (1) Vehicle value protection agreements may be offered,  
 145 sold, or given to consumers in this state in compliance with  
 146 this part.

147 (2) Notwithstanding any other provision of law, any amount  
 148 charged or financed for a vehicle value protection product must  
 149 be separately stated and is not to be considered a finance  
 150 charge or interest.



151 (3) The extension of credit, the terms of credit, and the  
152 terms of the related motor vehicle sale or lease may not be  
153 conditioned upon the consumer's payment for or financing of any  
154 charge for a vehicle value protection agreement. However,  
155 vehicle value protection agreements may be discounted or given  
156 at no charge in connection with the purchase of other noncredit  
157 related goods or services.

158 (4) A provider may, but is not required to, use an  
159 administrator or other designee who shall be responsible for any  
160 and all of the administration of vehicle value protection  
161 agreements in compliance with this part.

162 (5) A vehicle value protection agreement shall not be sold  
163 unless the contract holder has been or will be provided access  
164 to a copy of the vehicle value protection agreement.

165 (6) A vehicle value protection agreement may not be sold  
166 if its coverage is duplicative of another vehicle value  
167 protection agreement for the vehicle or of a guaranteed asset  
168 protection product.

169 (7) Each provider shall:

170 (a) Insure all of its vehicle value protection agreements  
171 under a policy that pays or reimburses in the event the provider  
172 fails to perform its obligations under the vehicle value  
173 protection agreement that is issued by an insurer licensed or  
174 otherwise authorized or eligible to do business in this state;

175 (b) Maintain a funded reserve account for its obligations

176 under its contracts issued and outstanding in this state. The  
 177 reserves shall not be less than 40 percent of gross  
 178 consideration received, less claims paid, on the sale of the  
 179 vehicle value protection agreement for all in-force contracts in  
 180 this state. The reserve shall be placed in a trust with the  
 181 commission a financial security deposit, having a value of not  
 182 less than 5 percent of the gross consideration received, less  
 183 claims paid, on the sale of the vehicle value protection  
 184 agreements for all vehicle value protection agreements issued  
 185 and in force in this state, but not less than \$25,000,  
 186 consisting of one of the following:

- 187 1. A surety bond issued by an authorized surety;
- 188 2. Securities of the type eligible for deposit by insurers  
 189 pursuant to s. 625.52;
- 190 3. Cash;
- 191 4 A letter of credit issued by a qualified financial  
 192 institution; or
- 193 5. Another form of security prescribed by regulations  
 194 issued by the commission; or

195 (c) Maintain, or together with its parent corporation  
 196 maintain, a net worth or stockholders' equity of \$100 million;  
 197 and upon request, provide the commission with a copy of the  
 198 provider's or the provider's parent company's most recent Form  
 199 10-K or Form 20-F filed with the Securities and Exchange  
 200 Commission (SEC) within the last calendar year, or if the

201 company does not file with the SEC, a copy of the company's  
202 audited financial statements, which shows a net worth of the  
203 provider or its parent company of at least \$100 million. If the  
204 provider's parent company's Form 10-K, Form 20-F, or financial  
205 statements are filed to meet the provider's financial security  
206 requirement, then the parent company shall agree to guarantee  
207 the obligations of the provider relating to vehicle value  
208 protection agreements sold by the provider in this state.

209 (8) Except for the requirements specified in subsection  
210 (7), no other financial security requirements shall be required  
211 for vehicle value protection agreement providers.

212 520.1504 Disclosures.—

213 (1) Vehicle value protection agreements must disclose in  
214 writing and in clear, understandable language that is easy to  
215 read, the following:

216 (a) The name and address of the provider, contract holder,  
217 and administrator, if any.

218 (b) The terms of the vehicle value protection agreement,  
219 including, without limitation, the purchase price to be paid by  
220 the contract holder, if any, the requirements for eligibility,  
221 conditions of coverage, and exclusions.

222 (c) That the vehicle value protection agreement may be  
223 canceled by the contract holder within a free look period which  
224 is the period of time from the effective date of the contract  
225 until the date the contract may be canceled without penalty,

226 fee, or costs. This period may not be less than 30 days. That,  
227 in such event, the contract holder is entitled to a full refund  
228 of the purchase price paid by the contract holder, if any, so  
229 long as no benefits have been provided.

230 (d) The procedure the contract holder must follow, if any,  
231 to obtain a benefit under the terms and conditions of the  
232 vehicle value protection agreement, including, if applicable, a  
233 telephone number or website and address where the contract  
234 holder may apply for a benefit.

235 (e) Whether or not the vehicle value protection agreement  
236 is cancellable after the free look period and the conditions  
237 under which it may be canceled, including the procedures for  
238 requesting any refund of the unearned purchase price paid by the  
239 contract holder.

240 (f) In the event of cancellation, the method for  
241 calculating any refund of the unearned purchase price of the  
242 vehicle value protection agreement due.

243 (g) The extension of credit, the terms of the credit, and  
244 the terms of the related motor vehicle sale or lease, may not be  
245 conditioned upon the purchase of the vehicle value protection  
246 agreement.

247 (2) Vehicle value protection agreements shall state the  
248 terms, restrictions, and conditions governing cancellation of  
249 the vehicle value protection agreement before the termination or  
250 expiration date of the vehicle value protection agreement by

251 either the provider or the contract holder. The provider of the  
252 vehicle value protection agreement shall mail a written notice  
253 to the contract holder at the last known address of the contract  
254 holder contained in the records of the provider at least 5 days  
255 before cancellation by the provider. Prior notice is not  
256 required if the reason for cancellation is nonpayment of the  
257 provider fee, a material misrepresentation by the contract  
258 holder to the provider or administrator, or a substantial breach  
259 of duties by the contract holder relating to the covered product  
260 or its use. The notice shall state the effective date of the  
261 cancellation and the reason for the cancellation. If a vehicle  
262 value protection agreement is canceled by the provider for a  
263 reason other than nonpayment of the provider fee, the provider  
264 shall refund to the contract holder 100 percent of the unearned  
265 pro rata provider fee paid by the contract holder, if any. If  
266 coverage under the vehicle value protection agreement continues  
267 after a claim, then any refund may deduct claims paid. A  
268 reasonable administrative fee, not to exceed \$75, may be charged  
269 by the provider.

270 520.1505 Commercial transactions exempt.—Sections 520.1504  
271 and 520.1606 do not apply to vehicle value protection agreements  
272 offered in connection with a commercial transaction.

273 520.1506 Penalties.—Any provider, administrator, or any  
274 other person who willfully and intentionally violates any  
275 provision of this part commits a noncriminal violation, as

276 defined in s. 775.08(3), punishable by a fine not to exceed \$500  
277 per violation and no more than \$10,000 in the aggregate for all  
278 violations of similar nature. For purposes of this section,  
279 violations are of a similar nature if each violation consists of  
280 the same or similar course of conduct, action, or practice,  
281 irrespective of the number of times the conduct, action, or  
282 practice, which is determined to be a violation of this part  
283 occurred.

284 Section 5. Section 521.003, Florida Statutes, is amended  
285 to read:

286 521.003 Definitions.—As used in this chapter ~~ss. 521.001-~~  
287 ~~521.006~~, the term:

288 (1) "Adjusted or net capitalized cost" means the  
289 capitalized cost, less any capitalized cost-reduction payments  
290 made by the retail lessee at the inception of the lease  
291 agreement. The adjusted or net capitalized cost shall serve as  
292 the basis for calculating the amount of the retail lessee's  
293 periodic payment under the lease agreement.

294 (2) "Capitalized cost" means the agreed-upon total amount  
295 which, after deducting any capitalized cost reductions, serves  
296 as the basis for calculating the amount of the periodic payment  
297 under the lease agreement. The capitalized cost may include,  
298 without limitation:

- 299 (a) Taxes.  
300 (b) Registration fees.

- 301 (c) License fees.
- 302 (d) Insurance charges.
- 303 (e) Charges for guaranteed auto protection or GAP
- 304 coverage.
- 305 (f) Charges for service contracts and extended warranties.
- 306 (g) Fees and charges for accessories and for installing
- 307 accessories.
- 308 (h) Charges for delivery, service, and repair.
- 309 (i) Administrative fees, acquisition fees, and any and all
- 310 fees or charges for providing services incidental to the lease
- 311 agreement.
- 312 (j) The unpaid balance of any amount financed under an
- 313 outstanding motor vehicle loan agreement or motor vehicle retail
- 314 installment contract with respect to a motor vehicle used as a
- 315 trade-in.
- 316 (k) The unpaid portion of the early termination obligation
- 317 under an outstanding lease agreement.
- 318 (l) The first periodic payment due at the inception of the
- 319 lease agreement.
- 320 (3) "Capitalized cost reduction" means a payment made by
- 321 cash, check, credit card debit, net vehicle trade-in, rebate, or
- 322 other similar means in the nature of a down payment or credit,
- 323 made by the retail lessee at the inception of the lease
- 324 agreement, for the purpose of reducing the capitalized cost and
- 325 shall not include any periodic payments received by the retail

326 | lessor at the inception of the lease agreement.

327 |       (4) "Excess wear and use waiver" means a contractual  
328 | agreement wherein a lessor agrees, with or without a separate  
329 | charge, to cancel or waive all or part of amounts that may  
330 | become due under a lease agreement as a result of excessive wear  
331 | and use of a motor vehicle, which agreement must be part of, or  
332 | a separate addendum to, the lease agreement. Such waivers may  
333 | also cancel or waive amounts due for excess mileage.

334 |       ~~(5)-(4)~~ "Lease agreement" means a written agreement entered  
335 | into in this state for the transfer from a retail lessor to a  
336 | retail lessee of the right to possess and use a motor vehicle in  
337 | exchange for consideration for a scheduled term exceeding 4  
338 | months, whether or not the retail lessee has the option to  
339 | purchase or otherwise become the owner of the motor vehicle upon  
340 | expiration of the agreement. The term does not include an  
341 | agreement which covers an absolute sale, a sale pending  
342 | approval, or a retail installment sale, including a transaction  
343 | or contract which is governed by the Motor Vehicle Retail Sales  
344 | Finance Act of Florida.

345 |       ~~(6)-(5)~~ "Lease transaction" means a presentation made to  
346 | the retail lessee concerning the motor vehicle, including a  
347 | sales presentation or a document presented to the retail lessee,  
348 | resulting in the execution of a lease agreement.

349 |       ~~(7)-(6)~~ "Motor vehicle" means a motor vehicle of the type  
350 | and kind required to be registered and titled under chapters 319



351 and 320, excluding a recreational vehicle, moped, motorcycle  
352 powered by a motor with a displacement of 50 cubic centimeters  
353 or less, or a mobile home.

354 ~~(8)(7)~~ "Retail lessee" means an individual who executes a  
355 lease agreement for a motor vehicle from a retail lessor  
356 primarily for personal, family, or household purposes.

357 ~~(9)(8)~~ "Retail lessor" means a person who regularly  
358 engages in the business of selling or leasing motor vehicles and  
359 who offers or arranges a lease agreement for a motor vehicle.  
360 The term includes an agent or affiliate who acts on behalf of  
361 the retail lessor and excludes any assignee of the lease  
362 agreement.

363 Section 6. Section 521.007, Florida Statutes, is created  
364 to read:

365 521.007 Extended wear and use waiver.-

366 (1) A retail lessee may contract with a retail lessor for  
367 an excess wear and use waiver in connection with a lease  
368 agreement.

369 (2) The terms of the related motor vehicle lease may not  
370 be conditioned upon the consumer's payment for any extended wear  
371 and use waiver. However, extended wear and use waivers may be  
372 discounted or given at no charge in connection with the purchase  
373 of other noncredit related goods.

374 (3) A lease agreement that includes an excess wear and use  
375 waiver must disclose:

376 (a) The total charge for the excess wear and use waiver.

377 (b) Any exclusions or limitations on the amount of excess  
 378 wear and use that may be waived under the excess wear and use  
 379 waiver.

380 (c) The terms, restrictions, and conditions governing  
 381 cancellation of the excess wear and use waiver before the  
 382 termination or expiration excess wear and use waiver, which may  
 383 include an administrative fee not to exceed \$75.

384 (4) Such a product is not insurance for purposes of the  
 385 Florida Insurance Code.

386 Section 7. Subsection (1) of section 24.118, Florida  
 387 Statutes, is amended to read:

388 24.118 Other prohibited acts; penalties.—

389 (1) UNLAWFUL EXTENSIONS OF CREDIT.—Any retailer who  
 390 extends credit or lends money to a person for the purchase of a  
 391 lottery ticket commits ~~is guilty of~~ a misdemeanor of the second  
 392 degree, punishable as provided in s. 775.082 or s. 775.083. This  
 393 subsection does ~~shall not be construed to~~ prohibit the purchase  
 394 of a lottery ticket through the use of a credit or charge card  
 395 or other instrument issued by a bank, savings association,  
 396 credit union, or charge card company or by a retailer pursuant  
 397 to part IV ~~part III~~ of chapter 520, provided that any such  
 398 purchase from a retailer shall be in addition to the purchase of  
 399 goods and services other than lottery tickets having a cost of  
 400 no less than \$20.

401 Section 8. Subsection (13) of section 501.604, Florida  
 402 Statutes, is amended to read:

403 501.604 Exemptions.—The provisions of this part, except  
 404 ss. 501.608 and 501.616(6) and (7), do not apply to:

405 (13) A commercial telephone seller licensed pursuant to  
 406 chapter 516 or part IV ~~part III~~ of chapter 520. For purposes of  
 407 this exemption, the seller must solicit to sell a consumer good  
 408 or service within the scope of his or her license and the  
 409 completed transaction must be subject to the provisions of  
 410 chapter 516 or part IV ~~part III~~ of chapter 520.

411 Section 9. Paragraph (d) of subsection (2) of section  
 412 671.304, Florida Statutes, is amended to read:

413 671.304 Laws not repealed; precedence where code  
 414 provisions in conflict with other laws; certain statutory  
 415 remedies retained.—

416 (2) The following laws and parts of laws are specifically  
 417 not repealed and shall take precedence over any provisions of  
 418 this code which may be inconsistent or in conflict therewith:

419 (d) Chapter 520—Retail installment sales (Part I, Motor  
 420 Vehicle Sales Finance Act; Part IV ~~Part III~~, Retail Installment  
 421 Sales Act; Part V ~~Part IV~~, Installment Sales Finance Act).

422 Section 10. This act shall take effect October 1, 2024.

## INSURANCE & BANKING SUBCOMMITTEE

HB 605 by Rep. Tramont  
Asset Protection Products

### AMENDMENT SUMMARY January 18, 2024

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**Amendment 1 by Rep. Tramont (Line 48):** The amendment makes technical changes, including consolidating the bill's provisions into a single Part of the current Chapter 520, rather than creating a new part of the chapter and an additional chapter of Florida Statute.

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>	

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

3 Representative Tramont offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove lines 48-421 and insert:  
 7 asset protection products issued before October 1, 2008.

8 Section 2. Paragraph (g) of subsection (11) of section  
 9 520.07, Florida Statutes, is amended, and paragraphs (h) and (i)  
 10 are added to that subsection, to read:

11 520.07 Requirements and prohibitions as to retail  
 12 installment contracts.-

13 (11) In conjunction with entering into any new retail  
 14 installment contract or contract for a loan, a motor vehicle  
 15 retail installment seller as defined in s. 520.02, a sales  
 16 finance company as defined in s. 520.02, or a retail lessor as

## Amendment No.1

17 defined in s. 521.003, and any assignee of such an entity, may  
18 offer, for a fee or otherwise, optional guaranteed asset  
19 protection products in accordance with this chapter. The motor  
20 vehicle retail installment seller, sales finance company, retail  
21 lessor, or assignee may not require the purchase of a guaranteed  
22 asset protection product as a condition for making the loan. In  
23 order to offer any guaranteed asset protection product, a motor  
24 vehicle retail installment seller, sales finance company, or  
25 retail lessor, and any assignee of such an entity, shall comply  
26 with the following:

27 (g) If a contract for a guaranteed asset protection  
28 product is terminated, the entity shall refund to the buyer any  
29 unearned fees paid for the contract unless the contract provides  
30 otherwise. A refund is not due to a consumer who receives a  
31 benefit under such product. In order to receive a refund, the  
32 buyer must notify the entity of the event terminating the  
33 contract and request a refund within 90 days after the  
34 occurrence of the event terminating the contract. An entity may  
35 offer a buyer a contract that does not provide for a refund only  
36 if the entity also offers that buyer a bona fide option to  
37 purchase a comparable contract that provides for a refund. An  
38 entity may not deduct more than \$75 in administrative fees from  
39 a refund made under this subsection.

Amendment No.1

40 (h) Guaranteed asset protection products may be cancelable  
41 or noncancelable after a free-look period as defined in s.  
42 520.152.

43 (i) If the termination of the guaranteed asset protection  
44 product occurs because of a default under the retail installment  
45 contract or contract for a loan, the repossession of the motor  
46 vehicle associated with the retail installment contract or  
47 contract for a loan, or any other termination of the retail  
48 installment contract or contract for a loan, the entity may pay  
49 any refund due directly to the holder or administrator and apply  
50 the refund as a reduction of the amount owed under the retail  
51 installment contract or contract for a loan, unless the buyer  
52 can show that the retail installment contract has been paid in  
53 full.

54 Section 3. Section 520.151, Florida Statutes, is created  
55 to read:

56 520.151 Florida Vehicle Value Protection Agreements Act.-  
57 Sections 520.151-520.156 may be cited as the "Florida Vehicle  
58 Value Protection Agreements Act."

59 Section 4. Section 520.152, Florida Statutes, is created  
60 to read:

61 520.152 Definitions.-As used in ss. 520.151-520.156,  
62 unless the context or subject matter otherwise requires, the  
63 term:

## Amendment No.1

64 (1) "Administrator" means the person who is responsible  
65 for the administrative or operational function of managing  
66 vehicle value protection agreements, including, but not limited  
67 to, the adjudication of claims or benefit requests by contract  
68 holders.

69 (2) "Commercial transaction" means a transaction in which  
70 the motor vehicle subject to the transaction is used primarily  
71 for business or commercial purposes.

72 (3) "Contract holder" means a person who is the purchaser  
73 or holder of a vehicle value protection agreement.

74 (4) "Finance agreement" means a loan, retail installment  
75 sales contract, or lease for the purchase, refinancing, or lease  
76 of a motor vehicle.

77 (5) "Free-look period" means the period of time,  
78 commencing on the effective date of the contract, during which  
79 the buyer may cancel the contract for a full refund of the  
80 purchase price. This period may not be shorter than 30 days.

81 (6) "Motor vehicle" has the same meaning as provided in s.  
82 520.02.

83 (7) "Provider" means a person that is obligated to provide  
84 a benefit under a vehicle value protection agreement. A provider  
85 may function as an administrator or retain the services of a  
86 third-party administrator.

87 (8) "Vehicle value protection agreement" includes a  
88 contractual agreement that provides a benefit toward either the



Amendment No.1

89 reduction of some or all of the contract holder's current  
90 finance agreement deficiency balance or the purchase or lease of  
91 a replacement motor vehicle or motor vehicle services upon the  
92 occurrence of an adverse event to the motor vehicle, including,  
93 but not limited to, loss, theft, damage, obsolescence,  
94 diminished value, or depreciation. The term does not include  
95 guaranteed asset protection products as defined in s. 520.02.  
96 Such a product is not insurance for purposes of the Florida  
97 Insurance Code.

98 Section 5. Section 520.153, Florida Statutes, is created  
99 to read:

100 520.153 Requirements and prohibitions as to vehicle value  
101 protection agreements.-

102 (1) Vehicle value protection agreements may be offered,  
103 sold, or given to consumers in this state in compliance with  
104 this act.

105 (2) Notwithstanding any other law, any amount charged or  
106 financed for a vehicle value protection agreement is not  
107 considered a finance charge or interest and must be separately  
108 stated in the finance agreement and in the vehicle value  
109 protection agreement.

110 (3) The extension of credit, the terms of credit, or the  
111 terms of the related motor vehicle sale or lease may not be  
112 conditioned upon the consumer's payment for or financing of any  
113 charge for a vehicle value protection agreement. However, a

## Amendment No.1

114 vehicle value protection agreement may be discounted or given at  
115 no charge in connection with the purchase of other noncredit-  
116 related goods or services.

117 (4) A provider may use an administrator or other designee  
118 to administer a vehicle value protection agreement.

119 (5) A vehicle value protection agreement may not be sold  
120 or given to any person unless he or she has been or will be  
121 provided access to a copy of such vehicle value protection  
122 agreement at a reasonable time after such vehicle value  
123 protection agreement is sold or given.

124 (6) A vehicle value protection agreement may not be sold  
125 or given if coverage is duplicative of another vehicle value  
126 protection agreement sold or given to a person or duplicative of  
127 a guaranteed asset protection product.

128 (7) Each provider shall do one of the following:

129 (a) Insure all of its vehicle value protection agreements  
130 under a policy that pays or reimburses the contract holder in  
131 the event the provider fails to perform its obligations under  
132 the vehicle value protection agreement. The insurer must be  
133 licensed or otherwise authorized or eligible to do business in  
134 this state.

135 (b) Maintain a funded reserve account for its obligations  
136 under its contracts issued and outstanding in this state. The  
137 reserves may not be less than 40 percent of gross consideration  
138 received, less claims paid, on the sale of the vehicle value

## Amendment No.1

139 protection agreement for all in-force contracts in this state.  
140 The reserve must be placed in trust with the office and have a  
141 financial security deposit valued at not less than 5 percent of  
142 the gross consideration received, less claims paid, on the sale  
143 of the vehicle value protection agreements for all vehicle value  
144 protection agreements issued and in force in this state, but at  
145 least \$25,000. The reserve account must consist of one of the  
146 following:

- 147 1. A surety bond issued by an authorized surety.
- 148 2. Securities of the type eligible for deposit by insurers  
149 as provided in s. 625.52.
- 150 3. Cash.
- 151 4. A letter of credit issued by a qualified financial  
152 institution.

153 (c) Maintain, or together with its parent corporation  
154 maintain, a net worth or stockholders' equity of \$100 million  
155 and, upon request, provide the office with a copy of the  
156 provider's or the provider's parent company's Form 10-K or Form  
157 20-F filed with the Securities and Exchange Commission within  
158 the last calendar year, or if the company does not file with the  
159 Securities and Exchange Commission, a copy of the company's  
160 audited financial statements, which must show a net worth of the  
161 provider or its parent company of at least \$100 million. If the  
162 provider's parent company's Form 10-K, Form 20-F, or financial  
163 statements are filed to meet the provider's financial security

Amendment No.1

164 requirement, the parent company must agree to guarantee the  
165 obligations of the provider relating to vehicle value protection  
166 agreements sold by the provider in this state.

167 (8) A financial security requirement other than those  
168 imposed in subsection (7) may not be imposed on vehicle value  
169 protection agreement providers.

170 Section 6. Section 520.154, Florida Statutes, is created  
171 to read:

172 520.154 Disclosures.—

173 (1) A vehicle value protection agreement must disclose in  
174 writing, in clear, understandable language, all of the  
175 following:

176 (a) The name and address of the provider, contract holder,  
177 and administrator, if any.

178 (b) The terms of the vehicle value protection agreement,  
179 including, but not limited to, the purchase price to be paid by  
180 the contract holder, if any, the requirements for eligibility  
181 and conditions of coverage, and any exclusions.

182 (c) Whether the vehicle value protection agreement may be  
183 canceled by the contract holder during a free-look period as  
184 defined in s. 520.152, and that, in the event of cancellation,  
185 the contract holder is entitled to a full refund of the purchase  
186 price, if any, so long as no benefits have been provided.

187 (d) The procedure the contract holder must follow, if any,  
188 to obtain a benefit under the terms and conditions of the

## Amendment No.1

189 vehicle value protection agreement, including, if applicable, a  
190 telephone number, website, or mailing address where the contract  
191 holder may apply for a benefit.

192 (e) Whether the vehicle value protection agreement is  
193 cancelable after the free-look period and the conditions under  
194 which it may be canceled, including the procedures for  
195 requesting any refund of the unearned purchase price paid by the  
196 contract holder. In the event that the agreement is cancelable,  
197 it must include the methodology for calculating any refund due  
198 of the unearned purchase price of the vehicle value protection  
199 agreement.

200 (f) That the extension of credit, the terms of the credit,  
201 or the terms of the related motor vehicle sale or lease may not  
202 be conditioned upon the purchase of the vehicle value protection  
203 agreement.

204 (2) A vehicle value protection agreement must state the  
205 terms, restrictions, or conditions governing cancellation of the  
206 vehicle value protection agreement before the termination or  
207 expiration date of the vehicle value protection agreement by  
208 either the provider or the contract holder. The provider of the  
209 vehicle value protection agreement shall mail a written notice  
210 to the contract holder at the last known address of the contract  
211 holder contained in the records of the provider at least 5 days  
212 before cancellation by the provider, which notice must state the  
213 effective date of the cancellation and the reason for the

Amendment No.1

214 cancellation. However, such prior notice is not required if the  
215 reason for cancellation is nonpayment of the provider fee, a  
216 material misrepresentation by the contract holder to the  
217 provider or administrator, or a substantial breach of duties by  
218 the contract holder relating to the covered motor vehicle or its  
219 use. If a vehicle value protection agreement is canceled by the  
220 provider for a reason other than nonpayment of the provider fee,  
221 the provider must refund to the contract holder 100 percent of  
222 the unearned pro rata provider fee paid by the contract holder,  
223 if any. If coverage under the vehicle value protection agreement  
224 continues after a claim, any refund may reflect a deduction for  
225 claims paid and, at the discretion of the provider, an  
226 administrative fee of not more than \$75.

227 Section 7. Section 520.155, Florida Statutes, is created  
228 to read:

229 520.155 Commercial transactions exempt.—Sections 520.154  
230 and 520.156 do not apply to vehicle value protection agreements  
231 offered in connection with a commercial transaction.

232 Section 8. Section 520.156, Florida Statutes, is created  
233 to read:

234 520.156 Penalties.—A provider, an administrator, or any  
235 other person who willfully and intentionally violates ss.  
236 520.151-520.155 commits a noncriminal violation as defined in s.  
237 775.08(3), punishable by a fine not to exceed \$500 per violation  
238 and not more than \$10,000 in the aggregate for all violations of

Amendment No.1

239 a similar nature. For purposes of this section, the term  
240 "violations of a similar nature" means violations that consist  
241 of the same or similar course of conduct, action, or practice,  
242 irrespective of the number of times the action, conduct, or  
243 practice determined to be a violation of ss. 520.151-520.155  
244 occurred.

245 Section 9. Section 520.157, Florida Statutes, is created  
246 to read:

247 520.157 Excess wear and use waiver.-

248 (1) For purposes of this section, the term "excess wear  
249 and use waiver" means a contractual agreement wherein a lessor  
250 agrees, regardless of whether subject to a separate fee, to  
251 cancel or waive all or part of amounts that may become due under  
252 a lease agreement as a result of excess wear and use of a motor  
253 vehicle, which agreement must be part of, or a separate addendum  
254 to, the lease agreement. Such waivers may also cancel or waive  
255 amounts due for excess mileage.

256  
257  
258

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

260 Remove lines 5-27 and insert:  
261 520.07, F.S.; prohibiting certain entities from deducting more  
262 than a specified amount in administrative fees when providing a  
263 refund of a guaranteed asset protection product; authorizing

## Amendment No.1

264 guaranteed asset protection products to be cancelable or  
265 noncancelable under certain circumstances; authorizing certain  
266 entities to pay refunds directly to the holder or administrator  
267 of a loan under certain circumstances; creating s. 520.151,  
268 F.S.; providing a short title; creating s. 520.152, F.S.;  
269 defining terms; creating s. 520.153, F.S.; authorizing the  
270 offer, sale, or gift of vehicle value protection agreements in  
271 compliance with a certain act; specifying a requirement  
272 regarding the amount charged or financed for a vehicle value  
273 protection agreement; prohibiting the conditioning of credit  
274 offers or terms for the sale or lease of a motor vehicle upon a  
275 consumer's payment for or financing of any charge for a vehicle  
276 value protection agreement; authorizing discounting or giving  
277 the vehicle value protection agreement at no charge under  
278 certain circumstances; authorizing providers to use an  
279 administrator or other designee for administration of vehicle  
280 value protection agreements; prohibiting vehicle value  
281 protection agreements from being sold under certain  
282 circumstances; specifying financial security requirements for  
283 providers; prohibiting additional financial security  
284 requirements from being imposed on providers; creating s.  
285 520.154, F.S.; requiring vehicle value protection agreements to  
286 include certain disclosures in writing, in clear and  
287 understandable language; requiring vehicle value protection  
288 agreements to state the terms, restrictions, or conditions

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## Amendment No.1

289 governing cancellation by the provider or the contract holder;  
290 specifying requirements for notice by the provider, refund of  
291 fees, and deduction of fees in the event the vehicle value  
292 protection agreement is canceled; creating s. 520.155, F.S.;  
293 providing an exemption for vehicle value protection agreements  
294 in connection with a commercial transaction; creating s.  
295 520.156, F.S.; providing noncriminal penalties; defining the  
296 term "violations of a similar nature"; creating s. 520.157,  
297 F.S.; defining the term "excess wear and use waiver";  
298 authorizing a retail lessee to contract with a retail lessor for  
299 an excess wear and use waiver; prohibiting conditioning the  
300 terms of the consumer's motor vehicle lease on his or her  
301 payment for any excess wear and use waiver; authorizing  
302 discounting or giving the excess wear and use waiver at no  
303 charge under certain circumstances; requiring certain  
304 disclosures for a lease agreement that includes an excess wear  
305 and use waiver; providing construction; providing an effective  
306 date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Property Insurance Coverage

SPONSOR(S): Buchanan

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Lloyd
2) Commerce Committee			

SUMMARY ANALYSIS

**Citizens Property Insurance Corporation (Citizens):** Citizens is Florida’s property insurer of last resort. Citizens currently writes multiperil and wind-only policies within its three accounts, subject to applicants meeting eligibility criteria. However, Citizens is prohibited from issuing wind-only policies to commercial lines residential condominiums when 50 percent or more of the units in the condominium are rented more than eight times per calendar year for less than 30 days in each rental period (short-term rentals).

The bill eliminates the prohibition on Citizens’ eligibility for condominiums that are currently ineligible for wind-only coverage due to short-term rental status. These condominiums become eligible for wind-only coverage from Citizens at its current rate for commercial residential condominiums.

**Roof Inspections:** Insurers may not refuse to issue or refuse to renew a homeowners’ policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof. For a roof that is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowners’ expense before requiring a homeowner to replace a roof as a condition of issuing or renewing a homeowners’ insurance policy. Additionally, if an inspection of the roof performed by an authorized inspector shows that the roof has at least 5 years of useful life remaining, the insurer may not refuse to issue or renew a homeowners’ policy solely because of roof age. Current law does not require that authorized inspectors use a particular form to complete the roof inspection.

The bill requires that authorized inspectors conducting roof inspections to determine the remaining useful life on a residential roof use a specific form. An authorized inspector may also provide an appendix to this form which includes pictures or other documentation to demonstrate the remaining useful life of the roof.

**Loss Assessment Coverage:** Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for certain occurrences. Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made because of the same direct loss to the condominium property.

The bill provides that property insurance policies issued to residential condominium unit owners on or after July 1, 2024, must contain at least \$5,000 in property loss assessment coverage.

The bill has no impact on local or state government revenues or expenditures. It has an indeterminate positive and negative direct economic impact on the private sector.

The bill is effective on July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### ***Citizens Property Insurance Corporation (Citizens)***

##### Background

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> It is commonly known as Florida's insurer of last-resort since eligibility is partly determined on the risk not being able to be placed in the voluntary, admitted market at an affordable rate. Citizens offers property insurance through three different accounts: a personal lines account, a commercial lines account, and a coastal account.

The policies that Citizens writes within these three accounts include the following:

- Standard Personal Lines Policies – comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic Personal Lines Policies – similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial Lines Residential and Nonresidential Policies – generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal Lines and Commercial Lines Residential Property Insurance Policies – cover the peril of wind only;
- Commercial Lines Nonresidential Property Insurance Policies – cover the peril of wind only.<sup>3</sup>

Citizens' eligibility criteria sometimes allow it to issue policies that cover wind losses only (wind-only policies) when it is unable to issue a multiperil policy. However, under current law, Citizens is prohibited from issuing wind-only policies to commercial lines residential condominiums when 50 percent or more of the units in the condominium are rented more than eight times per calendar year for less than 30 days in each rental period.<sup>4</sup> Condominium owners have complained that due to this prohibition they are unable to obtain coverage from any insurers other than surplus lines insurers, which is typically more expensive than coverage from admitted insurers or Citizens.<sup>5</sup>

##### Effect of the Bill

The bill eliminates the prohibition on Citizens' eligibility for condominiums that are currently ineligible for wind-only coverage due to short-term rental status. These condominiums become eligible for wind-only policies from Citizens at its current rate for commercial residential condominiums.

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<sup>1</sup> The term "admitted market" means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> S. 627.351(6)(a)1., F.S.

<sup>3</sup> S. 627.351(6)(c)1., F.S.

<sup>4</sup> These types of rentals are commonly referred to as short-term rentals.

<sup>5</sup> See s. 626.913, F.S. Surplus lines rates must be noncompetitive with those of admitted insurers. S. 626.916, F.S.

## ***Roof Inspections***

### Background

Homeowners increasingly complained about insurers' refusal to write or renew their policies based upon the age of the roofs on their homes, even when inspections showed that the roofs had useful life remaining.<sup>6</sup> Homeowners also indicated that insurers refused to issue or renew policies unless they replaced roofs that are more than a certain number of years old. As a result, the Legislature implemented statutory prohibitions on property insurers canceling or nonrenewing policies solely based upon the age and condition of roofs.<sup>7</sup>

Insurers may not refuse to issue or refuse to renew a homeowners' policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.<sup>8</sup> For a roof that is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowners' expense before requiring a homeowner to replace a roof as a condition of issuing or renewing a homeowners' insurance policy.<sup>9</sup> Additionally, if an inspection of the roof performed by an authorized inspector shows that the roof has at least 5 years of useful life remaining, the insurer may not refuse to issue or renew a homeowners' policy solely because of roof age.<sup>10</sup> The age of the roof is determined using either:

- The last date for which 100 percent of the roof's surface was built or replaced in compliance with the building code in effect at the time, or
- The the initial date of a partial roof replacement when subsequent partial builds or replacements were completed that resulted in 100 percent of the roof's surface being built or replaced.<sup>11</sup>

At present, the law does not require that authorized inspectors use a particular form to complete the roof inspection.

### Effect of the Bill

The bill requires that authorized inspectors conducting roof inspections to determine the remaining useful life on a residential roof use the roof inspection form titled *Commercial Roof Condition Inspection Form (CL-RCF-1 07 17)*.<sup>12</sup> It also allows an authorized inspector to provide an appendix to this form which includes pictures or other documentation to demonstrate the remaining useful life of the roof.

## ***Loss Assessment Coverage***

### Background

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or

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<sup>6</sup> See e.g., Lawrence Mower, *Progressive Stops Renewing Some Home Policies in Florida as Lawmakers Target Roof Claims*, Tampa Bay Times (Feb. 8, 2022), <https://www.tampabay.com/news/florida-politics/2022/02/08/progressive-stops-renewing-some-home-policies-in-florida-as-lawmakers-target-roof-claims/> (last visited Jan. 13, 2024).

<sup>7</sup> Ch. 2022-268, Laws of Fla.

<sup>8</sup> S. 627.7011(5), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> This is a form issued, and used by, Citizens.

- Injuries that occur in the common areas of a condominium property.<sup>13</sup>

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made because of the same direct loss to the condominium property.<sup>14</sup> The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence that gave rise to the loss.<sup>15</sup> This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.<sup>16</sup>

### Effect of the Bill

The bill provides that property insurance policies issued to residential condominium unit owners on or after July 1, 2024, must contain at least \$5,000 in property loss assessment coverage.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 2.** Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

**Section 3.** Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

**Section 4.** 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:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>13</sup> The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 13, 2024).

<sup>14</sup> S. 627.714(1), F.S.

<sup>15</sup> S. 627.714(2), F.S.

<sup>16</sup> *Id.*

The bill will have a positive direct economic impact on condominium owners. Current owners of condominiums that are ineligible for coverage from Citizens because of short-term rentals, and are likely obtaining more expensive insurance from the surplus lines market, will be able to obtain coverage from Citizens. Additionally, condominium owners will receive the benefit of an increase in the loss assessment coverage provided by their property insurance policies if their policies do not already contain \$5,000 in loss assessment coverage. However, this increase in coverage may result in an indeterminate increase in premiums.

D. FISCAL COMMENTS:

None.

### 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 bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Section 2 (Lines 160-178):** This section of the bill requires the use of a commercial roof inspection form for the inspection of the roof of a residential structure. If the section is intended to require the use of a particular form for the inspection of a residential roof, the title of the form should be changed. However, if the form title is correct and the section of the bill is meant to correct an issue with commercial roof inspections, then the bill should be amended to put the form title in a statute addressing commercial roof inspections. An amendment is suggested to correct this inconsistency.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 625

2024

1                   A bill to be entitled  
2           An act relating to property insurance coverage;  
3           amending s. 627.351, F.S.; removing provisions  
4           relating to ineligibility of commercial lines  
5           residential condominiums for wind-only coverage by  
6           Citizens Property Insurance Corporation under certain  
7           circumstances; amending s. 627.7011, F.S.; requiring  
8           authorized inspectors to use a specified inspection  
9           form for roof inspections; authorizing such inspectors  
10          to provide appendices to the inspection forms for a  
11          specified purpose; amending s. 627.714, F.S.;  
12          increasing property loss assessment coverages under  
13          condominium unit owners' residential property  
14          policies; providing an effective date.

15  
16   Be It Enacted by the Legislature of the State of Florida:

17  
18           Section 1. Paragraph (a) of subsection (6) of section  
19   627.351, Florida Statutes, is amended to read:

20           627.351 Insurance risk apportionment plans.—

21           (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

22           (a) The public purpose of this subsection is to ensure  
23   that there is an orderly market for property insurance for  
24   residents and businesses of this state.

25           1. The Legislature finds that private insurers are



26 | unwilling or unable to provide affordable property insurance  
27 | coverage in this state to the extent sought and needed. The  
28 | absence of affordable property insurance threatens the public  
29 | health, safety, and welfare and likewise threatens the economic  
30 | health of the state. The state therefore has a compelling public  
31 | interest and a public purpose to assist in assuring that  
32 | property in the state is insured and that it is insured at  
33 | affordable rates so as to facilitate the remediation,  
34 | reconstruction, and replacement of damaged or destroyed property  
35 | in order to reduce or avoid the negative effects otherwise  
36 | resulting to the public health, safety, and welfare, to the  
37 | economy of the state, and to the revenues of the state and local  
38 | governments which are needed to provide for the public welfare.  
39 | It is necessary, therefore, to provide affordable property  
40 | insurance to applicants who are in good faith entitled to  
41 | procure insurance through the voluntary market but are unable to  
42 | do so. The Legislature intends, therefore, that affordable  
43 | property insurance be provided and that it continue to be  
44 | provided, as long as necessary, through Citizens Property  
45 | Insurance Corporation, a government entity that is an integral  
46 | part of the state, and that is not a private insurance company.  
47 | To that end, the corporation shall strive to increase the  
48 | availability of affordable property insurance in this state,  
49 | while achieving efficiencies and economies, and while providing  
50 | service to policyholders, applicants, and agents which is no

51 less than the quality generally provided in the voluntary  
52 market, for the achievement of the foregoing public purposes.  
53 Because it is essential for this government entity to have the  
54 maximum financial resources to pay claims following a  
55 catastrophic hurricane, it is the intent of the Legislature that  
56 the corporation continue to be an integral part of the state and  
57 that the income of the corporation be exempt from federal income  
58 taxation and that interest on the debt obligations issued by the  
59 corporation be exempt from federal income taxation.

60 2. The Residential Property and Casualty Joint  
61 Underwriting Association originally created by this statute  
62 shall be known as the Citizens Property Insurance Corporation.  
63 The corporation shall provide insurance for residential and  
64 commercial property, for applicants who are entitled, but, in  
65 good faith, are unable to procure insurance through the  
66 voluntary market. The corporation shall operate pursuant to a  
67 plan of operation approved by order of the Financial Services  
68 Commission. The plan is subject to continuous review by the  
69 commission. The commission may, by order, withdraw approval of  
70 all or part of a plan if the commission determines that  
71 conditions have changed since approval was granted and that the  
72 purposes of the plan require changes in the plan. For the  
73 purposes of this subsection, residential coverage includes both  
74 personal lines residential coverage, which consists of the type  
75 of coverage provided by homeowner, mobile home owner, dwelling,

76 | tenant, condominium unit owner, and similar policies; and  
77 | commercial lines residential coverage, which consists of the  
78 | type of coverage provided by condominium association, apartment  
79 | building, and similar policies.

80 |       3. With respect to coverage for personal lines residential  
81 | structures:

82 |       a. Effective January 1, 2014, a structure that has a  
83 | dwelling replacement cost of \$1 million or more, or a single  
84 | condominium unit that has a combined dwelling and contents  
85 | replacement cost of \$1 million or more, is not eligible for  
86 | coverage by the corporation. Such dwellings insured by the  
87 | corporation on December 31, 2013, may continue to be covered by  
88 | the corporation until the end of the policy term. The office  
89 | shall approve the method used by the corporation for valuing the  
90 | dwelling replacement cost for the purposes of this subparagraph.  
91 | If a policyholder is insured by the corporation before being  
92 | determined to be ineligible pursuant to this subparagraph and  
93 | such policyholder files a lawsuit challenging the determination,  
94 | the policyholder may remain insured by the corporation until the  
95 | conclusion of the litigation.

96 |       b. Effective January 1, 2015, a structure that has a  
97 | dwelling replacement cost of \$900,000 or more, or a single  
98 | condominium unit that has a combined dwelling and contents  
99 | replacement cost of \$900,000 or more, is not eligible for  
100 | coverage by the corporation. Such dwellings insured by the

101 corporation on December 31, 2014, may continue to be covered by  
 102 the corporation only until the end of the policy term.

103 c. Effective January 1, 2016, a structure that has a  
 104 dwelling replacement cost of \$800,000 or more, or a single  
 105 condominium unit that has a combined dwelling and contents  
 106 replacement cost of \$800,000 or more, is not eligible for  
 107 coverage by the corporation. Such dwellings insured by the  
 108 corporation on December 31, 2015, may continue to be covered by  
 109 the corporation until the end of the policy term.

110 d. Effective January 1, 2017, a structure that has a  
 111 dwelling replacement cost of \$700,000 or more, or a single  
 112 condominium unit that has a combined dwelling and contents  
 113 replacement cost of \$700,000 or more, is not eligible for  
 114 coverage by the corporation. Such dwellings insured by the  
 115 corporation on December 31, 2016, may continue to be covered by  
 116 the corporation until the end of the policy term.

117  
 118 The requirements of sub-subparagraphs b.-d. do not apply in  
 119 counties where the office determines there is not a reasonable  
 120 degree of competition. In such counties a personal lines  
 121 residential structure that has a dwelling replacement cost of  
 122 less than \$1 million, or a single condominium unit that has a  
 123 combined dwelling and contents replacement cost of less than \$1  
 124 million, is eligible for coverage by the corporation.

125 4. It is the intent of the Legislature that policyholders,

126 applicants, and agents of the corporation receive service and  
127 treatment of the highest possible level but never less than that  
128 generally provided in the voluntary market. It is also intended  
129 that the corporation be held to service standards no less than  
130 those applied to insurers in the voluntary market by the office  
131 with respect to responsiveness, timeliness, customer courtesy,  
132 and overall dealings with policyholders, applicants, or agents  
133 of the corporation.

134 5.a. Effective January 1, 2009, a personal lines  
135 residential structure that is located in the "wind-borne debris  
136 region," as defined in s. 1609.2, International Building Code  
137 (2006), and that has an insured value on the structure of  
138 \$750,000 or more is not eligible for coverage by the corporation  
139 unless the structure has opening protections as required under  
140 the Florida Building Code for a newly constructed residential  
141 structure in that area. A residential structure is deemed to  
142 comply with this sub-subparagraph if it has shutters or opening  
143 protections on all openings and if such opening protections  
144 complied with the Florida Building Code at the time they were  
145 installed.

146 b. Any major structure, as defined in s. 161.54(6)(a),  
147 that is newly constructed, or rebuilt, repaired, restored, or  
148 remodeled to increase the total square footage of finished area  
149 by more than 25 percent, pursuant to a permit applied for after  
150 July 1, 2015, is not eligible for coverage by the corporation if

HB 625

2024

151 the structure is seaward of the coastal construction control  
152 line established pursuant to s. 161.053 or is within the Coastal  
153 Barrier Resources System as designated by 16 U.S.C. ss. 3501-  
154 3510.

155 ~~6. With respect to wind-only coverage for commercial lines~~  
156 ~~residential condominiums, effective July 1, 2014, a condominium~~  
157 ~~shall be deemed ineligible for coverage if 50 percent or more of~~  
158 ~~the units are rented more than eight times in a calendar year~~  
159 ~~for a rental agreement period of less than 30 days.~~

160 Section 2. Paragraph (c) of subsection (5) of section  
161 627.7011, Florida Statutes, is amended to read:

162 627.7011 Homeowners' policies; offer of replacement cost  
163 coverage and law and ordinance coverage.—

164 (5)

165 (c) For a roof that is at least 15 years old, an insurer  
166 must allow a homeowner to have a roof inspection performed by an  
167 authorized inspector at the homeowner's expense before requiring  
168 the replacement of the roof of a residential structure as a  
169 condition of issuing or renewing a homeowner's insurance policy.  
170 The insurer may not refuse to issue or refuse to renew a  
171 homeowner's insurance policy solely because of roof age if an  
172 inspection of the roof of the residential structure performed by  
173 an authorized inspector indicates that the roof has 5 years or  
174 more of useful life remaining. An authorized inspector must use  
175 the Commercial Roof Condition Inspection Form (CL-RCF-1 07 17).

176 An authorized inspector may provide an appendix to this form  
 177 which includes pictures or other documentation to demonstrate  
 178 the remaining useful life of the roof.

179 Section 3. Subsection (1) of section 627.714, Florida  
 180 Statutes, is amended to read:

181 627.714 Residential condominium unit owner coverage; loss  
 182 assessment coverage required.—

183 (1) For policies issued or renewed on or after July 1,  
 184 2024 ~~2010~~, coverage under a unit owner's residential property  
 185 policy must include at least \$5,000 ~~\$2,000~~ in property loss  
 186 assessment coverage for all assessments made as a result of the  
 187 same direct loss to the property, regardless of the number of  
 188 assessments, owned by all members of the association  
 189 collectively if such loss is of the type of loss covered by the  
 190 unit owner's residential property insurance policy, to which a  
 191 deductible of no more than \$250 per direct property loss  
 192 applies. If a deductible was or will be applied to other  
 193 property loss sustained by the unit owner resulting from the  
 194 same direct loss to the property, no deductible applies to the  
 195 loss assessment coverage.

196 Section 4. This act shall take effect July 1, 2024.

## **INSURANCE & BANKING SUBCOMMITTEE**

### **HB 625 by Rep. Buchanan Property Insurance Coverage**

#### **AMENDMENT SUMMARY January 18, 2023**

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**Amendment 1 by Rep. Buchanan (Line 155):** The amendment:

- Establishes that rates charged by Citizens Property Insurance Corporation (Citizens) for wind-only policies issued to condominiums that are primarily used as short-term rentals are not subject to the rate glide path generally applied to Citizens' policies.
- Requires the use of specified roof condition inspection forms issued by Citizens and approved by the Office of Insurance Regulation.



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		

Committee/Subcommittee hearing bill: Insurance & Banking  
Subcommittee

Representative Buchanan offered the following:

**Amendment (with title amendment)**

Remove lines 155-178 and insert:

6. Beginning with the implementation of the corporation's next annual rate change on or after August 1, 2024, if the corporation writes a commercial lines residential condominium wind-only policy for a condominium where 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days, the rate charged for such policy is not subject to the provisions of subparagraph (n)5 ~~With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible~~

Amendment No. 1

17 ~~for coverage if 50 percent or more of the units are rented more~~  
18 ~~than eight times in a calendar year for a rental agreement~~  
19 ~~period of less than 30 days.~~

20 Section 2. Paragraph (c) of subsection (5) of section  
21 627.7011, Florida Statutes, is amended to read:

22 627.7011 Homeowners' policies; offer of replacement cost  
23 coverage and law and ordinance coverage.—

24 (5)

25 (c) For a roof that is at least 15 years old, an insurer  
26 must allow a homeowner to have a roof inspection performed by an  
27 authorized inspector at the homeowner's expense before requiring  
28 the replacement of the roof of a residential structure as a  
29 condition of issuing or renewing a homeowner's insurance policy.  
30 The insurer may not refuse to issue or refuse to renew a  
31 homeowner's insurance policy solely because of roof age if an  
32 inspection of the roof of the residential structure performed by  
33 an authorized inspector indicates that the roof has 5 years or  
34 more of useful life remaining. An authorized inspector must use  
35 the personal roof condition inspection form issued by Citizens  
36 Property Insurance Corporation and approved by the office. An  
37 authorized inspector may provide an appendix to this form which  
38 includes pictures or other documentation to demonstrate the  
39 remaining useful life of the roof.

40 Section 3. Section 627.7014, Florida Statutes, is created  
41 to read:

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Amendment No. 1

42 627.7014 Commercial roof inspections.

43 (1) For the purposes of this section, the term "authorized  
44 inspector" has the same meaning as s. 627.7011.

45 (2) An authorized inspector inspecting the roof of a  
46 commercial structure must use the commercial roof condition  
47 inspection form issued by Citizens Property Insurance  
48 Corporation and approved by the office. An authorized inspector  
49 may provide an appendix to this form which includes pictures or  
50 other documentation to demonstrate the remaining useful life of  
51 the roof.

52  
53  
54 -----  
55 **T I T L E A M E N D M E N T**

56 Remove lines 3-11 and insert:

57 amending s. 627.351, F.S.; creating eligibility criteria for  
58 commercial lines residential wind-only condominium coverage by  
59 Citizens Property Insurance Corporation under certain  
60 circumstances; amending s. 627.7011, F.S.; requiring authorized  
61 inspectors to use a specified inspection form for roof  
62 inspections; authorizing such inspectors to provide appendices  
63 to the inspection forms for a specified purpose; creating s.  
64 627.7014, F.S.; requiring authorized inspectors to use a  
65 specified inspection form for roof inspections; authorizing such

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 625 (2024)

Amendment No. 1

66 inspectors to provide appendices to the inspection forms for a  
67 specified purpose; amending s. 627.714, F.S.;



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 637 Treatment by a Medical Specialist

**SPONSOR(S):** Yeager

**TIED BILLS:** IDEN./SIM. BILLS: SB 808

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

**SUMMARY ANALYSIS**

Florida’s Workers’ Compensation Law (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Department of Financial Services, Division of Workers’ Compensation (DFS), provides regulatory oversight of Florida’s workers’ compensation system, including the workers’ compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers’ compensation health care providers that provide medical services to injured employees.

If a firefighter, law enforcement officer, correctional officer, or correctional probation officer becomes disabled by tuberculosis, heart disease, or hypertension, Florida law presumes that the disease has been contracted in the line of duty, subject to certain limitations, and is therefore compensable under workers compensation law, unless the contrary can be shown by competent evidence.

To be eligible for this legal presumption, the officer or firefighter must have taken a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill permits firefighters, law enforcement officer, correctional officers, or correctional probation officer requiring medical treatment for a compensable presumptive condition to seek treatment from a medical specialist. The treatment provided by the medical specialist should be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension.

Also, the bill increases the maximum reimbursement for a medical specialist licensed under Chapter 458 or Chapter 459, from 110% to 200% of the reimbursement allowed by Medicare.

The bill has no fiscal impact on state or local government revenues, an indeterminate negative impact of state and local government expenditures, and an indeterminate positive economic impact on the private sector.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### *Qualifications for Employment as a Firefighter, Law Enforcement, Correctional, or Probation Officer*

Florida law sets forth the minimum requirements for any person to be employed or appointed in a full- or part-time capacity, or in an auxiliary capacity, as a law enforcement officer, correctional officer, or correctional probation officer; or to be appointed as an auxiliary correctional officer by a private entity contracting with the Department of Corrections.

To become a law enforcement, correctional, or correctional probation officer, an applicant must satisfy age, education, and citizenship requirements; complete a training course; pass a certification exam; pass a criminal background check; and pass a physical examination.<sup>1</sup>

The physical examination requires screening for evidence of tuberculosis, heart disease, or hypertension.<sup>2</sup>

In addition to law enforcement, correctional, and correctional probation officers, the presumption applies to firefighters working for any unit of Florida government.<sup>3</sup>

##### *Workers' Compensation Presumption*

A legal presumption makes it easier for an employee to obtain workers' compensation benefits by shifting the burden of proof in a disability determination from the employee to the employer.<sup>4</sup>

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job is associated with a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.<sup>5</sup>

Florida law includes a presumption that treats tuberculosis, heart disease, or hypertension as an occupational disease associated with firefighters, law enforcement officers, correctional officers, and correctional probation officers. If these employees become temporarily or partially disabled by tuberculosis, heart disease, or hypertension, the law presumes that the employee contracted the disease in the line of duty unless the contrary can be shown by competent evidence.<sup>6</sup>

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<sup>1</sup> S. 943.13, F.S.

<sup>2</sup> S. 943.13(6), F.S.

<sup>3</sup> Ss. 112.18(1)(a) and 175.231, F.S.

<sup>4</sup> *Caldwell v. Division of Retirement, Florida Dept. of Administration*, 372 So. 2d 438, (Fla. 1979).

<sup>5</sup> S. 440.151(2), F.S.

<sup>6</sup> Ss. 112.18(1)(a) and 175.231, F.S.

However, firefighters, law enforcement officers, correctional officers, and correctional probation officers are entitled to the presumption only if the officer passed a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.<sup>7</sup>

If the employee's pre-employment physical failed to reveal any evidence of disease, the employee must demonstrate that he or she suffers from tuberculosis, heart disease, or hypertension, but does not have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.<sup>8</sup>

To overcome the statutory presumption, the employer must present clear and convincing evidence that the disease was caused by a non-work-related event or exposure.<sup>9</sup>

### *Pre-Employment Physicals*

To be employed as a law enforcement, correctional, or correctional probation officer, an applicant must pass a physical exam.<sup>10</sup> The law that establishes minimum employment standards states that such officers are eligible for the presumption of s. 112.18, F.S., only if the physical exam fails to reveal any evidence of tuberculosis, heart disease, or hypertension.<sup>11</sup>

To enroll in firefighting training courses and be certified as a firefighter, an applicant must be in good physical condition, as determined by a doctor or nurse practitioner.<sup>12</sup> The law does not mention specific screening for tuberculosis, heart disease, or hypertension. The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.<sup>13</sup>

### *Division of Workers' Compensation*

Florida's Workers' Compensation Law<sup>14</sup> requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.<sup>15</sup> DFS provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers<sup>16</sup> that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.<sup>17</sup> DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals<sup>18</sup> through the rulemaking process provided by the Administrative Procedures Act.<sup>19</sup> In 2023, CS/CS/HB 487 eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.<sup>20</sup> Instead, it mandates DFS to

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<sup>7</sup> S. 112.18(1)(a), F.S.

<sup>8</sup> *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019), citing *Walters v. State, DOC/Div. of Risk Management*, 100 So. 3d 1173 (Fla. 1st DCA 2019), rehearing denied, review denied 108 So. 3d 654 (The presumption is an adequate substitute for evidence of occupational causation, and compels the legal result that a claimant has proven occupational causation).

<sup>9</sup> *Butler v. City of Jacksonville*, 980 So. 2d 1250 (Fla. 1st DCA 2008).

<sup>10</sup> S. 943.13(6), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> S. 633.412(5), F.S.

<sup>13</sup> Rule 69A-37.037 and Form DFS-K3-1022.

<sup>14</sup> Ch. 440, F.S.

<sup>15</sup> S. 440.13(2)(a), F.S.

<sup>16</sup> The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.

<sup>17</sup> S. 440.13(12), F.S.

<sup>18</sup> Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.

<sup>19</sup> Ch. 120, F.S.

<sup>20</sup> Ch. 2023-144, Laws of Fla.



annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1<sup>st</sup>, effective the following January 1<sup>st</sup>.<sup>21</sup>

### *Medical Services*

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.<sup>22</sup>

### *Eligibility for the Workers' Compensation Presumption*

In a disputed workers' compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment; or
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.<sup>23</sup>

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment or the employing agency.<sup>24</sup>

Firefighters are not subject to the exclusion for prior treatment or compensation and they are not covered by the claim-filing deadline that lets a law enforcement officer, correctional officer or correctional probation officer file a claim up to 180 days after leaving the employment.

Thus, a firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.<sup>25</sup>

### *Reimbursement for Healthcare Providers*

A three-member panel (panel), consisting of the Chief Financial Officer (CFO) or their designee and two Governor's appointees, sets the MRAs.<sup>26</sup> Beginning with rates developed in 2024 and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DFS, instead of being included in the reimbursement manuals.<sup>27</sup> DFS incorporates the statewide schedules of the MRAs through rulemaking. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;<sup>28</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.<sup>29</sup> Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.<sup>30</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> S. 440.13, F.S.

<sup>23</sup> S. 112.18(1)(b)(1), F.S.

<sup>24</sup> S. 112.18(1)(b)(4), F.S.

<sup>25</sup> S. 440.151(6) and 440.185(1), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Ch. 2023-144, Laws of Fla.

<sup>28</sup> S. 440.13(12)(i)(1), F.S.

<sup>29</sup> S. 440.13(12)(i)(2), F.S.

<sup>30</sup> S. 440.13(12)(i)(3), F.S.

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the DWC, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>31</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>32</sup> The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>33</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>34</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>35</sup> The ambulatory surgical centers manual, developed by the panel, limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.<sup>36</sup> Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.<sup>37</sup> Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.<sup>38</sup>

### **Effect of the Bill**

The bill permits firefighters, law enforcement officer, correctional officers, or correctional probation officer requiring medical treatment for a compensable presumptive condition to seek treatment from a medical specialist.<sup>39</sup> The treatment provided by the medical specialist should be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension.

Also, the bill increases the maximum reimbursement for a medical specialist licensed under Chapter 458 or Chapter 459, from 110 percent for non-surgeons and 145 percent for surgeons to 200 percent of the reimbursement allowed by Medicare for both non-surgeons and surgeons.

This bill provides an effective date as of October 1, 2024.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 112.18, F.S., relating to firefighters and law enforcement or correctional officers; special provisions relative to disability.

**Section 2.** Providing an effective date of October 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The state may experience increased expenses associated with specialist treatment of presumed conditions under the bill due to the increased fee allowed.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>31</sup> S. 440.13(12)(f), F.S.

<sup>32</sup> S. 440.13(12)(g), F.S.

<sup>33</sup> S. 440.13(12)(d), F.S.

<sup>34</sup> S. 440.13(12)(a), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> S. 440.13(12)(h), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 440.13(12)(f), F.S.

<sup>39</sup> Please see section III. C., Drafting Comments.

1. Revenues:

None.

2. Expenditures:

Local government may experience increased expenses associated with specialist treatment of presumed conditions under the bill due to the increased fee allowed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Specialist workers' compensation medical providers may receive increased fees for treatment of presumed conditions as provided for by the bill.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires county/municipality governments that employ firefighters, law enforcement officers, correctional officers, or correctional probation officers to fund additional expenses related to those employees accessing specialist care for presumed conditions at a rate higher than currently applicable workers' compensation rates; however, an exception may apply. The bill applies to all similarly situated persons, i.e., every county/municipality government that employs such individuals, in addition to the state, which also employs such individuals.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Firefighters, LEOs, correctional officers, and correctional probation officers are already entitled to treatment by a medical specialist when medically necessary. It is unclear from the text of the bill what change is intended. An amendment to clarify the intended effect may resolve this issue.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1                                    A bill to be entitled  
 2                    An act relating to treatment by a medical specialist;  
 3                    amending s. 112.18, F.S.; authorizing a firefighter,  
 4                    law enforcement officer, correctional officer, and  
 5                    correctional probation officer to receive medical  
 6                    treatment by a medical specialist for certain  
 7                    conditions under certain circumstances; requiring such  
 8                    treatment to be reasonable, necessary, and related to  
 9                    the firefighter's or officer's condition; specifying a  
 10                    reimbursement percentage for such treatment; defining  
 11                    the term "medical specialist"; providing an effective  
 12                    date.

13  
 14    Be It Enacted by the Legislature of the State of Florida:

15  
 16                    Section 1. Subsection (3) is added to section 112.18,  
 17                    Florida Statutes, to read:

18                    112.18 Firefighters and law enforcement or correctional  
 19                    officers; special provisions relative to disability.—

20                    (3) (a) A firefighter, law enforcement officer,  
 21                    correctional officer, or correctional probation officer  
 22                    requiring medical treatment for a compensable presumptive  
 23                    condition listed in subsection (1) may be treated by a medical  
 24                    specialist. Except in emergency situations, a firefighter, law  
 25                    enforcement officer, correctional officer, or correctional

HB 637

2024

26 probation officer entitled to receive treatment by a medical  
27 specialist under this subsection must provide notice of his or  
28 her selection of a medical specialist to the firefighter's or  
29 officer's workers compensation carrier, self-insured employer,  
30 or third-party administrator before he or she begins treatment,  
31 and the carrier, self-insured employer, or third-party  
32 administrator must authorize and schedule the appointment and  
33 treatment with the medical specialist. The treatment by a  
34 medical specialist must be reasonable, necessary, and related to  
35 tuberculosis, heart disease, or hypertension and reimbursed at  
36 no more than 200 percent of the Medicare rate.

37 (b) For purposes of this subsection, the term "medical  
38 specialist" means a physician licensed under chapter 458 or  
39 chapter 459 who has board certification in a medical specialty  
40 inclusive of care and treatment of tuberculosis, heart disease,  
41 or hypertension.

42 Section 2. This act shall take effect October 1, 2024.

## **INSURANCE & BANKING SUBCOMMITTEE**

### **HB 637 by Rep. Yeager Treatment by a Medical Specialist**

#### **AMENDMENT SUMMARY January 18, 2024**

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**Amendment 1 by Rep. Yeager (Line 20):** The amendment:

- Requires written notice of the medical specialist permitted by the bill.
- Allows the employer/carrier to authorize an alternative specialist with equal or greater qualifications.
- Requires authorization of treatment within 5 business days of receiving the notice and scheduling of an appointment within 30 days.
- Clarifies that the bill creates an exception applicable to the usual provider selection process provided under the workers' compensation law.

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>	

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

3 Representative Yeager offered the following:

**Amendment**

6 Remove lines 20-36 and insert:

7 (3)(a) Notwithstanding paragraph 440.13(2)(c), a firefighter,  
8 law enforcement officer, correctional officer, or  
9 correctional probation officer requiring medical treatment for a  
10 compensable presumptive condition listed in subsection (1) may  
11 be treated by a medical specialist. Except in emergency  
12 situations, a firefighter, law enforcement officer, correctional  
13 officer, or correctional probation officer entitled to access a  
14 medical specialist under this subsection must provide written  
15 notice of his or her selection of a medical specialist to the  
16 firefighter's or officer's workers compensation carrier, self-

## Amendment No.1

17 insured employer, or third-party administrator, and the carrier,  
18 self- insured employer, or third-party administrator must  
19 authorize the selected specialist or authorize an alternative  
20 specialist meeting the same or greater qualifications. The  
21 carrier, self-insured employer or third-party must, within 5  
22 business days of the receipt of the notice, authorize treatment  
23 and schedule an appointment to be held within 30 days of the  
24 receipt of the notice with the selected specialist or the  
25 alternative specialist. If the carrier, self-insured employer or  
26 third-party administrator fails to provide an alternative  
27 specialist within the 5 business days of receipt of the notice,  
28 the specialist selected by the employee shall be authorized. The  
29 continuing care and treatment by a medical specialist must be  
30 reasonable, necessary, and related to tuberculosis, heart  
31 disease, or hypertension, be reimbursed at no more than 200  
32 percent of the Medicare rate and be authorized by the  
33 firefighter's or officer's workers compensation carrier, self-  
34 insured employer, or third-party administrator.

35





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 943 Pub. Rec./My Safe Florida Home Program

**SPONSOR(S):** LaMarca

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 988

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

### SUMMARY ANALYSIS

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS), with the intent that the MSFH Program provide licensed inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants, subject to the availability of funds.

Under the MSFH Program, licensed inspectors must provide home inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The inspections provided to homeowners under the MSFH Program must include, at a minimum, certain information. Further, the inspection reports provide detailed information to the MSFH Program regarding the applicant's home.

Similarly, financial grants under the MSFH Program are intended to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. For a homeowner to be eligible for a grant, the following criteria must be met:

- The homeowner must have been granted a homestead exemption on the home;
- The home must be a dwelling with an insured value of \$700,000 or less;
- The home must undergo an acceptable hurricane mitigation inspection under the MSFH Program;
- The building permit application for initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

The bill creates a public records exemption for information contained in applications and inspection reports submitted under the MSFH Program, regardless of the date that such applications and reports were submitted.

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 may have an indeterminate negative fiscal impact on state government expenditures, no fiscal impact on state government revenues, no fiscal impact on local government revenues or expenditures, and an indeterminate positive fiscal impact on the private sector.

The bill provides an effective date of upon becoming a law.

**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

##### My Safe Florida Home Program

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS), with the intent that the MSFH Program provide licensed inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants, subject to the availability of funds.<sup>1</sup> Under the MSFH Program, DFS must develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include hurricane mitigation inspections,<sup>2</sup> mitigation grants,<sup>3</sup> and education, consumer awareness, and outreach.<sup>4</sup>

##### HURRICANE MITIGATION INSPECTIONS

Under the MSFH Program, licensed inspectors must provide home inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, to determine:

- What mitigation measures are needed,
- What insurance premium discounts may be available, and
- What improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage.<sup>5</sup>

DFS must also contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by DFS as a wind certification entity to provide hurricane mitigation inspections, the entity must meet certain requirements.<sup>6</sup> The inspections provided to homeowners by such entities, at a minimum, must include:

- A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated premium discounts, which are correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.<sup>7</sup>

The inspection report provides information to the MSFH Program regarding the applicant's home, such as detailed descriptions of the premises, pictures of the interior and exterior of the structure, including private areas, entry points, and possible vulnerabilities to its security.

An application for an inspection must contain a signed or electronically verified statement, made under penalty of perjury, that the applicant has submitted only a single application for that home.<sup>8</sup>

##### MITIGATION GRANTS

Financial grants under the MSFH Program are intended to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.<sup>9</sup>

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<sup>1</sup> S. 215.5586, F.S.

<sup>2</sup> See S. 215.5586(1), F.S.

<sup>3</sup> See s. 215.5586(2), F.S.

<sup>4</sup> See s. 215.5586(3), F.S.

<sup>5</sup> S. 215.5586(2)(a), F.S.

<sup>6</sup> See s. 215.5586(2)(c), F.S.

<sup>7</sup> S. 215.5586(2)(b), F.S.

<sup>8</sup> S. 215.5586(2)(d), F.S.

For a homeowner to be eligible for a grant, the following criteria must be met:

- The homeowner must have been granted a homestead exemption on the home under ch. 196, F.S.;<sup>10</sup>
- The home must be a dwelling with an insured value of \$700,000 or less;<sup>11</sup>
- The home must undergo an acceptable hurricane mitigation inspection under the MSFH Program;
- The building permit application for initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.<sup>12</sup>

An application for a grant must contain a signed or electronically verified statement, made under penalty of perjury, that the applicant has submitted only a single application.<sup>13</sup> The application must include attachments that demonstrate the applicant meets the requirements described above.<sup>14</sup>

Under the MSFH Program, DFS must develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the internet or other electronic means to collect information and determine eligibility.<sup>15</sup>

### **Effect of the Bill**

The bill creates a public records exemption for information contained in applications and inspection reports submitted under the MSFH Program, regardless of the date that such applications and reports were submitted.

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.** Creates s. 215.55861, F.S., relating to My Safe Florida Home Program public records exemption.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides that the bill will take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>9</sup> S. 215.5586(3), F.S.

<sup>10</sup> Chapter 196, F.S., relates to, among other things, homestead exemptions.

<sup>11</sup> Homeowners who are low-income persons, as defined s. 420.0004(11), F.S., are exempt from this requirement. The term "low-income persons" is defined by s. 420.0004(11), F.S., as one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80% of the median annual adjusted gross income for households within the state, or 80% of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

<sup>12</sup> S. 215.5586(2)(a), F.S.

<sup>13</sup> S. 215.5586(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 215.5586(2)(i), F.S.

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments" section below.

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 the submission of applications and inspection reports under the MSFH Program, in which case the bill would have a positive impact on communities affected by natural disasters. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal negative fiscal impact on state 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 such 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 DFS pursuant to an application and inspection reports submitted to the MSFH Program. The purpose of the exemption is to protect sensitive personal information, such as names, email addresses, mailing addresses, and telephone numbers, that DFS receives in conjunction with its duties related to the review of

such applications and inspection reports. 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**



HB 943

2024

26 | 119.07(1) and s. 24(a), Art. I of the State Constitution. These  
27 | documents contain personal information, including but not  
28 | limited to names, e-mail addresses, mailing addresses, telephone  
29 | numbers. This information is unique to each individual and, when  
30 | combined with other personal identifying information, can be  
31 | used for identity theft, consumer scams, unwanted solicitations,  
32 | or other invasive contact. Additionally, applications and  
33 | inspection reports contain detailed descriptions and pictures of  
34 | the inside and outside of applicants' homes, including private  
35 | areas, points of entry, and other vulnerabilities. The public  
36 | availability of these records put applicants of the My Safe  
37 | Florida Home Program at increased risk of home invasions and  
38 | reduces privacy in their homes.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 311 Securities  
**SPONSOR(S):** Insurance & Banking Subcommittee  
**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Fletcher	Lloyd

### 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 changes the requirement that the date of the act for which recovery is sought occurred on or after January 1, 1979, to October 1, 2024;
- Increasing the amount an eligible person may recover from the Fund from \$10,000 to \$15,000, adding 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.<sup>1</sup> 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,<sup>2</sup> to reform the Act.<sup>3</sup>

OFR, with the BLS Task Force's assistance, presented to the 2023 legislative session proposed amendments<sup>4</sup> 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.<sup>5</sup> The 2023 bill was enacted,<sup>6</sup> and the BLS Task Force and OFR are now presenting their recommendations for substantive amendments to the Act with this bill.<sup>7</sup> In summary, this bill is a joint effort of the BLS Task Force and OFR to bring Florida's securities laws up to date with changes in federal securities laws and other states' securities laws.<sup>8</sup>

#### **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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> A

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<sup>1</sup> 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).

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

<sup>3</sup> The Florida Bar Business Law Section, *supra* note 1.

<sup>4</sup> See 2023 Senate Bill 180, and 2023 House Bill 253.

<sup>5</sup> The Florida Bar Business Law Section, *supra* note 1.

<sup>6</sup> Ch. 2023-205, Laws of Fla.

<sup>7</sup> The Florida Bar Business Law Section, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> *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.”<sup>12</sup>

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.”<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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: 378,435<sup>16</sup>

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

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

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.<sup>21</sup> Civil remedies under the Act include rescission and damages.<sup>22</sup>

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<sup>12</sup> 15 U.S.C. § 78c(a)(5).

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

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

<sup>15</sup> S. 20.121(3), F.S.

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

<sup>17</sup> *Id.*

<sup>18</sup> S. 517.12, F.S.

<sup>19</sup> See ss. 517.051 or 517.061, F.S.

<sup>20</sup> 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.

<sup>21</sup> S. 517.302(1), F.S.

<sup>22</sup> 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:<sup>23</sup>

- 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 conditions<sup>24</sup>
- 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.<sup>25</sup>
- 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.<sup>26</sup>

## 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.

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<sup>23</sup> S. 517.12, F.S.

<sup>24</sup> S. 517.021(8), F.S.

<sup>25</sup> S. 517.021(14), F.S.

<sup>26</sup> 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.<sup>27</sup>

The bill adds the following definitions:

- Angel investor group<sup>28</sup> means a group of accredited investors<sup>29</sup> 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 entity<sup>30</sup> 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.<sup>31</sup>

The exempt securities provided in the Act are self-executing and do not require any filing with OFR prior to claiming an exemption.<sup>32</sup> 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.<sup>33</sup>

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<sup>27</sup> 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).

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

<sup>29</sup> 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).

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

<sup>31</sup> S. 517.07, F.S.

<sup>32</sup> S. 517.051(1), F.S.

<sup>33</sup> *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.<sup>34</sup>

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.<sup>35</sup>

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.<sup>36</sup> The bill replaces the term “corporation” with the term “business entity” to expand the scope of entities subject to the exemption.

### ***Shares of a Residential Cooperative***

The bill clarifies that 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, is exempt from registration requirements.<sup>37</sup>

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<sup>34</sup> S. 517.051(1), F.S.

<sup>35</sup> S. 517.051(3), F.S.

<sup>36</sup> S. 517.051(4), F.S.

<sup>37</sup> 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.<sup>38</sup> 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).<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

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<sup>38</sup> S. 517.051(8), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> S. 517.051(9), F.S.

<sup>41</sup> S. 517.071, F.S.



Current law provides over twenty transactions that are exempt from the registration requirements of the Act.<sup>42</sup> 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;<sup>43</sup>
- 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;<sup>44</sup>
- 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;<sup>45</sup>
- 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;<sup>46</sup>
- 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;<sup>47</sup> 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.<sup>48</sup>

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

#### 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.<sup>51</sup> Formed in 1919, NASAA is the "oldest international organization devoted to investor protection."<sup>52</sup> NASAA advocates on behalf of state securities agencies in the United States that are responsible for capital formation and investor protection.<sup>53</sup> NASAA also coordinates training and education seminars for securities agency staff<sup>54</sup> and creates model rules for implementation amongst its members.<sup>55</sup>

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.<sup>56</sup> Specifically, the exemption limits the sale of securities to

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<sup>42</sup> S. 517.061, F.S.

<sup>43</sup> S. 517.061(1), F.S.

<sup>44</sup> S. 517.061(3), F.S.

<sup>45</sup> S. 517.061(4), F.S.

<sup>46</sup> S. 517.061(6), F.S.

<sup>47</sup> S. 517.061(7), F.S.

<sup>48</sup> S. 517.061(15), F.S.

<sup>49</sup> S. 517.061(1), F.S.

<sup>50</sup> *Id.*

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

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> 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).

<sup>56</sup> Office of Financial Regulation, *supra* note 16, at p. 17.

accredited investors and the issuer must not be subject to disqualification.<sup>57</sup> 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.<sup>58</sup> The majority of states have adopted this accredited investor exemption.<sup>59</sup>

## UNIFORM SECURITIES ACT

The Uniform Securities Act (USA) is a model act developed by the Uniform Law Commissioners.<sup>60</sup> The USA was first created in 1956 and was later amended in 1985 and again in 2002.<sup>61</sup> 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).<sup>62</sup>

### 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 exemption<sup>63</sup> 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,<sup>64</sup> that the issuer is parties to the reorganization, and eliminates the requirement that the security holders consent to the sale of such securities;<sup>65</sup>
- Expands the current exemption relating to employer-sponsored stock option plans<sup>66</sup> 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,<sup>67</sup> that the Commission define "institutional buyer," and makes the current 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 generally applicable to all exemptions, not just this one; and

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

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

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> S. 517.061(6), F.S.

<sup>64</sup> S. 517.061(9), F.S.

<sup>65</sup> This requirement is not eliminated entirely. The requirement for security holders' consent is a matter of corporate law and already covered under Florida's corporate laws, and therefore unnecessary to include it in the Act.

<sup>66</sup> S. 517.061(15), F.S.

<sup>67</sup> S. 517.061(11)(a), F.S.

- Removes the provision prohibiting the payment of a commission or compensation for the sale of the securities in certain circumstances 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, as the Act already prohibits any commission payment except to a registered dealer.

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.<sup>68</sup>

Additionally, the bill:

- Adds a secured party<sup>69</sup> 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.<sup>70</sup>

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.<sup>71</sup>

## **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.<sup>72</sup> However, this exemption may not be used in conjunction with any other exemption under the Act.<sup>73</sup>

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<sup>68</sup> *Id.* at 20.

<sup>69</sup> S. 517.061(2), F.S.

<sup>70</sup> *Id.* at 20-21.

<sup>71</sup> *Id.* at 21.

<sup>72</sup> S. 517.0611(2), F.S.

<sup>73</sup> *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.<sup>74</sup> 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 1934 Act;
- 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% 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.<sup>75</sup>

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.<sup>76</sup>

The issuer must also provide OFR with a copy of the escrow agreement with a financial institution authorized to conduct business in this state.<sup>77</sup> All investor funds must be deposited in the escrow account.<sup>78</sup> 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.<sup>79</sup>

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.<sup>80</sup> 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.<sup>81</sup>

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

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<sup>74</sup> S. 517.0611(3), F.S.

<sup>75</sup> S. 517.0611(4), F.S.

<sup>76</sup> S. 517.0611(7), F.S.

<sup>77</sup> S. 517.0611(8), F.S.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> S. 517.0611(9), F.S.

<sup>81</sup> S. 517.0611(10), F.S.

issuer's notice-filing.<sup>82</sup> 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.<sup>83</sup>

The Act also provides certain requirements for intermediaries,<sup>84</sup> as well as prohibited activities for intermediaries.<sup>85</sup>

#### INVEST GEORGIA EXEMPTION

The Invest Georgia Exemption (IGE) was created in 2011 by the Georgia's Commissioner of Securities.<sup>86</sup> IGE allows for-profit businesses formed under Georgia law or properly registered to transact business in Georgia to raise up to \$5 million in a single offering.<sup>87</sup> IGE filers can sell up to \$10,000 in securities to non-accredited Georgia investors, and can sell up to the offering limit to accredited Georgia investors.<sup>88</sup>

Businesses qualify for the IGE program if 80% of gross revenues are derived from Georgia; 80% of assets are held in Georgia; 80% of the offering's proceeds are used in Georgia; or a majority of the issuer's employees are based in Georgia.<sup>89</sup>

Qualifying businesses are able to send out general solicitations to potential investors but can only offer and sell to Georgia residents.<sup>90</sup> Further, IGE does not set limitations on the securities offered; rather, IGE gives the issuer the freedom to set their own valuation for issuing equity or convertible notes, loans, etc.<sup>91</sup>

According to Georgia's Division of Securities, IGE has been successfully used by breweries, medical technology firms, real estate firms, manufacturers, restaurants, entertainment, and other businesses.<sup>92</sup> Over 100 companies have used IGE since its inception in 2011.<sup>93</sup>

#### 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 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.

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<sup>82</sup> S. 517.0611(12)(a), F.S.

<sup>83</sup> S. 517.0611(12)(b), F.S.

<sup>84</sup> See S. 517.0611(13), F.S.

<sup>85</sup> See S. 517.0611(14), F.S.

<sup>86</sup> Georgia Secretary of State Securities Division, *Invest Georgia Exemption*, <https://sos.ga.gov/sites/default/files/2023-05/IGE%20pamphlet-web.pdf> (last visited Jan. 10, 2024).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

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 a third-party 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 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, based in part on Georgia’s IGE program. 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 1934 Act;

- 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.<sup>94</sup>
- 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, 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.<sup>95</sup>

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 entrepreneurs across the United States.<sup>96</sup> 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.<sup>97</sup>

### **SEC RULE 148**

New SEC Rule 148<sup>98</sup> provides that certain “demo day” communications<sup>99</sup> will not be deemed a general solicitation or general advertising.<sup>100</sup> 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

<sup>94</sup> Created by the bill, proposed s. 517.0616, F.S., provides that certain registration exemptions are not available to an issuer that would be disqualified under SEC Rule 506(d) at the time the issuer makes an offer for the sale of a security.

<sup>95</sup> *Id.* at p. 25.

<sup>96</sup> 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/corpfm/facilitating-capital-formation-secg> (last visited Jan. 8, 2024).

<sup>97</sup> *Id.*

<sup>98</sup> 17 C.F.R. 230.148.

<sup>99</sup> 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 96.

<sup>100</sup> *Id.*

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.<sup>101</sup>

## SEC RULE 241

SEC Rule 241<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup>

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.<sup>105</sup> 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 A<sup>106</sup> or Regulation Crowdfunding<sup>107</sup> 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.<sup>108</sup>

## 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.<sup>109</sup>

## 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.<sup>110</sup> OFR receives and reviews the applications for securities to be registered, and the Commission may prescribe forms on

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<sup>101</sup> *Id.*

<sup>102</sup> 17 C.F.R. 230.241.

<sup>103</sup> U.S. Securities and Exchange Commission, *supra* note 96.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> 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 96.

<sup>107</sup> 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.*

<sup>108</sup> U.S. Securities and Exchange Commission, *supra* note 96.

<sup>109</sup> The Florida Bar Business Law Section, *supra* note 1, at p. 56.

<sup>110</sup> S. 517.081(1), F.S.



which such applications are to be submitted.<sup>111</sup> Applications must be signed by the applicant, sworn to by any person having knowledge of the facts, and filed with OFR.<sup>112</sup>

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.
- 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.<sup>113</sup>

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.<sup>114</sup> 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.<sup>115</sup> This is synonymous with a Small Company Offering Registration (SCOR) under the 1933 Act.<sup>116</sup> 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.<sup>117</sup>

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<sup>111</sup> S. 517.081(2), F.S.

<sup>112</sup> S. 517.081(2), F.S.

<sup>113</sup> S. 517.081(3), F.S.

<sup>114</sup> S. 517.081(3)(g)1., F.S.

<sup>115</sup> S. 517.081(3)(g)2., F.S.

<sup>116</sup> The Florida Bar Business Law Section, *supra* note 1, at p. 59.

<sup>117</sup> S. 517.081(3)(g)2., F.S.

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.<sup>118</sup>

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.<sup>119</sup>

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.<sup>120</sup> Thereafter, such registered security may be sold by any registered dealer, subject, however, to the further order of OFR.<sup>121</sup> 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.<sup>122</sup>

## **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
- 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.<sup>123</sup>

## **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.<sup>124</sup> 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).<sup>125</sup>

### **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

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<sup>118</sup> S. 517.081(3)(n), F.S.

<sup>119</sup> S. 517.081(6), F.S.

<sup>120</sup> S. 517.081(7), F.S.

<sup>121</sup> S. 517.081(7), F.S.

<sup>122</sup> S. 517.081(8), F.S.

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<sup>124</sup> S. 517.101, F.S.

<sup>125</sup> S. 517.101(1), F.S.

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).<sup>126</sup> 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.<sup>127</sup> The SGF is funded by a percentage of revenues received as assessment fees by OFR.<sup>128</sup>

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.<sup>129</sup>

### **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.<sup>130</sup>

Among other things, the Act also establishes that:<sup>131</sup>

- 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.

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<sup>126</sup> S. 517.101, F.S.

<sup>127</sup> S. 517.131(1)(a), F.S. See also, Office of Financial Regulation, *Statute Review: Biennial Report December 2022* (<https://lofr.gov/sitePages/documents/OFR-Statute-Review-Report-2022.pdf>), p. 21-22 (last visited Jan 4, 2024).

<sup>128</sup> 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.

<sup>129</sup> S. 517.131(2), F.S.

<sup>130</sup> S. 517.131, F.S.

<sup>131</sup> S. 517.141, F.S.

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.<sup>132</sup>

## 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.
- Requires that a person meet the following conditions to be eligible for payment from the SGF for acts that occur on or after October 1, 2024:
  - 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 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.<sup>133</sup>

#### 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.<sup>134</sup> 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;
- 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.<sup>135</sup>

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.<sup>136</sup> OFR may also petition the court to impose a civil penalty against the defendant in an amount not to exceed:

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<sup>133</sup> Office of Financial Regulation, *supra* note 16, at p. 29.

<sup>134</sup> 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.

<sup>135</sup> S. 517.191, F.S.

<sup>136</sup> S. 517.191(3), F.S.

- \$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.<sup>137</sup>

All civil penalties collected pursuant to the above-referenced statutory guidelines must be deposited into the Anti-Fraud Trust Fund.<sup>138</sup>

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.<sup>139</sup>

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.<sup>140</sup> 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.<sup>141</sup>

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.<sup>142</sup>

### **Effect of the Bill**

The bill:

- 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 adult<sup>143</sup> 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**

<sup>137</sup> S. 517.191(4), F.S.

<sup>138</sup> *Id.*

<sup>139</sup> S. 517.191(5), F.S.

<sup>140</sup> S. 517.191(6), F.S.

<sup>141</sup> *Id.*

<sup>142</sup> S. 517.191(7), F.S.

<sup>143</sup> 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.

## Background

The Act provides that every sale made in violation of either ss. 517.07<sup>144</sup> or 517.12(1),<sup>145</sup> (3),<sup>146</sup> (4),<sup>147</sup> (8),<sup>148</sup> (10),<sup>149</sup> (12),<sup>150</sup> (15),<sup>151</sup> or (17),<sup>152</sup> 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.<sup>153</sup> Additionally, any person purchasing or selling a security in violation of s. 517.301, F.S.,<sup>154</sup> 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.<sup>155</sup>

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.<sup>156</sup>
- 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
  - 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.<sup>157</sup>

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<sup>144</sup> S. 517.07, F.S., relates to viatical settlement investments.

<sup>145</sup> S. 517.12(1), F.S., relates to a general prohibition against dealers and associated persons from selling or offering to sale any securities in or from offices in Florida to persons in Florida unless the person is registered with OFR.

<sup>146</sup> S. 517.12(3), F.S., relates to the registration and notice-filings of investment advisers, associated persons of investment advisers, and federal covered advisers with OFR.

<sup>147</sup> S. 517.12(4), F.S., relates to a general prohibition against dealers and investment advisers conducting business from a branch office in Florida unless the branch office is registered has notice-filed with OFR pursuant to the Act.

<sup>148</sup> S. 517.12(8), F.S., relates to a requirement that all dealers comply with the net capital and ratio requirements imposed pursuant to the 1934 Act.

<sup>149</sup> S. 517.12(10), F.S., relates to a general requirement that OFR register an applicant upon a finding that the applicant has complied with the applicable registration provisions of the Act.

<sup>150</sup> S. 517.12(12), F.S., relates to registration procedures when changes in personnel of a partnership or in the principals, copartners, officers, or directors of a dealer or investment adviser occurs.

<sup>151</sup> S. 517.12(15), F.S., relates to a general requirement that every applicant for initial or renewal registration as a securities dealer and every person so registered must be registered as a broker or dealer with the SEC.

<sup>152</sup> S. 517.12(17), F.S., relates to a requirement that every dealer and associated person registered or required to be registered with OFR must satisfy any continuing education requirements established by rule.

<sup>153</sup> S. 517.211(1), F.S.

<sup>154</sup> S. 517.301, F.S., relates to fraudulent transactions and the falsification or concealment of facts.

<sup>155</sup> S. 517.211(2), F.S.

<sup>156</sup> S. 517.211(3), F.S.

<sup>157</sup> S. 517.211(4), F.S.

- 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.<sup>158</sup>

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.<sup>159</sup>

## **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.<sup>160</sup>

## **Fraudulent Transactions; Falsification or Concealment of Facts; Boiler Rooms**

### **Background**

The Act defines the term "investment" for purposes of ss. 517.311<sup>161</sup> and 517.312, F.S.,<sup>162</sup> 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.,<sup>163</sup> or registered under former ch. 498, F.S.,<sup>164</sup> 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 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.

<sup>158</sup> S. 517.211(5), F.S.

<sup>159</sup> S. 517.211(6), F.S.

<sup>160</sup> Office of Financial Regulation, *supra* note 16, at p. 31.

<sup>161</sup> S. 517.311, F.S., relates to false representations, deceptive words, and enforcement.

<sup>162</sup> S. 517.312, F.S., relates to securities, investments, boiler rooms; prohibited practices; and remedies.

<sup>163</sup> Chapter 475, F.S., relates to, among other things, the licensure and regulation of real estate brokers.

<sup>164</sup> The former chapter 498, F.S., related to, among other things, the licensure and regulation of land sales practices.



- 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.<sup>165</sup>

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 room<sup>166</sup> in Florida which sells or offers for sale any security or investment in violation of the above described prohibitions.<sup>167</sup>

### **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.,<sup>168</sup> or registered under former ch. 498, F.S.<sup>169</sup>

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.

### **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.

<sup>165</sup> S. 517.301, F.S.

<sup>166</sup> 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).

<sup>167</sup> S. 517.312, F.S.

<sup>168</sup> Chapter 475, F.S., relates to, among other things, the licensure and regulation of real estate brokers.

<sup>169</sup> The former chapter 498, F.S., related to, among other things, the licensure and regulation of land sales practices.

- 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.<sup>170</sup>

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 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.<sup>171</sup>

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<sup>170</sup> Office of Financial Regulation, *supra* note 16, at p. 35.

<sup>171</sup> Office of Financial Regulation, *supra* note 16, at p. 33.

**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.<sup>172</sup>

<b>Section</b>	<b>Rule-Making Authority</b>
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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

<sup>172</sup> Office of Financial Regulation, *supra* note 16, at p. 33.  
**STORAGE NAME** pcs0311.IBS  
**DATE** 1/16/2024

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to securities; amending s. 517.021,  
 3 F.S.; revising definitions; defining the terms "angel  
 4 investor group" and "business entity"; amending s.  
 5 517.051, F.S.; revising the list of securities that  
 6 are exempt from registration requirements under  
 7 certain provisions; amending s. 517.061, F.S.;  
 8 revising the list of transactions that are exempt from  
 9 registration requirements under certain provisions;  
 10 amending s. 517.0611, F.S.; revising a short title;  
 11 revising provisions relating to a certain registration  
 12 exemption for certain securities transactions;  
 13 updating the federal laws or regulations with which  
 14 the offer or sale of securities must be in compliance;  
 15 revising requirements for issuers relating to the  
 16 registration exemption; revising requirements for the  
 17 notice of offering that must be filed by the issuer  
 18 under certain circumstances; specifying the timeframe  
 19 within which issuers may amend such notice after any  
 20 material information contained in the notice becomes  
 21 inaccurate; authorizing the issuer to engage in  
 22 general advertising and general solicitation under  
 23 certain circumstances; specifying requirements for  
 24 such advertising and solicitation; requiring the  
 25 issuer to provide a disclosure statement to certain

26 | entities and persons within a specified timeframe;  
 27 | revising requirements for such statement; deleting  
 28 | requirements for the escrow agreement; conforming  
 29 | provisions to changes made by the act; revising the  
 30 | amount that may be received for sales of certain  
 31 | securities; providing a limit on securities that may  
 32 | be sold by an issuer to an investor; deleting the  
 33 | requirement that an issuer file and provide a certain  
 34 | annual report; conforming cross-references; revising  
 35 | the duties of intermediaries under certain  
 36 | circumstances; providing obligations of issuers under  
 37 | certain circumstances; providing that certain sales  
 38 | are voidable within a specified timeframe; providing  
 39 | requirements for purchasers' notices to issuers to  
 40 | void purchases; deleting provisions relating to funds  
 41 | received from investors; creating s. 517.0612, F.S.;  
 42 | providing a short title; providing applicability;  
 43 | requiring that offers and sales of securities be in  
 44 | accordance with certain federal laws and rules;  
 45 | specifying certain requirements for issuers relating  
 46 | to the registration exemption; specifying a limitation  
 47 | on the amount of cash and other consideration that may  
 48 | be received from sales of certain securities made  
 49 | within a specified timeframe; prohibiting an issuer  
 50 | from accepting more than a specified amount from a

51 single purchaser under certain circumstances;  
 52 authorizing the issuer to engage in general  
 53 advertising and general solicitation of the offering  
 54 under certain circumstances; specifying that a certain  
 55 prohibition is enforceable under ch. 517, F.S.;  
 56 requiring that the purchaser receive a disclosure  
 57 statement within a specified timeframe; specifying the  
 58 requirements for such statement; requiring certain  
 59 funds to be deposited into certain bank and depository  
 60 institutions; prohibiting the issuer from withdrawing  
 61 any amount of the offering proceeds until the target  
 62 offering amount has been received; requiring the  
 63 issuer to file a notice of the offering in a certain  
 64 format within a specified timeframe; requiring the  
 65 issuer to file an amended notice within a specified  
 66 timeframe under certain circumstances; prohibiting  
 67 agents of issuers from engaging in certain acts under  
 68 certain circumstances; providing that sales made under  
 69 the exemption are voidable within a specified  
 70 timeframe; providing requirements for purchasers'  
 71 notices to issuers to void purchases; creating s.  
 72 517.0613, F.S.; providing construction; providing that  
 73 registration exemptions under certain provisions are  
 74 not available to issuers for certain transactions  
 75 under specified circumstances; providing registration

76 requirements; creating s. 517.0614, F.S.; specifying  
 77 criteria for determining integration of offerings for  
 78 the purpose of registration or qualifying for a  
 79 registration exemption; specifying certain  
 80 requirements for the integration of offerings for an  
 81 exempt offering for which general solicitation is  
 82 prohibited; specifying certain requirements for the  
 83 integration of offerings for two or more exempt  
 84 offerings that allow general solicitation; specifying  
 85 the circumstances under which integration analysis is  
 86 not required; creating s. 517.0615, F.S.; specifying  
 87 that certain communications are not deemed to  
 88 constitute general solicitation or general advertising  
 89 under specified circumstances; creating s. 517.0616,  
 90 F.S.; providing that registration exemptions under  
 91 certain provisions are not available to certain  
 92 issuers under a specified circumstance; amending s.  
 93 517.081, F.S.; revising the duties and authority of  
 94 the Financial Services Commission; authorizing the  
 95 commission to establish certain criteria relating to  
 96 the issuance of certain securities, trusts, and  
 97 investments; authorizing the commission to prescribe  
 98 certain forms and establish procedures for depositing  
 99 fees and filing documents and requirements and  
 100 standards relating to prospectuses, advertisements,



101 and other sales literature; revising the list of  
 102 issuers that are ineligible to submit simplified  
 103 offering circulars; deleting provisions that require  
 104 issuers to provide certain documents to the Office of  
 105 Financial Regulation under certain circumstances;  
 106 revising the requirements that must be met before the  
 107 office must record the registration of a security;  
 108 amending s. 517.101, F.S.; revising requirements for  
 109 written consent to service in certain suits,  
 110 proceedings, and actions; amending s. 517.131, F.S.;  
 111 defining the term "final judgment"; specifying the  
 112 purpose of the Securities Guaranty Fund; making  
 113 technical changes; revising eligibility for payment  
 114 from the fund; requiring eligible persons or receivers  
 115 seeking payment from the fund to file a certain  
 116 application with the office on a certain form;  
 117 authorizing the commission to adopt rules regarding  
 118 electronic filing of such application; specifying the  
 119 timeframe within which certain eligible persons or  
 120 receivers must file such application; providing  
 121 requirements for such applications; requiring the  
 122 office to approve applications for payment under  
 123 certain circumstances and to provide applicants with  
 124 certain notices within a specified timeframe;  
 125 requiring eligible persons or receivers to assign to

126 | the office all rights, titles, and interests in final  
 127 | judgments and orders of restitution equal to a  
 128 | specified amount under certain circumstances;  
 129 | requiring the office to deem an application for  
 130 | payment abandoned under certain circumstances;  
 131 | requiring that the time period to complete  
 132 | applications be tolled under certain circumstances;  
 133 | deleting provisions relating to specified notices to  
 134 | the office and to rulemaking authority; amending s.  
 135 | 517.141, F.S.; defining terms; revising the Securities  
 136 | Guaranty Fund disbursement amounts to which eligible  
 137 | persons are entitled; revising provisions regarding  
 138 | payment of aggregate claims; providing for the  
 139 | satisfaction of claims in the event of an insufficient  
 140 | balance in the fund; requiring payments and  
 141 | disbursements from the Securities Guaranty Fund to be  
 142 | made by the Chief Financial Officer or his or her  
 143 | authorized designee, upon authorization by the office;  
 144 | requiring such authorization to be submitted within a  
 145 | certain timeframe; deleting provisions regarding  
 146 | requirements for payment of claims; conforming  
 147 | provisions to changes made by the act; specifying the  
 148 | circumstances under which a claimant must reimburse  
 149 | the fund for payments received from the fund;  
 150 | providing penalties; authorizing the Department of

151 Financial Services, rather than the office, to  
 152 institute legal proceedings for certain compliance  
 153 enforcement and to recover certain interests, costs,  
 154 and fees; amending s. 517.191, F.S.; deleting an  
 155 obsolete term; revising the civil penalty amounts for  
 156 certain violations; authorizing the office to recover  
 157 certain costs and attorney fees; requiring that moneys  
 158 recovered be deposited in a specified trust fund;  
 159 specifying the liability of control persons; providing  
 160 an exception; specifying circumstances under which  
 161 certain persons are deemed to have violated ch. 517,  
 162 F.S.; authorizing the office to issue and serve cease  
 163 and desist orders and emergency cease and desist  
 164 orders under certain circumstances; authorizing the  
 165 office to impose and collect administrative fines for  
 166 certain violations; specifying the disposition of such  
 167 fines; authorizing the office to bar applications or  
 168 notifications for licenses and registrations under  
 169 certain circumstances; conforming cross-references;  
 170 providing construction; specifying jurisdiction of the  
 171 courts relating to the sale or offer of certain  
 172 securities; making technical changes; amending s.  
 173 517.211, F.S.; providing for joint and several  
 174 liability of control persons in certain circumstances  
 175 for the purposes of specified actions; specifying the

176 date on which certain interest begins accruing in an  
 177 action for rescission; providing construction;  
 178 specifying that certain civil remedies extend to  
 179 purchasers or sellers of securities; making technical  
 180 changes; repealing s. 517.221, F.S., relating to cease  
 181 and desist orders; repealing s. 517.241, F.S.,  
 182 relating to remedies; amending s. 517.301, F.S.;  
 183 revising the circumstances under which certain  
 184 activities are considered unlawful and violations of  
 185 law; conforming provisions to changes made by the act;  
 186 revising the definition of the term "investment";  
 187 specifying that certain misrepresentations by persons  
 188 issuing or selling securities are unlawful; specifying  
 189 that certain misrepresentations by persons registered  
 190 or required to be registered under certain provisions  
 191 or subject to certain requirements are unlawful;  
 192 specifying that obtaining money or property in  
 193 connection with the offer or sale of an investment is  
 194 unlawful under certain conditions; providing  
 195 construction; requiring disclaimers for certain  
 196 statements; making technical changes; repealing s.  
 197 517.311, F.S., relating to false representations,  
 198 deceptive words, and enforcement; repealing s.  
 199 517.312, F.S., relating to securities, investments,  
 200 and boiler rooms, prohibited practices, and remedies;

201 amending ss. 517.072 and 517.12, F.S.; conforming  
 202 cross-references and making technical changes;  
 203 amending ss. 517.1201 and 517.1202, F.S.; conforming  
 204 cross-references; amending s. 517.302, F.S.;  
 205 conforming a provision to changes made by the act and  
 206 making a technical change; providing an effective  
 207 date.

208

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

210

211 Section 1. Present subsections (3), (4), and (5) and  
 212 subsections (6) through (25) of section 517.021, Florida  
 213 Statutes, are redesignated as subsections (4), (5), and (6) and  
 214 subsections (8) through (27), respectively, new subsections (3)  
 215 and (7) are added to that section, and subsection (1) and  
 216 present subsections (4), (8), (9), and (14) of that section are  
 217 amended, to read:

218 517.021 Definitions.—When used in this chapter, unless the  
 219 context otherwise indicates, the following terms have the  
 220 following respective meanings:

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

224 (3) "Angel investor group" means a group of accredited  
 225 investors who hold regular meetings and have defined processes

226 and procedures for making investment decisions, individually or  
 227 among the membership of the group, and who are not associated  
 228 persons, affiliates, or agents of a dealer or investment  
 229 adviser.

230 (5)-(4) "Boiler room" means an enterprise in which two or  
 231 more persons in a common scheme or enterprise solicit potential  
 232 investors through telephone calls, e-mail, text messages, social  
 233 media, chat rooms, or other electronic means ~~engage in telephone~~  
 234 ~~communications with members of the public using two or more~~  
 235 ~~telephones at one location, or at more than one location in a~~  
 236 ~~common scheme or enterprise.~~

237 (7) "Business entity" means any corporation, partnership,  
 238 limited partnership, limited liability company, proprietorship,  
 239 firm, enterprise, franchise, association, self-employed  
 240 individual, or trust, which may or may not be fictitiously  
 241 named, doing business in this state.

242 (10) (a)-(8) "Dealer" includes, unless otherwise specified,  
 243 a person, other than an associated person of a dealer, that  
 244 engages, for all or part of the person's time, directly or  
 245 indirectly, as agent or principal in the business of offering,  
 246 buying, selling, or otherwise dealing or trading in securities  
 247 issued by another person.

248 (b) The term "dealer" does not include any of the  
 249 following:

250 1.(a) A licensed practicing attorney who renders or

251 performs any such services in connection with the regular  
 252 practice of the attorney's profession.

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

255 ~~3.(e)~~ A trust company having trust powers that it is  
 256 authorized to exercise in this state, which renders or performs  
 257 services in a fiduciary capacity incidental to the exercise of  
 258 its trust powers.

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

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

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

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

267 ~~a.1.~~ Is an officer, a director, a limited liability  
 268 company manager or managing member, or a bona fide employee of  
 269 the issuer;

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

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

276 of, the issuer other than in connection with transactions in  
 277 securities; and

278 d.4. Does not receive a commission, compensation, or other  
 279 consideration for the completed sale of the issuer's securities  
 280 apart from the compensation received for regular duties to the  
 281 issuer.

282 (11)-(9) "Federal covered adviser" means a person that is  
 283 registered or required to be registered under s. 203 of the  
 284 Investment Advisers Act of 1940, as amended. The term does not  
 285 include any person that is excluded from the definition of  
 286 investment adviser under subparagraphs (16) (b)1.-7. and 9  
 287 ~~(14) (b)1.-8.~~

288 (16) (a)-(14)-(a) "Investment adviser" means a person, other  
 289 than an associated person of an investment adviser or a federal  
 290 covered adviser, that receives compensation, directly or  
 291 indirectly, and engages for all or part of the person's time,  
 292 directly or indirectly, or through publications or writings, in  
 293 the business of advising others as to the value of securities or  
 294 as to the advisability of investments in, purchasing of, or  
 295 selling of securities.

296 (b) The term does not include any of the following:

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



301 services.

302 2. A licensed practicing attorney or certified public  
 303 accountant whose performance of such services is solely  
 304 incidental to the practice of the attorney's or accountant's  
 305 profession.

306 3. A bank authorized to do business in this state.

307 4. A bank holding company as defined in the Bank Holding  
 308 Company Act of 1956, as amended, authorized to do business in  
 309 this state.

310 5. A trust company having trust powers, as defined in s.  
 311 658.12, which it is authorized to exercise in this state, which  
 312 trust company renders or performs investment advisory services  
 313 in a fiduciary capacity incidental to the exercise of its trust  
 314 powers.

315 6. A person that renders investment advice exclusively to  
 316 insurance or investment companies.

317 7. A person that, during the preceding 12 months, has  
 318 fewer than six clients who are residents of this state. As used  
 319 in this subparagraph, the term "client" has the same meaning as  
 320 provided in Securities and Exchange Commission Rule 275.222-2,  
 321 17 C.F.R. s. 275.222-2, as amended ~~does not hold itself out to~~  
 322 ~~the general public as an investment adviser and has no more than~~  
 323 ~~15 clients within 12 consecutive months in this state.~~

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

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

330 ~~9. A federal covered adviser.~~

331 9. The United States, a state, or any political  
 332 subdivision of a state, or any agency, authority, or  
 333 instrumentality of any such entity; a business entity that is  
 334 wholly owned directly or indirectly by such a governmental  
 335 entity; or any officer, agent, or employee of any such  
 336 governmental or business entity who is acting within the scope  
 337 of his or her official duties.

338 Section 2. Present subsections (9) and (10) of section  
 339 517.051, Florida Statutes, are redesignated as subsections (10)  
 340 and (11), respectively, and amended, a new subsection (9) is  
 341 added to that section, and subsections (1), (3), (4), and (8) of  
 342 that section are amended, to read:

343 517.051 Exempt securities.—The exemptions provided herein  
 344 from the registration requirements of s. 517.07 are self-  
 345 executing and do not require any filing with the office prior to  
 346 claiming such exemption. Any person who claims entitlement to  
 347 any of these exemptions bears the burden of proving such  
 348 entitlement in any proceeding brought under this chapter. The  
 349 registration provisions of s. 517.07 do not apply to any of the  
 350 following securities:

351 (1) A security issued or guaranteed by the United States  
 352 or any territory or insular possession of the United States, by  
 353 the District of Columbia, or by any state of the United States  
 354 or by any political subdivision or agency or other  
 355 instrumentality thereof; ~~provided that~~

356 (a) Except as provided in paragraph (b), a ~~no~~ person may  
 357 not shall directly or indirectly offer or sell securities, other  
 358 than general obligation bonds, described under this subsection  
 359 if the issuer or guarantor is in default or has been in default  
 360 any time after December 31, 1975, as to principal or interest:

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

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

365  
 366 except by an offering circular containing a full and fair  
 367 disclosure as prescribed by rule of the commission.

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

373 (3) A security issued by and which represents or will  
 374 represent an interest in or a direct obligation of or be  
 375 guaranteed by any of the following:

376 (a) An international bank of which the United States is a  
 377 member.

378 (b) A bank organized under the laws of the United States.

379 (c) A member bank of the Federal Reserve System.

380 (d) A depository institution, when a substantial portion  
 381 of its business consists of or will consist of receiving  
 382 deposits or share accounts that are insured to the maximum  
 383 amount authorized by statute by the Federal Deposit Insurance  
 384 Corporation or the National Credit Union Share Insurance Fund ~~or~~  
 385 guaranteed by:

386 ~~(a) A national bank, a federally chartered savings and~~  
 387 ~~loan association, or a federally chartered savings bank, or the~~  
 388 ~~initial subscription for equity securities in such national~~  
 389 ~~bank, federally chartered savings and loan association, or~~  
 390 ~~federally chartered savings bank;~~

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

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

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

398 (4) A security issued or guaranteed, as to principal,  
 399 interest, or dividend, by a business entity ~~corporation~~ owning  
 400 or operating a railroad, another common carrier, or any other

401 public service utility; provided that such business entity  
 402 ~~corporation~~ is subject to regulation or supervision whether as  
 403 to its rates and charges or as to the issue of its own  
 404 securities by a public commission, board, or officer of the  
 405 government of the United States, of any state, territory, or  
 406 insular possession of the United States, of any municipality  
 407 located therein, of the District of Columbia, or of the Dominion  
 408 of Canada or of any province thereof; also equipment securities  
 409 based on chattel mortgages, leases, or agreements for  
 410 conditional sale of cars, motive power, or other rolling stock  
 411 mortgaged, leased, or sold to or furnished for the use of or  
 412 upon such railroad or other public service utility corporation  
 413 or where the ownership or title of such equipment is pledged or  
 414 retained in accordance with ~~the provisions of~~ the laws of the  
 415 United States or of any state or of the Dominion of Canada to  
 416 secure the payment of such equipment securities; and also bonds,  
 417 notes, or other evidences of indebtedness issued by a holding  
 418 corporation and secured by collateral consisting of any  
 419 securities hereinabove described; provided, further, that the  
 420 collateral securities equal in fair value at least 125 percent  
 421 of the par value of the bonds, notes, or other evidences of  
 422 indebtedness so secured.

423 (8) Shares or other equity interests of a business entity  
 424 which represent ownership or entitle the holders of such shares  
 425 or other equity interests to possession and occupancy of

426 specific apartment units in property owned by such business  
 427 entity and organized and operated on a cooperative basis, solely  
 428 for residential purposes ~~A note, draft, bill of exchange, or~~  
 429 ~~banker's acceptance having a unit amount of \$25,000 or more~~  
 430 ~~which arises out of a current transaction, or the proceeds of~~  
 431 ~~which have been or are to be used for current transactions, and~~  
 432 ~~which has a maturity period at the time of issuance not~~  
 433 ~~exceeding 9 months exclusive of days of grace, or any renewal~~  
 434 ~~thereof which has a maturity period likewise limited. This~~  
 435 ~~subsection applies only to prime quality negotiable commercial~~  
 436 ~~paper of a type not ordinarily purchased by the general public;~~  
 437 ~~that is, paper issued to facilitate well-recognized types of~~  
 438 ~~current operational business requirements and of a type eligible~~  
 439 ~~for discounting by Federal Reserve banks.~~

440 (9) A member's or owner's interest in, or a retention  
 441 certificate or like security given in lieu of a cash patronage  
 442 dividend issued by, a not-for-profit membership entity operated  
 443 either as a cooperative under the cooperative laws of a state or  
 444 in accordance with the cooperative provisions of subchapter T of  
 445 chapter 1 of subtitle A of the United States Internal Revenue  
 446 Code, as amended, but not a member's or owner's interest,  
 447 retention certificate, or like security sold or transferred to a  
 448 person other than:

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

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

454 (10)-(9) A security issued by a business entity ~~corporation~~  
 455 organized and operated exclusively for religious, educational,  
 456 benevolent, fraternal, charitable, or reformatory purposes and  
 457 not for pecuniary profit, no part of the net earnings of which  
 458 ~~corporation~~ inures to the benefit of any private stockholder or  
 459 individual, or any security of a fund that is excluded from the  
 460 definition of an investment company under s. 3(c)(10)(B) of the  
 461 Investment Company Act of 1940, as amended; provided that a ~~no~~  
 462 person may not ~~shall~~ directly or indirectly offer or sell  
 463 securities under this subsection except by an offering circular  
 464 containing full and fair disclosure, as prescribed by the rules  
 465 of the commission, of all material information, including, but  
 466 not limited to, a description of the securities offered and  
 467 terms of the offering, a description of the nature of the  
 468 issuer's business, a statement of the purpose of the offering  
 469 and the intended application by the issuer of the proceeds  
 470 thereof, and financial statements of the issuer prepared in  
 471 conformance with United States generally accepted accounting  
 472 principles. Section 6(c) of the Philanthropy Protection Act of  
 473 1995, Pub. L. No. 104-62, does ~~shall~~ not preempt any provision  
 474 of this chapter.

475 (11)-(10) Any insurance or endowment policy or annuity

476 contract or optional annuity contract or self-insurance  
 477 agreement issued by a business entity ~~corporation~~, insurance  
 478 company, reciprocal insurer, or risk retention group subject to  
 479 the supervision of the insurance regulator or bank regulator, or  
 480 any agency or officer performing like functions, of any state or  
 481 territory of the United States or the District of Columbia.

482 Section 3. Section 517.061, Florida Statutes, is amended  
 483 to read:

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

486 517.061 Exempt transactions.—Except as otherwise provided  
 487 in subsection (11), the exemptions provided herein from the  
 488 registration requirements of s. 517.07 are self-executing and do  
 489 not require any filing with the office before being claimed. Any  
 490 person who claims entitlement to an exemption under this section  
 491 bears the burden of proving such entitlement in any proceeding  
 492 brought under this chapter. The registration provisions of s.  
 493 517.07 do not apply to any of the following transactions;  
 494 however, such transactions are subject to s. 517.301:

495 (1)(a) Any judicial sale or any sale by an executor, an  
 496 administrator, a guardian, or a conservator; any sale by a  
 497 receiver or trustee in insolvency or bankruptcy; any sale by an  
 498 assignee as defined in s. 727.103 with respect to an assignment  
 499 as defined in that section; or any transaction incident to a  
 500 judicially approved reorganization in which a security is issued



501 in exchange for one or more outstanding securities, claims, or  
 502 property interests.

503 (b) Except for a security exchanged in a case brought  
 504 under Title 11 of the United States Code, a security that is  
 505 issued in exchange for one or more bona fide outstanding  
 506 securities, claims, or property interests, or partly in such  
 507 exchange and partly for cash, if the terms and conditions of  
 508 such issuance and exchange are approved:

509 1. By a court, an official or agency of the United States,  
 510 a banking or insurance commission of a state or territory of the  
 511 United States, or another governmental authority expressly  
 512 authorized by law to grant such approval.

513 2. After a hearing upon the fairness of such terms and  
 514 conditions and at which all persons to whom issuance of  
 515 securities in such exchange is proposed have the right to  
 516 appear.

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

521 (3) A transaction involving a stock dividend or equivalent  
 522 equity distribution, regardless of whether the business entity  
 523 distributing the dividend or equivalent equity distribution is  
 524 the issuer, if nothing of value is given by stockholders or  
 525 other equity holders for the dividend or equivalent equity

526 distribution other than the surrender of a right to a cash or  
527 property dividend in the event that each stockholder or other  
528 equity holder may elect to take the dividend or equivalent  
529 equity distribution in cash, property, or stock.

530 (4) A transaction under an offer to existing security  
531 holders of the issuer, including persons that at the date of the  
532 transaction are holders of convertible securities, options, or  
533 warrants, if a commission or other remuneration is not paid or  
534 given, directly or indirectly, for soliciting a security holder  
535 in this state.

536 (5) The issuance of securities to such equity security  
537 holders or creditors of a business entity in the process of a  
538 reorganization of such business entity, made in good faith and  
539 not for the purpose of evading this chapter, either in exchange  
540 for the securities of such equity security holders or claims of  
541 such creditors or partly for cash and partly in exchange for the  
542 securities or claims of such equity security holders or  
543 creditors.

544 (6) A transaction involving the distribution of the  
545 securities of an issuer to the security holders of another  
546 person in connection with a merger, consolidation, exchange of  
547 securities, sale of assets, or other reorganization to which the  
548 issuer, or the issuer's parent or subsidiary, and the other  
549 person, or the person's parent or subsidiary, are parties.

550 (7) The offer or sale of securities, solely in connection

551 with the transfer of ownership of an eligible privately held  
552 company, through a merger and acquisition broker in accordance  
553 with s. 517.12(21).

554 (8) The offer or sale of securities under a bona fide  
555 employee stock purchase, savings, option, profit-sharing,  
556 pension, or similar employee benefit plan, including any  
557 securities, plan interests, and guarantees issued under a  
558 compensatory benefit plan or compensation contract, contained in  
559 a record, established by the issuer, its parents, its majority-  
560 owned subsidiaries, or the majority-owned subsidiaries of the  
561 issuer's parent for the participation of their employees. This  
562 includes offers or sales of such securities to all of the  
563 following persons:

564 (a) Directors, managers, managing members, general  
565 partners, officers, consultants, and advisors.

566 (b) If the issuer is a business trust, trustees and former  
567 trustees.

568 (c) Family members who acquire such securities from  
569 persons described in this section through gifts or domestic  
570 relations orders.

571 (d) Former employees, directors, managers, managing  
572 members, general partners, officers, consultants, and advisors,  
573 if those individuals were employed by or providing services to  
574 the issuer when the securities were offered.

575 (e) Insurance agents who are exclusive insurance agents of

576 the issuer, or of the issuer's parents or subsidiaries, or who  
 577 derive more than 50 percent of their annual income from such  
 578 persons.

579 (9) The offer or sale of securities to a bank, trust  
 580 company, savings institution, insurance company, dealer,  
 581 investment company as defined in the Investment Company Act of  
 582 1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing  
 583 trust, or qualified institutional buyer, whether any of such  
 584 entities is acting in its individual or fiduciary capacity.

585 (10) (a) The offer or sale, by or on behalf of an issuer,  
 586 of its own securities if the offer or sale is part of an  
 587 offering made in accordance with all of the following  
 588 conditions:

589 1. There are no more than 35 purchasers, or the issuer  
 590 reasonably believes that there are no more than 35 purchasers,  
 591 of the securities of the issuer in this state during an offering  
 592 made in reliance upon this subsection or, if such offering  
 593 continues for a period in excess of 12 months, in any  
 594 consecutive 12-month period.

595 2. Neither the issuer nor any person acting on behalf of  
 596 the issuer offers or sells securities pursuant to this  
 597 subsection by means of any form of general solicitation or  
 598 general advertising in this state.

599 3. Before the sale, each purchaser or the purchaser's  
 600 representative, if any, is provided with, or given reasonable

601 access to, full and fair disclosure of all material information,  
602 which must include written notification of a purchaser's right  
603 to void the sale under subparagraph 4.

604 4. Any sale made pursuant to this subsection is voidable  
605 by the purchaser within 3 days after the first tender of  
606 consideration is made by such purchaser to the issuer by  
607 notifying the issuer that the purchaser expressly voids the  
608 purchase. The purchaser's notice to the issuer must be sent by  
609 e-mail to the issuer's e-mail address set forth in the  
610 disclosure document provided to the purchaser or purchaser's  
611 representative or by hand delivery, courier service, or other  
612 method by which written proof of delivery to the issuer of the  
613 purchaser's election to rescind the purchase is evidenced.

614 (b) The following purchasers are excluded from the  
615 calculation of the number of purchasers under subparagraph  
616 (a)1.:

617 1. Any spouse or child of the purchaser or any related  
618 family member who has the same principal residence as such  
619 purchaser.

620 2. A trust or estate in which a purchaser, any of the  
621 persons related to such purchaser specified in subparagraph 1.,  
622 and any business entity specified in subparagraph 3.  
623 collectively have more than 50 percent of the beneficial  
624 interest, excluding any contingent interest.

625 3. A business entity in which a purchaser, any of the

626 persons related to such purchaser specified in subparagraph 1.,  
627 and any trust or estate specified in subparagraph 2.  
628 collectively are beneficial owners of more than 50 percent of  
629 the equity securities or equity interest.

630 4. An accredited investor.

631  
632 A business entity must be counted as one purchaser. However, if  
633 the business entity is organized for the specific purpose of  
634 acquiring the securities offered and is not an accredited  
635 investor, each beneficial owner of equity securities or equity  
636 interests in the business entity must be counted as a separate  
637 purchaser. A noncontributory employee benefit plan within the  
638 meaning of Title I of the Employee Retirement Income Security  
639 Act of 1974 must be counted as one purchaser if the trustee  
640 makes all investment decisions for the plan.

641 (11) Offers or sales of securities by an issuer in a  
642 transaction that meets all of the following conditions:

643 (a) The offers or sales of securities are made only to  
644 persons who are, or who the issuer reasonably believes are,  
645 accredited investors.

646 (b) The issuer is not a business entity that has an  
647 undefined business operation, lacks a business plan, lacks a  
648 stated investment goal for the funds being raised, or plans to  
649 engage in a merger or acquisition with an unspecified business  
650 entity.

651 (c) The issuer reasonably believes that all purchasers are  
 652 purchasing for investment and not with the view to or for sale  
 653 in connection with a distribution of the security. Any resale of  
 654 a security sold in reliance on this exemption within 12 months  
 655 after sale is presumed to be with a view to distribution and not  
 656 for investment, except a resale pursuant to a registration  
 657 statement effective under this chapter or pursuant to an  
 658 exemption available under this chapter, the Securities Act of  
 659 1933, as amended, or the rules and regulations adopted  
 660 thereunder.

661 (d)1. A general announcement of the proposed offering,  
 662 made by any means, includes only the following information:

663 a. The name, address, and telephone number of the issuer  
 664 of the securities.

665 b. The name, a brief description, and price, if known, of  
 666 any security to be issued.

667 c. A brief description of the business.

668 d. The type, number, and aggregate amount of securities  
 669 being offered.

670 e. The name, address, and telephone number of the person  
 671 to contact for additional information.

672 f. A statement that:

673 (I) Sales will be made only to accredited investors;

674 (II) Money or other consideration is not being solicited  
 675 and will not be accepted by way of this general announcement;

676 and

677 (III) The securities have not been registered with or  
678 approved by any state securities agency or the Securities and  
679 Exchange Commission and are being offered and sold pursuant to  
680 an exemption from registration.

681 2. The issuer, in connection with an offer, may provide  
682 information in addition to the information provided in the  
683 general announcement as specified in subparagraph 1. if such  
684 information is delivered:

685 a. Through an electronic database that is restricted to  
686 persons who have been prequalified as accredited investors; or

687 b. After the issuer reasonably believes that the  
688 prospective purchaser is an accredited investor.

689 (e) The issuer does not use telephone solicitation unless,  
690 before placing the call, the issuer reasonably believes that the  
691 prospective purchaser to be solicited is an accredited investor.

692 (f) The issuer files with the office a notice of  
693 transaction, a consent to service of process, and a copy of the  
694 general announcement within 15 days after the first sale is made  
695 in this state. The commission may adopt by rule procedures for  
696 filing documents by electronic means.

697 (g) Dissemination of the general announcement of the  
698 proposed offering to persons who are not accredited investors  
699 does not disqualify the issuer from claiming the exemption under  
700 this subsection.



701       (12) The isolated sale or offer for sale of securities  
 702 when made by or on behalf of a bona fide owner, not the issuer  
 703 or underwriter, of the securities, who disposes of such  
 704 securities for the owner's own account, and such sale is not  
 705 made directly or indirectly for the benefit of the issuer or an  
 706 underwriter of such securities or for the direct or indirect  
 707 promotion of any scheme or enterprise with the intent of  
 708 violating or evading this chapter. For purposes of this  
 709 subsection, isolated offers or sales include, but are not  
 710 limited to, an isolated offer or sale made by or on behalf of a  
 711 bona fide owner, rather than the issuer or underwriter, of the  
 712 securities if:

713       (a) The offer or sale of securities is in a transaction  
 714 satisfying all of the conditions specified in subparagraphs  
 715 (10) (a) 1., 2., and 3. and paragraph (10) (b); or

716       (b) The offer or sale of securities is in a transaction  
 717 exempt under s. 4(a) (1) of the Securities Act of 1933, as  
 718 amended, or under Securities and Exchange Commission rules or  
 719 regulations.

720       (13) By or for the account of a pledgeholder, a secured  
 721 party as defined in s. 679.1021(1)(ttt), or a mortgagee selling  
 722 or offering for sale or delivery in the ordinary course of  
 723 business and not for the purposes of avoiding the provisions of  
 724 this chapter, to liquidate a bona fide debt, a security pledged  
 725 in good faith as security for such debt.

726       (14) An unsolicited purchase or sale of securities on  
 727 order of, and as the agent for, another solely and exclusively  
 728 by a dealer registered pursuant to s. 517.12; provided that this  
 729 exemption applies solely and exclusively to such registered  
 730 dealers and does not authorize or permit the purchase or sale of  
 731 securities at the direction of, and as agent for, another by any  
 732 person other than a dealer so registered; and provided further  
 733 that such purchase or sale may not be directly or indirectly for  
 734 the benefit of the issuer or an underwriter of such securities  
 735 or for the direct or indirect promotion of any scheme or  
 736 enterprise with the intent of violating or evading this chapter.

737       (15) A nonissuer transaction with a federal covered  
 738 adviser with investments under management in excess of \$100  
 739 million acting in the exercise of discretionary authority in a  
 740 signed record for the account of others.

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

743       (a) The performance of the terms of the option is  
 744 guaranteed by any dealer registered under the Securities  
 745 Exchange Act of 1934, as amended, which guaranty and dealer are  
 746 in compliance with such requirements or rules as may be approved  
 747 or adopted by the commission; or

748       (b)1. Such options transactions are cleared by the Options  
 749 Clearing Corporation or any other clearinghouse recognized by  
 750 commission rule;

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

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

756        (17) (a) The offer or sale of securities, as agent or  
 757 principal, by a dealer registered pursuant to s. 517.12, when  
 758 such securities are offered or sold at a price reasonably  
 759 related to the current market price of such securities, provided  
 760 that such securities are:

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

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

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

769            4. Securities, other than any security that is a federal  
 770 covered security and is not subject to any registration or  
 771 filing requirements under this chapter, that have been listed or  
 772 approved for listing upon notice of issuance by a securities  
 773 exchange registered under the Securities Exchange Act of 1934,  
 774 as amended; and all securities senior to any securities so  
 775 listed or approved for listing upon notice of issuance, or

776 represented by subscription rights which have been so listed or  
 777 approved for listing upon notice of issuance, or evidences of  
 778 indebtedness guaranteed by an issuer with a class of securities  
 779 listed or approved for listing upon notice of issuance by such  
 780 securities exchange, such securities to be exempt only so long  
 781 as such listings or approvals remain in effect. The exemption  
 782 provided in this subparagraph does not apply when the securities  
 783 are suspended from listing approval for listing or trading.

784 (b) The exemption provided in this subsection does not  
 785 apply if the sale is made for the direct or indirect benefit of  
 786 an issuer or a control person of such issuer or if such  
 787 securities constitute the whole or part of an unsold allotment  
 788 to, or subscription or participation by, a dealer as an  
 789 underwriter of such securities.

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

796 (18) Any nonissuer transaction by a registered dealer, and  
 797 any resale transaction by a sponsor of a unit investment trust  
 798 registered under the Investment Company Act of 1940, as amended,  
 799 in a security of a class that has been outstanding in the hands  
 800 of the public for at least 90 days; provided that, at the time

801 of the transaction, the following conditions in paragraphs (a),  
 802 (b), and (c) and either paragraph (d) or paragraph (e) are met:

803 (a) The issuer of the security is actually engaged in  
 804 business and is not in the organizational stage or in bankruptcy  
 805 or receivership and is not a blank check, blind pool, or shell  
 806 company whose primary plan of business is to engage in a merger  
 807 or combination of the business with, or an acquisition of, an  
 808 unidentified person.

809 (b) The security is sold at a price reasonably related to  
 810 the current market price of the security.

811 (c) The security does not constitute the whole or part of  
 812 an unsold allotment to, or a subscription or participation by,  
 813 the dealer as an underwriter of the security.

814 (d) The security is listed in a nationally recognized  
 815 securities manual designated by rule of the commission or a  
 816 document filed with and publicly viewable through the Securities  
 817 and Exchange Commission electronic data gathering and retrieval  
 818 system and contains:

819 1. A description of the business and operations of the  
 820 issuer;

821 2. The names of the issuer's officers and directors, if  
 822 any, or, in the case of an issuer not domiciled in the United  
 823 States, the corporate equivalents of such persons in the  
 824 issuer's country of domicile;

825 3. An audited balance sheet of the issuer as of a date

826 within 18 months before such transaction or, in the case of a  
827 reorganization or merger in which parties to the reorganization  
828 or merger had such audited balance sheet, a pro forma balance  
829 sheet; and

830 4. An audited income statement for each of the issuer's  
831 immediately preceding 2 fiscal years, or for the period of  
832 existence of the issuer, if in existence for less than 2 years  
833 or, in the case of a reorganization or merger in which the  
834 parties to the reorganization or merger had such audited income  
835 statement, a pro forma income statement.

836 (e)1. The issuer of the security has a class of equity  
837 securities listed on a national securities exchange registered  
838 under the Securities Exchange Act of 1934, as amended;

839 2. The class of security is quoted, offered, purchased, or  
840 sold through an alternative trading system registered under  
841 Securities and Exchange Commission Regulation ATS, 17 C.F.R. s.  
842 242.301, as amended, and the issuer of the security has made  
843 current information publicly available in accordance with  
844 Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s.  
845 240.15c2-11, as amended;

846 3. The issuer of the security is a unit investment trust  
847 registered under the Investment Company Act of 1940, as amended;

848 4. The issuer of the security has been engaged in  
849 continuous business, including predecessors, for at least 3  
850 years; or

851 5. The issuer of the security has total assets of at least  
 852 \$2 million based on an audited balance sheet as of a date within  
 853 18 months before such transaction or, in the case of a  
 854 reorganization or merger in which parties to the reorganization  
 855 or merger had such audited balance sheet, a pro forma balance  
 856 sheet.

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

859 (20) A nonissuer transaction in an outstanding security by  
 860 or through a dealer registered or exempt from registration under  
 861 this chapter, if all of the following are true:

862 (a) The issuer is a reporting issuer in a foreign  
 863 jurisdiction designated by this subsection or by commission  
 864 rule, and the issuer has been subject to continuous reporting  
 865 requirements in such foreign jurisdiction for not less than 180  
 866 days before the transaction.

867 (b) The security is listed on the securities exchange  
 868 designated by this subsection or by commission rule, is a  
 869 security of the same issuer which is of senior or substantially  
 870 equal rank to the listed security, or is a warrant or right to  
 871 purchase or subscribe to any such security.

872  
 873 For purposes of this subsection, Canada, together with its  
 874 provinces and territories, is designated as a foreign  
 875 jurisdiction, and The Toronto Stock Exchange, Inc., is

876 designated as a securities exchange. If, after an administrative  
 877 hearing in compliance with ss. 120.569 and 120.57, the office  
 878 finds that revocation is necessary or appropriate in furtherance  
 879 of the public interest and for the protection of investors, it  
 880 may revoke the designation of a securities exchange under this  
 881 subsection.

882 (21) Other transactions exempted by commission rule upon a  
 883 finding by the office that the application of s. 517.07 to a  
 884 particular transaction is not necessary or appropriate in  
 885 furtherance of the public interest and for the protection of  
 886 investors due to the small dollar amount of the securities  
 887 involved or the limited character of the offering. In  
 888 conjunction with its adoption by rule of such exemptions, the  
 889 commission may exempt persons selling or offering for sale  
 890 securities in such a transaction from the registration  
 891 requirements of s. 517.12. A rule adopted by the commission  
 892 under this subsection may not have the effect of narrowing or  
 893 limiting any exemption specified in this section.

894 Section 4. Section 517.0611, Florida Statutes, is amended  
 895 to read:

896 517.0611 The Florida Limited Offering Exemption Intrastate  
 897 crowdfunding.—

898 (1) This section may be cited as ~~the~~ "The Florida Limited  
 899 Offering Intrastate Crowdfunding Exemption."

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



901 to a securities transaction conducted in accordance with this  
 902 section; however, such transaction is subject to s. 517.301  
 903 ~~Notwithstanding any other provision of this chapter, an offer or~~  
 904 ~~sale of a security by an issuer is an exempt transaction under~~  
 905 ~~s. 517.061 if the offer or sale is conducted in accordance with~~  
 906 ~~this section. The exemption provided in this section may not be~~  
 907 ~~used in conjunction with any other exemption under s. 517.051 or~~  
 908 ~~s. 517.061.~~

909 (3) The offer or sale of securities under this section  
 910 must be conducted in accordance with the requirements of the  
 911 federal exemption for intrastate offerings in s. 3(a)(11) of the  
 912 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, and  
 913 ~~United States~~ Securities and Exchange Commission Rule 147, 17  
 914 C.F.R. s. 230.147, as amended, or Securities and Exchange  
 915 Commission Rule 147A, 17. C.F.R. s. 230.147A, as amended ~~adopted~~  
 916 ~~pursuant to the Securities Act of 1933.~~

917 (4) An issuer ~~must~~:

918 (a) Must be a for-profit business entity that maintains  
 919 ~~formed under the laws of the state, be registered with the~~  
 920 ~~Secretary of State, maintain~~ its principal place of business ~~in~~  
 921 ~~the state, and~~ derives ~~derive~~ its revenues primarily from  
 922 operations in this ~~the~~ state.

923 (b) Must conduct transactions for an ~~the~~ offering of \$2.5  
 924 million or more through a dealer registered with the office or  
 925 an intermediary registered under s. 517.12 ~~s. 517.12(19)~~. For an

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

928 (c) May not be, ~~either~~ before or as a result of the  
 929 offering, an investment company as defined in s. 3 of the  
 930 Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended,  
 931 or subject to the reporting requirements of s. 13 or s. 15(d) of  
 932 the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s.  
 933 78o(d), as amended.

934 (d) May not be a business entity that has ~~company with~~ an  
 935 undefined business operation, ~~a company that~~ lacks a business  
 936 plan, ~~a company that~~ lacks a stated investment goal for the  
 937 funds being raised, or ~~a company that~~ plans to engage in a  
 938 merger or acquisition with an unspecified business entity.

939 (e) May not be subject to a disqualification established  
 940 by the commission ~~or office~~ or a disqualification described in  
 941 s. 517.0616 or s. 517.1611 ~~or United States Securities and~~  
 942 ~~Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted~~  
 943 ~~pursuant to the Securities Act of 1933.~~ Each director, officer,  
 944 manager, managing member, or general partner, or person  
 945 occupying a similar status or performing a similar function, or  
 946 person holding more than 20 percent of the equity interest  
 947 ~~shares~~ of the issuer, is subject to this paragraph requirement.

948 (f) Must deposit all funds received from investors in an  
 949 account in ~~Execute an escrow agreement with~~ a federally insured  
 950 financial institution authorized to do business in this ~~the~~

951 state, and maintain all such funds in the account until the  
952 target offering amount has been reached or the offering has been  
953 terminated or has expired. If the target offering amount has not  
954 been reached within the period specified by the issuer in the  
955 disclosure statement provided to investors, or if the offering  
956 is terminated or expires, the issuer must refund invested funds  
957 to all investors within 10 business days after such occurrence  
958 ~~for the deposit of investor funds, and ensure that all offering~~  
959 ~~proceeds are provided to the issuer only when the aggregate~~  
960 ~~capital raised from all investors is equal to or greater than~~  
961 ~~the target offering amount.~~

962 (g) Must use all funds in accordance with the use of  
963 proceeds as disclosed to prospective investors ~~Allow investors~~  
964 ~~to cancel a commitment to invest within 3 business days before~~  
965 ~~the offering deadline, as stated in the disclosure statement,~~  
966 ~~and issue refunds to all investors if the target offering amount~~  
967 ~~is not reached by the offering deadline.~~

968 (5) The issuer must file a notice of the offering with the  
969 office, in writing or in electronic form, in a format prescribed  
970 by commission rule, together with a nonrefundable filing fee of  
971 \$200. The filing fee must ~~shall~~ be deposited into the Regulatory  
972 Trust Fund of the office. The commission may adopt rules  
973 establishing procedures for the deposit of fees and the filing  
974 of documents by electronic means if the procedures provide the  
975 office with the information and data required by this section. A

976 notice is effective upon receipt, by the office, of the  
 977 completed form, filing fee, and an irrevocable written consent  
 978 to service of civil process, similar to that provided for in s.  
 979 517.101. The notice may be terminated by filing with the office  
 980 a notice of termination. The notice and offering expire 12  
 981 months after filing the notice with the office and are not  
 982 eligible for renewal. The notice must:

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

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

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

991 (d) Identify any predecessors, owners, officers,  
 992 directors, general partners, managers, managing members, and  
 993 ~~control persons~~ or any person occupying a similar status or  
 994 performing a similar function of the issuer, including that  
 995 person's title, ~~his or her~~ status as a partner, trustee, or sole  
 996 proprietor or a similar role, and ~~his or her~~ ownership  
 997 percentage.

998 (e) Identify the federally insured financial institution  
 999 ~~into, authorized to do business in the state, in~~ which investor  
 1000 funds will be deposited, ~~in accordance with the escrow~~

1001 agreement.

1002 (f) ~~Require an attestation under oath that the issuer, its~~  
 1003 ~~predecessors, affiliated issuers, directors, officers, and~~  
 1004 ~~control persons, or any other person occupying a similar status~~  
 1005 ~~or performing a similar function, are not currently and have not~~  
 1006 ~~been within the past 10 years the subject of regulatory or~~  
 1007 ~~criminal actions involving fraud or deceit.~~

1008 ~~(g) Include documentation verifying that the issuer is~~  
 1009 ~~organized under the laws of the state and authorized to do~~  
 1010 ~~business in the state.~~

1011 ~~(h) If applicable, include the intermediary's website~~  
 1012 ~~address where the issuer's securities will be offered.~~

1013 (g)(i) State Include the target offering amount and the  
 1014 date, not to exceed 365 days, by which the target amount must be  
 1015 reached in order to avoid termination of the offering.

1016 (6) The issuer must amend the notice form within 10  
 1017 business ~~30~~ days after any material information contained in the  
 1018 notice becomes inaccurate ~~for any reason~~. The commission may  
 1019 require, by rule, an issuer who has filed a notice under this  
 1020 section to file amendments with the office.

1021 (7) The issuer may engage in general advertising and  
 1022 general solicitation of the offering to prospective investors.  
 1023 Any oral or written statements in advertising or solicitation of  
 1024 the offering which contain a material misstatement, or which  
 1025 fail to disclose material information, are subject to

1026 enforcement under this chapter. Any general advertising or other  
 1027 general announcement must state that the offering is limited and  
 1028 open only to residents of this state.

1029 (8) The issuer must provide a disclosure statement to  
 1030 ~~investors and the dealer or intermediary, along with a copy to~~  
 1031 ~~the office at the time that the notice is filed, and make~~  
 1032 ~~available to potential investors through the dealer or~~  
 1033 ~~intermediary, as applicable; to the office at the time that the~~  
 1034 notice is filed; and to each prospective investor at least 3  
 1035 days before the investor's commitment to purchase or payment of  
 1036 any consideration. The~~7~~a disclosure statement must contain  
 1037 ~~containing~~ material information about the issuer and the  
 1038 offering, including all of the following:

1039 (a) The name, legal status, physical address, e-mail  
 1040 address, and website address of the issuer.

1041 (b) The names of the directors, officers, managers,  
 1042 managing members, and general partners and any person occupying  
 1043 a similar status or performing a similar function, and the name  
 1044 and ownership percentage of each person holding more than 20  
 1045 percent of the issuer's equity interests ~~shares of the issuer.~~

1046 (c) A description of the current business ~~of the issuer~~  
 1047 and ~~the~~ anticipated business plan of the issuer.

1048 (d) A description of the stated purpose and intended use  
 1049 of the proceeds of the offering.

1050 (e) The target offering amount and~~7~~ the deadline to reach

1051 the target offering amount, ~~and regular updates regarding the~~  
 1052 ~~progress of the issuer in meeting the target offering amount.~~

1053 (f) The price to the public of the securities ~~or the~~  
 1054 ~~method for determining the price. However, before the sale, each~~  
 1055 ~~investor must receive in writing the final price and all~~  
 1056 ~~required disclosures and have an opportunity to rescind the~~  
 1057 ~~commitment to purchase the securities.~~

1058 (g) A description of the ownership and capital structure  
 1059 of the issuer, including:

1060 1. Terms of the securities being offered and each class of  
 1061 security of the issuer, including how those terms may be  
 1062 modified, and a summary of the differences between such  
 1063 securities, including how the rights of the securities being  
 1064 offered may be materially limited, diluted, or qualified by  
 1065 rights of any other class of security of the issuer.

1066 2. A description of how the exercise of the rights held by  
 1067 the principal equity holders ~~shareholders~~ of the issuer could  
 1068 negatively impact the purchasers of the securities being  
 1069 offered.

1070 ~~3. The name and ownership level of each existing~~  
 1071 ~~shareholder who owns more than 20 percent of any class of the~~  
 1072 ~~securities of the issuer.~~

1073 ~~4. How the securities being offered are being valued, and~~  
 1074 ~~examples of methods of how such securities may be valued by the~~  
 1075 ~~issuer in the future, including during subsequent corporate~~

1076 | ~~actions.~~

1077 |         ~~5. The risks to purchasers of the securities relating to~~  
 1078 | ~~minority ownership in the issuer, the risks associated with~~  
 1079 | ~~corporate action, including additional issuances of shares, a~~  
 1080 | ~~sale of the issuer or of assets of the issuer, or transactions~~  
 1081 | ~~with related parties.~~

1082 |         (h) A statement that the security being offered is not  
 1083 | registered under federal or state securities laws and that the  
 1084 | securities are subject to the limitation on resale contained in  
 1085 | Securities and Exchange Commission Rule 147 or Rule 147A.

1086 |         (i) Any issuer plans, formal or informal, to offer  
 1087 | additional securities in the future.

1088 |         (j) The risks to purchasers of the securities relating to  
 1089 | minority ownership in the issuer.

1090 |         ~~(k)-(h)~~ A description of the financial condition of the  
 1091 | issuer.

1092 |         1. For offerings that, in combination with all other  
 1093 | offerings of the issuer within the preceding 12-month period,  
 1094 | have ~~target~~ offering amounts of \$500,000 ~~\$100,000~~ or less, the  
 1095 | financial statements of the issuer may be, but are not required  
 1096 | to be, included ~~description must include the most recent income~~  
 1097 | ~~tax return filed by the issuer, if any, and a financial~~  
 1098 | ~~statement that must be certified by the principal executive~~  
 1099 | ~~officer of the issuer as true and complete in all material~~  
 1100 | ~~respects.~~



1101           2. For offerings that, in combination with all other  
 1102 offerings of the issuer within the preceding 12-month period,  
 1103 have ~~target~~ offering amounts of more than \$500,000 ~~\$100,000~~, but  
 1104 not more than \$2.5 million ~~\$500,000~~, the description must  
 1105 include financial statements prepared in accordance with  
 1106 generally accepted accounting principles and reviewed by a  
 1107 certified public accountant, as defined in s. 473.302, who is  
 1108 independent of the issuer, using professional standards and  
 1109 procedures ~~for such review~~ or standards and procedures  
 1110 established by commission ~~the office, by rule,~~ for such purpose.

1111           3. For offerings that, in combination with all other  
 1112 offerings of the issuer within the preceding 12-month period,  
 1113 have ~~target~~ offering amounts of more than \$2.5 million ~~\$500,000~~,  
 1114 the description must include audited financial statements  
 1115 prepared in accordance with generally accepted accounting  
 1116 principles by a certified public accountant, as defined in s.  
 1117 473.302, who is independent of the issuer, and other  
 1118 requirements as the commission may establish by rule.

1119           (1) ~~(i)~~ The following statement in boldface, conspicuous  
 1120 type on the front page of the disclosure statement:

1121  
 1122           Neither the Securities and Exchange Commission nor any  
 1123 state securities commission has approved or  
 1124 disapproved these securities or determined if this  
 1125 disclosure statement is truthful or complete. Any

1126 representation to the contrary is a criminal offense.

1127

1128 These securities are offered under, and will be sold  
 1129 in reliance upon, an exemption from the registration  
 1130 requirements of federal and Florida securities laws.

1131 ~~Consequently,~~ Neither the Federal Government nor the  
 1132 State of Florida has reviewed the accuracy or  
 1133 completeness of any offering materials. In making an  
 1134 investment decision, investors must rely on their own  
 1135 examination of the issuer and the terms of the  
 1136 offering, including the merits and risks involved.

1137 These securities are subject to restrictions on  
 1138 transferability and resale and may not be transferred  
 1139 or resold except as specifically authorized by  
 1140 applicable federal and state securities laws.

1141 Investing in these securities involves a speculative  
 1142 risk, and investors should be able to bear the loss of  
 1143 their entire investment.

1144 ~~(8) The issuer shall provide to the office a copy of the~~  
 1145 ~~escrow agreement with a financial institution authorized to~~  
 1146 ~~conduct business in this state. All investor funds must be~~  
 1147 ~~deposited in the escrow account. The escrow agreement must~~  
 1148 ~~require that all offering proceeds be released to the issuer~~  
 1149 ~~only when the aggregate capital raised from all investors is~~  
 1150 ~~equal to or greater than the minimum target offering amount~~

1151 ~~specified in the disclosure statement as necessary to implement~~  
 1152 ~~the business plan, and that all investors will receive a full~~  
 1153 ~~return of their investment commitment if that target offering~~  
 1154 ~~amount is not raised by the date stated in the disclosure~~  
 1155 ~~statement.~~

1156 (9) The sum of all cash and other consideration received  
 1157 for sales of a security under this section may not exceed \$5 ~~\$1~~  
 1158 million, less the aggregate amount received for all sales of  
 1159 securities by the issuer within the 12 months preceding the  
 1160 first offer or sale made in reliance upon this exemption. Offers  
 1161 or sales to a person owning 20 percent or more of the  
 1162 outstanding equity interests ~~shares~~ of any class or classes of  
 1163 securities or to an officer, director, manager, managing member,  
 1164 general partner, or trustee, or a person occupying a similar  
 1165 status, do not count toward this limitation.

1166 (10) Unless the investor is an accredited investor, or the  
 1167 issuer reasonably believes that the investor is an accredited  
 1168 investor as defined by Rule 501 of Regulation D, ~~adopted~~  
 1169 ~~pursuant to the Securities Act of 1933,~~ the aggregate amount of  
 1170 securities sold by an issuer to an investor ~~in transactions~~  
 1171 ~~exempt from registration requirements under this subsection~~ in a  
 1172 12-month period may not exceed \$10,000 ~~÷~~

1173 ~~(a) The greater of \$2,000 or 5 percent of the annual~~  
 1174 ~~income or net worth of such investor, if the annual income or~~  
 1175 ~~the net worth of the investor is less than \$100,000.~~

1176 ~~(b) Ten percent of the annual income or net worth of such~~  
 1177 ~~investor, not to exceed a maximum aggregate amount sold of~~  
 1178 ~~\$100,000, if either the annual income or net worth of the~~  
 1179 ~~investor is equal to or exceeds \$100,000.~~

1180 ~~(11) The issuer shall file with the office and provide to~~  
 1181 ~~investors free of charge an annual report of the results of~~  
 1182 ~~operations and financial statements of the issuer within 45 days~~  
 1183 ~~after the end of its fiscal year, until no securities under this~~  
 1184 ~~offering are outstanding. The annual reports must meet the~~  
 1185 ~~following requirements:~~

1186 ~~(a) Include an analysis by management of the issuer of the~~  
 1187 ~~business operations and the financial condition of the issuer,~~  
 1188 ~~and disclose the compensation received by each director,~~  
 1189 ~~executive officer, and person having an ownership interest of 20~~  
 1190 ~~percent or more of the issuer, including cash compensation~~  
 1191 ~~earned since the previous report and on an annual basis, and any~~  
 1192 ~~bonuses, stock options, other rights to receive securities of~~  
 1193 ~~the issuer, or any affiliate of the issuer, or other~~  
 1194 ~~compensation received.~~

1195 ~~(b) Disclose any material change to information contained~~  
 1196 ~~in the disclosure statements which was not disclosed in a~~  
 1197 ~~previous report.~~

1198 ~~(11)-(12)-(a)~~ A notice-filing under this section must ~~shall~~  
 1199 be summarily suspended by the office if:

1200 (a) The payment for the filing is dishonored by the

1201 financial institution upon which the funds are drawn. For  
 1202 purposes of s. 120.60(6), failure to pay the required notice  
 1203 filing fee constitutes an immediate and serious danger to the  
 1204 public health, safety, and welfare. The office shall enter a  
 1205 final order revoking a notice-filing in which the payment for  
 1206 the filing is dishonored by the financial institution upon which  
 1207 the funds are drawn; or-

1208 (b) ~~A notice-filing under this section shall be summarily~~  
 1209 ~~suspended by the office if~~ The issuer made a material false  
 1210 statement in the issuer's notice-filing. The summary suspension  
 1211 remains ~~shall remain~~ in effect until a final order is entered by  
 1212 the office. For purposes of s. 120.60(6), a material false  
 1213 statement made in the issuer's notice-filing constitutes an  
 1214 immediate and serious danger to the public health, safety, and  
 1215 welfare. If an issuer made a material false statement in the  
 1216 issuer's notice-filing, the office must ~~shall~~ enter a final  
 1217 order revoking the notice-filing, issue a fine as prescribed by  
 1218 s. 517.191(9) ~~s. 517.221(3)~~, and issue permanent bars under s.  
 1219 517.191(10) ~~s. 517.221(4)~~ to the issuer and all owners,  
 1220 officers, directors, general partners, and control persons, or  
 1221 any person occupying a similar status or performing a similar  
 1222 function of the issuer, including title; status as a partner,  
 1223 trustee, sole proprietor, or similar role; and ownership  
 1224 percentage.

1225 (12)-(13) If the issuer employs the services of an

1226 intermediary, the ~~An~~ intermediary must:

1227 (a) Take measures, as established by commission rule, to  
 1228 reduce the risk of fraud with respect to the ~~transactions,~~  
 1229 ~~including verifying that the issuer is in compliance with the~~  
 1230 ~~requirements of this section and, if necessary, denying an~~  
 1231 ~~issuer access to its platform if the intermediary believes it is~~  
 1232 ~~unable to adequately assess the risk of fraud of the issuer or~~  
 1233 ~~its potential~~ offering.

1234 (b) Provide ~~basic~~ information on its website regarding the  
 1235 high risk of investment in and limitation on the resale of  
 1236 exempt securities and the potential for loss of an entire  
 1237 investment. The ~~basic~~ information must include, but need not be  
 1238 limited to, all of the following:

1239 1. A description of the financial institution into which  
 1240 investor funds will be deposited ~~escrow agreement that the~~  
 1241 ~~issuer has executed~~ and the conditions for the use ~~release~~ of  
 1242 such funds by ~~to~~ the issuer ~~in accordance with the agreement and~~  
 1243 ~~subsection (4).~~

1244 2. A description of whether financial information provided  
 1245 by the issuer has been audited by an independent certified  
 1246 public accountant, as defined in s. 473.302.

1247 (c) Obtain from each prospective investor a zip code or  
 1248 residence address, a copy of a driver license, and any other  
 1249 proof of residency in order for the issuer or intermediary to  
 1250 reasonably believe that the potential investor is a resident of

1251 this state. The commission may adopt rules authorizing  
 1252 additional forms of identification and prescribing the process  
 1253 for verifying any identification presented by the prospective  
 1254 investor.

1255 (d) Obtain information sufficient for the issuer or  
 1256 intermediary to reasonably believe that a particular prospective  
 1257 investor is an accredited investor

1258 ~~(c) Obtain a zip code or residence address from each~~  
 1259 ~~potential investor who seeks to view information regarding~~  
 1260 ~~specific investment opportunities, in order to confirm that the~~  
 1261 ~~potential investor is a resident of the state.~~

1262 ~~(d) Obtain and verify a valid Florida driver license~~  
 1263 ~~number or Florida identification card number from each investor~~  
 1264 ~~before purchase of a security to confirm that the investor is a~~  
 1265 ~~resident of the state. The commission may adopt rules~~  
 1266 ~~authorizing additional forms of identification and prescribing~~  
 1267 ~~the process for verifying any identification presented by the~~  
 1268 ~~investor.~~

1269 ~~(e) Obtain an affidavit from each investor stating that~~  
 1270 ~~the investment being made by the investor is consistent with the~~  
 1271 ~~income requirements of subsection (10).~~

1272 ~~(f) Direct the release of investor funds in escrow in~~  
 1273 ~~accordance with subsection (4).~~

1274 ~~(g) Direct investors to transmit funds directly to the~~  
 1275 ~~financial institution designated in the escrow agreement to hold~~

1276 ~~the funds for the benefit of the investor.~~

1277 (e)~~(h)~~ Provide a monthly update for each offering, after  
1278 the first full month after the date of the offering. The update  
1279 must be accessible on the intermediary's website and must  
1280 display the date and amount of each sale of securities, and each  
1281 cancellation of commitment to invest, in the previous calendar  
1282 month.

1283 ~~(i) Require each investor to certify in writing, including~~  
1284 ~~as part of such certification his or her signature and his or~~  
1285 ~~her initials next to each paragraph of the certification, as~~  
1286 ~~follows:~~

1287 ~~I understand and acknowledge that:~~

1288 ~~I am investing in a high-risk, speculative business~~  
1289 ~~venture. I may lose all of my investment, and I can afford the~~  
1290 ~~loss of my investment.~~

1291 ~~This offering has not been reviewed or approved by any~~  
1292 ~~state or federal securities commission or other regulatory~~  
1293 ~~authority and no regulatory authority has confirmed the accuracy~~  
1294 ~~or determined the adequacy of any disclosure made to me relating~~  
1295 ~~to this offering.~~

1296 ~~The securities I am acquiring in this offering are illiquid~~  
1297 ~~and are subject to possible dilution. There is no ready market~~  
1298 ~~for the sale of the securities. It may be difficult or~~  
1299 ~~impossible for me to sell or otherwise dispose of the~~  
1300 ~~securities, and I may be required to hold the securities~~



1301 ~~indefinitely.~~

1302 ~~I may be subject to tax on my share of the taxable income~~  
 1303 ~~and losses of the issuer, whether or not I have sold or~~  
 1304 ~~otherwise disposed of my investment or received any dividends or~~  
 1305 ~~other distributions from the issuer.~~

1306 ~~By entering into this transaction with the issuer, I am~~  
 1307 ~~affirmatively representing myself as being a Florida resident at~~  
 1308 ~~the time this contract is formed, and if this representation is~~  
 1309 ~~subsequently shown to be false, the contract is void.~~

1310 ~~If I resell any of the securities I am acquiring in this~~  
 1311 ~~offering to a person that is not a Florida resident within 9~~  
 1312 ~~months after the closing of the offering, my contract with the~~  
 1313 ~~issuer for the purchase of these securities is void.~~

1314 ~~(j) Require each investor to answer questions~~  
 1315 ~~demonstrating an understanding of the level of risk generally~~  
 1316 ~~applicable to investments in startups, emerging businesses, and~~  
 1317 ~~small issuers, and an understanding of the risk of illiquidity.~~

1318 ~~(f)-(k)~~ Take reasonable steps to protect personal  
 1319 information collected from investors, as required by s. 501.171.

1320 ~~(g)-(l)~~ Prohibit its directors, and officers, managers,  
 1321 managing members, general partners, employees, and agents from  
 1322 having any financial interest in the issuer using its services.

1323 ~~(m) Implement written policies and procedures that are~~  
 1324 ~~reasonably designed to achieve compliance with federal and state~~  
 1325 ~~securities laws; comply with the anti-money laundering~~

1326 ~~requirements of 31 C.F.R. chapter X applicable to registered~~  
 1327 ~~brokers; and comply with the privacy requirements of 17 C.F.R.~~  
 1328 ~~part 248 relating to brokers.~~

1329 (13) ~~(14)~~ An intermediary not registered as a dealer under  
 1330 s. 517.12(5) may not:

1331 (a) Offer investment advice or recommendations. A refusal  
 1332 by an intermediary to post an offering that it deems not  
 1333 credible or that represents a potential for fraud may not be  
 1334 construed as an offer of investment advice or recommendation.

1335 (b) Solicit purchases, sales, or offers to buy securities  
 1336 offered or displayed on its website.

1337 (c) Compensate employees, agents, or other persons for the  
 1338 solicitation of, or based on the sale of, securities offered or  
 1339 displayed on its website.

1340 (d) Hold, manage, possess, or otherwise handle investor  
 1341 funds or securities.

1342 (e) Compensate promoters, finders, or lead generators for  
 1343 providing the intermediary with the personal identifying  
 1344 information of any prospective ~~potential~~ investor.

1345 (f) Engage in any other activities set forth by commission  
 1346 rule.

1347 (14) If the issuer does not employ a dealer or an  
 1348 intermediary for an offering pursuant to the exemption created  
 1349 under this section, the issuer must fulfill each of the  
 1350 obligations specified in paragraphs (12)(c)-(f).

1351           (15) Any sale made pursuant to the exemption created under  
 1352 this section is voidable by the purchaser within 3 days after  
 1353 the first tender of consideration is made by such purchaser to  
 1354 the issuer by notifying the issuer that the purchaser expressly  
 1355 voids the purchase. The purchaser's notice to the issuer must be  
 1356 sent by e-mail to the issuer's e-mail address set forth in the  
 1357 disclosure statement that is provided to the purchaser or  
 1358 purchaser's representative or by certified mail or overnight  
 1359 delivery service with proof of delivery to the mailing address  
 1360 set forth in the disclosure statement ~~All funds received from~~  
 1361 ~~investors must be directed to the financial institution~~  
 1362 ~~designated in the escrow agreement to hold the funds and must be~~  
 1363 ~~used in accordance with representations made to investors by the~~  
 1364 ~~intermediary. If an investor cancels a commitment to invest, the~~  
 1365 ~~intermediary must direct the financial institution designated to~~  
 1366 ~~hold the funds to promptly refund the funds of the investor.~~

1367           Section 5. Section 517.0612, Florida Statutes, is created  
 1368 to read:

1369           517.0612 Florida Invest Local Exemption.-

1370           (1) This section may be cited as the "Florida Invest Local  
 1371 Exemption."

1372           (2) The registration provisions of s. 517.07 do not apply  
 1373 to a securities transaction conducted in accordance with this  
 1374 section; however, such transaction is subject to s. 517.301.

1375           (3) The offer or sale of securities under this section

1376 must meet the requirements of the federal exemption for  
 1377 intrastate offerings in s. 3(a)(11) of the Securities Act of  
 1378 1933, Securities and Exchange Commission Rule 147, or Securities  
 1379 and Exchange Commission Rule 147A, as amended.

1380 (4) The issuer must be a for-profit business entity  
 1381 registered with the Department of State which has its principal  
 1382 place of business in this state. The issuer may not be, before  
 1383 or as a result of the offering:

1384 (a) An investment company as defined in the Investment  
 1385 Company Act of 1940, as amended;

1386 (b) Subject to the reporting requirements of the  
 1387 Securities and Exchange Act of 1934, as amended;

1388 (c) A business entity that has an undefined business  
 1389 operation, lacks a business plan, lacks a stated investment goal  
 1390 for the funds being raised, or plans to engage in a merger or  
 1391 acquisition with an unspecified business entity; or

1392 (d) Subject to a disqualification as provided in s.  
 1393 517.0616.

1394 (5) The sum of all cash and other consideration received  
 1395 from all sales of the securities in reliance upon the exemption  
 1396 under this section may not exceed \$500,000, less the aggregate  
 1397 amount received for all sales of securities by the issuer within  
 1398 the 12 months before the first offer or sale made in reliance on  
 1399 this exemption.

1400 (6) (a) The issuer may not accept more than \$10,000 from

1401 any single purchaser unless any of the following apply:

1402 1. The issuer reasonably believes that the purchaser is an

1403 accredited investor.

1404 2. The purchaser is an officer, director, partner, or

1405 trustee, or an individual occupying a similar status or

1406 performing similar functions, of the issuer.

1407 3. The purchaser is an owner of 10 percent or more of the

1408 issuer's outstanding equity.

1409 (b) For purposes of this subsection, the following persons

1410 must be treated collectively as a single purchaser:

1411 1. Any spouse or child of the purchaser or any related

1412 family member who has the same primary residence as the

1413 purchaser.

1414 2. Any business entity of which the purchaser and any

1415 person related to the purchaser as provided in subparagraph 1.

1416 collectively own more than 50 percent of the equity interest.

1417 (7) The issuer may engage in general advertising and

1418 general solicitation of the offering. Any general advertising or

1419 other general announcement must state that the offer is limited

1420 and open only to residents of this state. Any oral or written

1421 statements in advertising or solicitation of the offer which

1422 contain a material misstatement, or which fail to disclose

1423 material information, are subject to enforcement under this

1424 chapter.

1425 (8) A purchaser must receive, at least 3 business days

1426 before any binding commitment to purchase or consideration paid,  
1427 a disclosure statement that provides material information  
1428 regarding the issuer, including, but not limited to, all of the  
1429 following information:

1430 (a) The issuer's name, type of entity, and contact  
1431 information.

1432 (b) The name and contact information of each director,  
1433 officer, or other manager of the issuer.

1434 (c) A description of the issuer's business.

1435 (d) A description of the security being offered.

1436 (e) The total amount of the offering.

1437 (f) The intended use of proceeds from the sale of the  
1438 securities.

1439 (g) The target offering amount.

1440 (h) A statement that if the target offering amount is not  
1441 obtained in cash or in the value of other tangible consideration  
1442 received on a date that is no more than 180 days after the  
1443 commencement of the offering, the offering will be terminated,  
1444 and any funds or other consideration received from purchasers  
1445 must be promptly returned.

1446 (i) A statement that the security being offered is not  
1447 registered under federal or state securities laws and that the  
1448 securities are subject to the limitation on resale contained in  
1449 Securities and Exchange Commission Rule 147 or Rule 147A.

1450 (j) The names and addresses of all persons who will be

1451 involved in the offer and sale of securities on behalf of the  
 1452 issuer.

1453 (k) The name of the bank or other depository institution  
 1454 into which investor funds will be deposited.

1455 (l) The following statement in boldface, conspicuous type:

1456  
 1457 Neither the Securities and Exchange Commission nor any  
 1458 state securities commission has approved or  
 1459 disapproved these securities or determined that this  
 1460 disclosure statement is truthful or complete. Any  
 1461 representation to the contrary is a criminal offense.

1462  
 1463 (9) All funds received from investors must be deposited  
 1464 into a bank or depository institution authorized to do business  
 1465 in this state. The issuer may not withdraw any amount of the  
 1466 offering proceeds unless the target offering amount has been  
 1467 received.

1468 (10) The issuer must file a notice of the offering with  
 1469 the office, in writing or in electronic form, in a format  
 1470 prescribed by commission rule, no less than 5 business days  
 1471 before the offering commences, along with the disclosure  
 1472 statement described in subsection (8). If there are any material  
 1473 changes to the information previously submitted, the issuer,  
 1474 within 3 business days after such material change, must file an  
 1475 amended notice.

1476 (11) An individual, entity, or entity employee who acts as  
 1477 an agent for the issuer in the offer or sale of securities and  
 1478 is not registered as a dealer under this chapter may not do  
 1479 either of the following:

1480 (a) Receive compensation based upon the solicitation of  
 1481 purchases, sales, or offers to purchase the securities.

1482 (b) Take custody of investor funds or securities.

1483 (12) Any sale made pursuant to the exemption created under  
 1484 this section is voidable by the purchaser within 3 days after  
 1485 the first tender of consideration is made by such purchaser to  
 1486 the issuer by notifying the issuer that the purchaser expressly  
 1487 voids the purchase. The purchaser's notice to the issuer must be  
 1488 sent by e-mail to the issuer's e-mail address set forth in the  
 1489 disclosure statement that is provided to a purchaser or the  
 1490 purchaser's representative or by hand delivery, courier service,  
 1491 or other method by which written proof of delivery to the issuer  
 1492 of the purchaser's election to rescind the purchase is  
 1493 evidenced.

1494 Section 6. Section 517.0613, Florida Statutes, is created  
 1495 to read:

1496 517.0613 Failure to comply with a securities registration  
 1497 exemption.—

1498 (1) Failure to meet the requirements for any exemption  
 1499 from securities registration does not preclude the issuer from  
 1500 claiming the availability of any other applicable state or



1501 federal exemption.

1502 (2) The exemptions created under ss. 517.061, 517.0611,  
1503 and 517.0612 are not available to an issuer for any transaction  
1504 or series of transactions that, although in technical compliance  
1505 with the applicable provisions, is part of a plan or scheme to  
1506 evade the registration provisions of s. 517.07, and registration  
1507 under s. 517.07 is required in connection with such  
1508 transactions.

1509 Section 7. Section 517.0614, Florida Statutes, is created  
1510 to read:

1511 517.0614 Integration of offerings.—

1512 (1) If the safe harbors in subsection (2) do not apply, in  
1513 determining whether two or more offerings are to be treated as  
1514 one for the purpose of registration or qualifying for an  
1515 exemption from registration under this chapter, offers and sales  
1516 may not be integrated if, based on the particular facts and  
1517 circumstances, the issuer can establish either that each  
1518 offering complies with the registration requirements of this  
1519 chapter, or that an exemption from registration is available for  
1520 the particular offering, provided that any transaction or series  
1521 of transactions that, although in technical compliance with this  
1522 chapter, is part of a plan or scheme to evade the registration  
1523 requirements of this chapter will not have the effect of  
1524 avoiding integration. In making this determination:

1525 (a) For an exempt offering prohibiting general

1526 solicitation, the issuer must have a reasonable belief, based on  
 1527 the facts and circumstances, with respect to each purchaser in  
 1528 the exempt offering prohibiting general solicitation, that the  
 1529 issuer or any person acting on the issuer's behalf:

1530 1. Did not solicit such purchaser through the use of  
 1531 general solicitation; or

1532 2. Established a substantive relationship with such  
 1533 purchaser before the commencement of the exempt offering  
 1534 prohibiting general solicitation, provided that a purchaser  
 1535 previously solicited through the use of general solicitation is  
 1536 not deemed to have been solicited through the use of general  
 1537 solicitation in the current offering if, during the 45 calendar  
 1538 days following such previous general solicitation:

1539 a. No offer or sale of the same or similar class of  
 1540 securities has been made by or on behalf of the issuer,  
 1541 including to such purchaser; and

1542 b. The issuer or any person acting on the issuer's behalf  
 1543 has not solicited such purchaser through the use of general  
 1544 solicitation for any other security.

1545 (b) For two or more concurrent exempt offerings permitting  
 1546 general solicitation, in addition to satisfying the requirements  
 1547 of the particular exemption relied on, general solicitation  
 1548 offering materials for one offering that includes information  
 1549 about the material terms of a concurrent offering under another  
 1550 exemption may constitute an offer of securities in such other

1551 offering, and therefore the offer must comply with all the  
1552 requirements for, and restrictions on, offers under the  
1553 exemption being relied on for such other offering, including any  
1554 legend requirements and communications restrictions.

1555 (2) The integration analysis required by subsection (1) is  
1556 not required if any of the following nonexclusive safe harbors  
1557 apply:

1558 (a) An offering commenced more than 30 calendar days  
1559 before the commencement of any other offering, or more than 30  
1560 calendar days after the termination or completion of any other  
1561 offering, may not be integrated with such other offering,  
1562 provided that for an exempt offering for which general  
1563 solicitation is not permitted which follows by 30 calendar days  
1564 or more an offering that allows general solicitation, paragraph  
1565 (1)(a) applies.

1566 (b) Offers and sales made in compliance with any of the  
1567 following provisions are not subject to integration with other  
1568 offerings:

1569 1. Section 517.051 or s. 517.061, except s. 517.061(9),  
1570 (10), or (11).

1571 2. Section 517.0611 or s. 517.0612.

1572 Section 8. Section 517.0615, Florida Statutes, is created  
1573 to read:

1574 517.0615 Solicitations of interest.—

1575 (1) A communication may not be deemed to constitute

1576 general solicitation or general advertising if the communication  
 1577 is made in connection with a seminar or meeting in which more  
 1578 than one issuer participates and which is sponsored by a  
 1579 college, a university, or another institution of higher  
 1580 education; a state or local government or an instrumentality  
 1581 thereof; a nonprofit chamber of commerce or other nonprofit  
 1582 organization; or an angel investor group, incubator, or  
 1583 accelerator, if all of the following apply:

1584 (a) Advertising for the seminar or meeting does not  
 1585 reference a specific offering of securities by the issuer.

1586 (b) The sponsor of the seminar or meeting does not do any  
 1587 of the following:

1588 1. Make investment recommendations or provide investment  
 1589 advice to attendees of the seminar or meeting.

1590 2. Engage in any investment negotiations between the  
 1591 issuer and investors attending the seminar or meeting.

1592 3. Charge attendees of the seminar or meeting any fees,  
 1593 other than reasonable administrative fees.

1594 4. Receive any compensation for making introductions  
 1595 between seminar or meeting attendees and issuers or for  
 1596 investment negotiations between such parties.

1597 5. Receive any compensation with respect to the seminar or  
 1598 meeting, which compensation would require registration or  
 1599 notice-filing under this chapter, the Securities Exchange Act of  
 1600 1934, 15 U.S.C. ss. 78a et seq., as amended, or the Investment

1601 Advisers Act of 1940, 15 U.S.C. s. 80b-1 et seq., as amended.  
 1602 The sponsorship of or participation in the seminar or meeting  
 1603 does not by itself require registration or notice-filing under  
 1604 this chapter.

1605 (c) The type of information regarding an offering of  
 1606 securities by the issuer which is communicated or distributed by  
 1607 or on behalf of the issuer in connection with the seminar or  
 1608 meeting is limited to a notification that the issuer is in the  
 1609 process of offering or planning to offer securities, the type  
 1610 and amount of securities being offered, the intended use of  
 1611 proceeds of the offering, and the unsubscribed amount in an  
 1612 offering.

1613 (d) If the event allows attendees to participate  
 1614 virtually, rather than in person, online participation in the  
 1615 event is limited to:

1616 1. Individuals that are members of, or otherwise  
 1617 associated with, the sponsor organization;

1618 2. Individuals that the sponsor reasonably believes are  
 1619 accredited investors; or

1620 3. Individuals that have been invited to the event by the  
 1621 sponsor based on industry or investment-related experience  
 1622 reasonably selected by the sponsor in good faith and disclosed  
 1623 in the public communications about the event.

1624 (2) Before any offers or sales are made in connection with  
 1625 an offering, communications by an issuer or any person

1626 authorized to act on behalf of the issuer are not deemed to  
1627 constitute general solicitation or general advertising if the  
1628 communication is solely for the purpose of determining whether  
1629 there is any interest in a contemplated securities offering.  
1630 Requirements imposed under this chapter on written or oral  
1631 statements made in the course of such communication may be  
1632 enforced as provided in this chapter. The solicitation or  
1633 acceptance of money or other consideration or of any commitment,  
1634 binding or otherwise, from any person is prohibited.

1635 (a) The communication must state all of the following:

1636 1. Money or other consideration is not being solicited  
1637 and, if sent in response, will not be accepted.

1638 2. Any offer to buy the securities will not be accepted,  
1639 and no part of the purchase price will be accepted.

1640 3. A person's indication of interest does not involve  
1641 obligation or commitment of any kind.

1642 (b) Any written communication under this subsection may  
1643 include a means by which a person may indicate to the issuer  
1644 that the person is interested in a potential offering. The  
1645 issuer may require the name, address, telephone number, or e-  
1646 mail address in any response form included in the written  
1647 communication under this paragraph.

1648 (c) A communication in accordance with this subsection is  
1649 not subject to s. 501.059, regarding telephone solicitations.

1650 Section 9. Section 517.0616, Florida Statutes, is created

1651 to read:

1652 517.0616 Disqualification.—A registration exemption under  
 1653 s. 517.061(9), (10), and (11), s. 517.0611, or s. 517.0612 is  
 1654 not available to an issuer that would be disqualified under  
 1655 Securities and Exchange Commission Rule 506(d), 17 C.F.R. s.  
 1656 230.506(d), as amended, at the time the issuer makes an offer  
 1657 for the sale of a security.

1658 Section 10. Present subsections (4) through (8) of section  
 1659 517.081, Florida Statutes, are redesignated as subsections (6)  
 1660 through (10), respectively, new subsections (4) and (5) are  
 1661 added to that section, and subsection (2), paragraph (g) of  
 1662 subsection (3), and present subsection (7) of that section are  
 1663 amended, to read:

1664 517.081 Registration procedure.—

1665 (2) The office shall receive and act upon applications for  
 1666 the registration of ~~to have securities registered, and the~~  
 1667 ~~commission may prescribe forms on which it may require such~~  
 1668 ~~applications to be submitted.~~ Applications must ~~shall~~ be duly  
 1669 signed by the applicant, sworn to by any person having knowledge  
 1670 of the facts, and filed with the office. ~~The commission may~~  
 1671 ~~establish, by rule, procedures for depositing fees and filing~~  
 1672 ~~documents by electronic means provided such procedures provide~~  
 1673 ~~the office with the information and data required by this~~  
 1674 ~~section.~~ An application may be made either by the issuer of the  
 1675 securities for which registration is applied or by any

1676 registered dealer desiring to sell such securities ~~the same~~  
 1677 within the state.

1678 (3) The office may require the applicant to submit to the  
 1679 office the following information concerning the issuer and such  
 1680 other relevant information as the office may in its judgment  
 1681 deem necessary to enable it to ascertain whether such securities  
 1682 shall be registered pursuant to the provisions of this section:

1683 (g)~~1.~~ A specimen copy of the securities certificate, if  
 1684 applicable, and a copy of any circular, prospectus,  
 1685 advertisement, or other description of such securities.

1686 ~~2. The commission shall adopt a form for a simplified~~  
 1687 ~~offering circular to register, under this section, securities~~  
 1688 ~~that are sold in offerings in which the aggregate offering price~~  
 1689 ~~in any consecutive 12-month period does not exceed the amount~~  
 1690 ~~provided in s. 3(b) of the Securities Act of 1933, as amended.~~  
 1691 ~~The following issuers shall not be eligible to submit a~~  
 1692 ~~simplified offering circular adopted pursuant to this~~  
 1693 ~~subparagraph:~~

1694 ~~a. An issuer seeking to register securities for resale by~~  
 1695 ~~persons other than the issuer.~~

1696 ~~b. An issuer that is subject to any of the~~  
 1697 ~~disqualifications described in 17 C.F.R. s. 230.262, adopted~~  
 1698 ~~pursuant to the Securities Act of 1933, as amended, or that has~~  
 1699 ~~been or is engaged or is about to engage in an activity that~~  
 1700 ~~would be grounds for denial, revocation, or suspension under s.~~



1701 ~~517.111. For purposes of this subparagraph, an issuer includes~~  
 1702 ~~an issuer's director, officer, general partner, manager or~~  
 1703 ~~managing member, trustee, or equity owner who owns at least 10~~  
 1704 ~~percent of the ownership interests of the issuer, promoter, or~~  
 1705 ~~selling agent of the securities to be offered or any officer,~~  
 1706 ~~director, partner, or manager or managing member of such selling~~  
 1707 ~~agent.~~

1708 ~~e. An issuer that is a development-stage company that~~  
 1709 ~~either has no specific business plan or purpose or has indicated~~  
 1710 ~~that its business plan is to merge with an unidentified company~~  
 1711 ~~or companies.~~

1712 ~~d. An issuer of offerings in which the specific business~~  
 1713 ~~or properties cannot be described.~~

1714 ~~e. Any issuer the office determines is ineligible because~~  
 1715 ~~the form does not provide full and fair disclosure of material~~  
 1716 ~~information for the type of offering to be registered by the~~  
 1717 ~~issuer.~~

1718 ~~f. Any issuer that has failed to provide the office the~~  
 1719 ~~reports required for a previous offering registered pursuant to~~  
 1720 ~~this subparagraph.~~

1721  
 1722 ~~As a condition precedent to qualifying for use of the simplified~~  
 1723 ~~offering circular, an issuer shall agree to provide the office~~  
 1724 ~~with an annual financial report containing a balance sheet as of~~  
 1725 ~~the end of the issuer's fiscal year and a statement of income~~

1726 ~~for such year, prepared in accordance with United States~~  
1727 ~~generally accepted accounting principles and accompanied by an~~  
1728 ~~independent accountant's report. If the issuer has more than 100~~  
1729 ~~security holders at the end of a fiscal year, the financial~~  
1730 ~~statements must be audited. Annual financial reports must be~~  
1731 ~~filed with the office within 90 days after the close of the~~  
1732 ~~issuer's fiscal year for each of the first 5 years following the~~  
1733 ~~effective date of the registration.~~

1734 (4) The commission may, by rule:

1735 (a) Establish criteria relating to the issuance of equity  
1736 securities, debt securities, insurance company securities, real  
1737 estate investment trusts, oil and gas investments, and other  
1738 investments. In establishing these criteria, the commission may  
1739 consider the rules and regulations of the Securities and  
1740 Exchange Commission and statements of policy by the North  
1741 American Securities Administrators Association, Inc., relating  
1742 to the registration of securities offerings. The criteria must  
1743 include all of the following:

1744 1. The promoter's equity investment ratio.

1745 2. The financial condition of the issuer.

1746 3. The voting rights of shareholders.

1747 4. The grant of options or warrants to underwriters and  
1748 others.

1749 5. Loans and other transactions with affiliates of the  
1750 issuer.

1751           6. The use, escrow, or refund of proceeds of the offering.  
 1752           (b) Prescribe forms requiring applications for the  
 1753 registration of securities to be submitted to the office,  
 1754 including a simplified offering circular to register, under this  
 1755 section, securities that are sold in offerings in which the  
 1756 aggregate offering price in any consecutive 12-month period does  
 1757 not exceed the amount provided in s. 3(b) of the Securities Act  
 1758 of 1933, as amended.

1759           (c) Establish procedures for depositing fees and filing  
 1760 documents by electronic means, provided that such procedures  
 1761 provide the office with the information and data required by  
 1762 this section.

1763           (d) Establish requirements and standards for the filing,  
 1764 content, and circulation of a preliminary, final, or amended  
 1765 prospectus, advertisements, and other sales literature. In  
 1766 establishing such requirements and standards, the commission  
 1767 shall consider the rules and regulations of the Securities and  
 1768 Exchange Commission relating to requirements for preliminary,  
 1769 final, or amended or supplemented prospectuses and the rules of  
 1770 the Financial Industry Regulatory Authority relating to  
 1771 advertisements and sales literature.

1772           (5) All of the following issuers are not eligible to  
 1773 submit a simplified offering circular:

1774           (a) An issuer that is subject to any of the  
 1775 disqualifications described in Securities and Exchange

1776 Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that  
 1777 has been or is engaged or is about to engage in an activity that  
 1778 would be grounds for denial, revocation, or suspension under s.  
 1779 517.111. For purposes of this paragraph, an issuer includes an  
 1780 issuer's director, officer, general partner, manager or managing  
 1781 member, trustee, or a person owning at least 10 percent of the  
 1782 ownership interests of the issuer; a promoter or selling agent  
 1783 of the securities to be offered; or any officer, director,  
 1784 partner, or manager or managing member of such selling agent.

1785 (b) An issuer that is a development-stage company that  
 1786 either has no specific business plan or purpose or has indicated  
 1787 that its business plan is to merge with an unidentified business  
 1788 entity or entities.

1789 (c) An issuer of offerings in which the specific business  
 1790 or properties cannot be described.

1791 (d) An issuer that the office determines is ineligible  
 1792 because the simplified circular does not provide full and fair  
 1793 disclosure of material information for the type of offering to  
 1794 be registered by the issuer.

1795 (9)(a)-(7) The office shall record the registration of a  
 1796 security in the register of securities if, upon examination of  
 1797 an any application, it finds that all of the following  
 1798 requirements are met: the office

- 1799 1. The application is complete.
- 1800 2. The fee imposed in subsection (8) has been paid.

1801           3. The sale of the security would not be fraudulent and  
 1802 would not work or tend to work a fraud upon the purchaser.

1803           4. The terms of the sale of such securities would be fair,  
 1804 just, and equitable.

1805           5. The enterprise or business of the issuer is not based  
 1806 upon unsound business principles.

1807           (b) Upon registration, the security may be sold by the  
 1808 issuer or any registered dealer, subject, however, to the  
 1809 further order of the office shall find that the sale of the  
 1810 security referred to therein would not be fraudulent and would  
 1811 not work or tend to work a fraud upon the purchaser, that the  
 1812 terms of the sale of such securities would be fair, just, and  
 1813 equitable, and that the enterprise or business of the issuer is  
 1814 not based upon unsound business principles, it shall record the  
 1815 registration of such security in the register of securities; and  
 1816 thereupon such security so registered may be sold by any  
 1817 registered dealer, subject, however, to the further order of the  
 1818 office. In order to determine if an offering is fair, just, and  
 1819 equitable, the commission may by rule establish requirements and  
 1820 standards for the filing, content, and circulation of any  
 1821 preliminary, final, or amended prospectus and other sales  
 1822 literature and may by rule establish merit qualification  
 1823 criteria relating to the issuance of equity securities, debt  
 1824 securities, insurance company securities, real estate investment  
 1825 trusts, and other traditional and nontraditional investments,

1826 ~~including, but not limited to, oil and gas investments. The~~  
 1827 ~~criteria may include such elements as the promoter's equity~~  
 1828 ~~investment ratio, the financial condition of the issuer, the~~  
 1829 ~~voting rights of shareholders, the grant of options or warrants~~  
 1830 ~~to underwriters and others, loans and other affiliated~~  
 1831 ~~transaction, the use or refund of proceeds of the offering, and~~  
 1832 ~~such other relevant criteria as the office in its judgment may~~  
 1833 ~~deem necessary to such determination.~~

1834 Section 11. Subsection (2) of section 517.101, Florida  
 1835 Statutes, is amended to read:

1836 517.101 Consent to service.—

1837 (2) Any such action must ~~shall~~ be brought either in the  
 1838 county of the plaintiff's residence or in the county in which  
 1839 the office has its official headquarters. The written consent  
 1840 must ~~shall~~ be authenticated by the seal of the ~~said~~ issuer, if  
 1841 it has a seal, and by the acknowledged signature of a director,  
 1842 manager, managing member, general partner, trustee, or officer  
 1843 of the issuer ~~member of the copartnership or company, or by the~~  
 1844 ~~acknowledged signature of any officer of the incorporated or~~  
 1845 ~~unincorporated association, if it be an incorporated or~~  
 1846 ~~unincorporated association, duly authorized by resolution of the~~  
 1847 ~~board of directors, trustees, or managers of the corporation or~~  
 1848 ~~association, and must ~~shall~~ in such case be accompanied by a~~  
 1849 ~~duly certified copy of the resolution of the issuer's board of~~  
 1850 ~~directors, trustees, managers, managing members, or general~~

1851 ~~partners or managers of the corporation or association,~~  
 1852 authorizing the signer to execute the consent ~~officers to~~  
 1853 ~~execute the same.~~ In case any process or pleadings mentioned in  
 1854 this chapter are served upon the office, service must ~~it shall~~  
 1855 be by duplicate copies, one of which must ~~shall~~ be filed in the  
 1856 office and the other ~~another~~ immediately forwarded by the office  
 1857 by registered mail to the principal office of the issuer against  
 1858 which the ~~said~~ process or pleadings are directed.

1859 Section 12. Section 517.131, Florida Statutes, is amended  
 1860 to read:

1861 517.131 Securities Guaranty Fund.—

1862 (1) As used in this section, the term "final judgment"  
 1863 includes an arbitration award confirmed by a court of competent  
 1864 jurisdiction.

1865 (2)(a) The Chief Financial Officer shall establish a  
 1866 Securities Guaranty Fund to provide monetary relief to victims  
 1867 of securities violations under this chapter who are entitled to  
 1868 monetary damages or restitution and cannot recover the full  
 1869 amount of such monetary damages or restitution from the  
 1870 wrongdoer. An amount not exceeding 20 percent of all revenues  
 1871 received as assessment fees pursuant to s. 517.12(9) and (10)  
 1872 for dealers and investment advisers or s. 517.1201 for federal  
 1873 covered advisers and an amount not exceeding 10 percent of all  
 1874 revenues received as assessment fees pursuant to s. 517.12(9)  
 1875 and (10) for associated persons must ~~shall~~ be part of the

1876 regular registration ~~license~~ fee and must ~~shall~~ be transferred  
 1877 to or deposited in the Securities Guaranty Fund.

1878 (b) If the balance in the Securities Guaranty Fund at any  
 1879 time exceeds \$1.5 million, transfer of assessment fees to the  
 1880 ~~this~~ fund must ~~shall~~ be discontinued at the end of that  
 1881 registration ~~license~~ year, and transfer of such assessment fees  
 1882 may ~~shall~~ not resume ~~be resumed~~ unless the fund balance is  
 1883 reduced below \$1 million by disbursement made in accordance with  
 1884 s. 517.141.

1885 ~~(2) The Securities Guaranty Fund shall be disbursed as~~  
 1886 ~~provided in s. 517.141 to a person who is adjudged by a court of~~  
 1887 ~~competent jurisdiction to have suffered monetary damages as a~~  
 1888 ~~result of any of the following acts committed by a dealer,~~  
 1889 ~~investment adviser, or associated person who was licensed under~~  
 1890 ~~this chapter at the time the act was committed:~~

1891 ~~(a) A violation of s. 517.07.~~

1892 ~~(b) A violation of s. 517.301.~~

1893 (3) A ~~Any~~ person is eligible for payment ~~to seek recovery~~  
 1894 from the Securities Guaranty Fund if:

1895 (a) The act for which recovery is sought occurred on or  
 1896 after October 1, 2024, and the person:

1897 1. Holds an unsatisfied final judgment in which a  
 1898 wrongdoer was found to have violated s. 517.07 or s. 517.301;

1899 2. Has applied any amount recovered from the judgment  
 1900 debtor or any other source to the damages awarded by the court



1901 or arbitrator; and

1902 3. Is a natural person who was a resident of this state,  
 1903 or is a business entity that was domiciled in this state, at the  
 1904 time of the violation of s. 517.07 or s. 517.301; or

1905 (b) The person is a receiver appointed pursuant to s.  
 1906 517.191(2) by a court of competent jurisdiction for a wrongdoer  
 1907 ordered to pay restitution under s. 517.191(3) as a result of a  
 1908 violation of s. 517.07 or s. 517.301 which has requested payment  
 1909 from the Securities Guaranty Fund on behalf of a person eligible  
 1910 for payment under paragraph (a)

1911 ~~(a) Such person has received final judgment in a court of~~  
 1912 ~~competent jurisdiction in any action wherein the cause of action~~  
 1913 ~~was based on a violation of those sections referred to in~~  
 1914 ~~subsection (2).~~

1915 ~~(b) Such person has made all reasonable searches and~~  
 1916 ~~inquiries to ascertain whether the judgment debtor possesses~~  
 1917 ~~real or personal property or other assets subject to being sold~~  
 1918 ~~or applied in satisfaction of the judgment, and by her or his~~  
 1919 ~~search the person has discovered no property or assets; or she~~  
 1920 ~~or he has discovered property and assets and has taken all~~  
 1921 ~~necessary action and proceedings for the application thereof to~~  
 1922 ~~the judgment, but the amount thereby realized was insufficient~~  
 1923 ~~to satisfy the judgment. To verify compliance with such~~  
 1924 ~~condition, the office may require such person to have a writ of~~  
 1925 ~~execution be issued upon such judgment, may require a showing~~

1926 ~~that no personal or real property of the judgment debtor liable~~  
 1927 ~~to be levied upon in complete satisfaction of the judgment can~~  
 1928 ~~be found, or may require an affidavit from the claimant setting~~  
 1929 ~~forth the reasonable searches and inquiries undertaken and the~~  
 1930 ~~result of those searches and inquiries.~~

1931 ~~(c) Such person has applied any amounts recovered from the~~  
 1932 ~~judgment debtor, or from any other source, to the damages~~  
 1933 ~~awarded by the court.~~

1934 ~~(d) The act for which recovery is sought occurred on or~~  
 1935 ~~after January 1, 1979.~~

1936 ~~(e) The office waives compliance with the requirements of~~  
 1937 ~~paragraph (a) or paragraph (b). The office may waive such~~  
 1938 ~~compliance if the dealer, investment adviser, or associated~~  
 1939 ~~person which is the subject of the claim filed with the office~~  
 1940 ~~is the subject of any proceeding in which a receiver has been~~  
 1941 ~~appointed by a court of competent jurisdiction. If the office~~  
 1942 ~~waives such compliance, the office may, upon petition by the~~  
 1943 ~~debtor or the court-appointed trustee, examiner, or receiver,~~  
 1944 ~~distribute funds from the Securities Guaranty Fund up to the~~  
 1945 ~~amount allowed under s. 517.141. Any waiver granted pursuant to~~  
 1946 ~~this section shall be considered a judgment for purposes of~~  
 1947 ~~complying with the requirements of this section and of s.~~  
 1948 ~~517.141.~~

1949 (4) A person who has done any of the following is not  
 1950 eligible for payment from the Securities Guaranty Fund:

1951           (a) Participated or assisted in a violation of this  
 1952 chapter.

1953           (b) Attempted to commit or committed a violation of this  
 1954 chapter.

1955           (c) Profited from a violation of this chapter.

1956           (5) An eligible person, or a receiver on behalf of the  
 1957 eligible person, seeking payment from the Securities Guaranty  
 1958 Fund must file with the office a written application on a form  
 1959 that the commission may prescribe by rule. The commission may  
 1960 adopt by rule procedures for filing documents by electronic  
 1961 means, provided that such procedures provide the office with the  
 1962 information and data required by this section. The application  
 1963 must be filed with the office within 1 year after the date of  
 1964 the final judgment, the date on which a restitution order has  
 1965 been ripe for execution, or the date of any appellate decision  
 1966 thereon, and, at minimum, must contain all of the following  
 1967 information:

1968           (a) The eligible person's and, if applicable, the  
 1969 receiver's full name, address, and contact information.

1970           (b) The person ordered to pay restitution.

1971           (c) If the eligible person is a business entity, the  
 1972 eligible person's type and place of organization and, as  
 1973 applicable, a copy, as amended, of its articles of  
 1974 incorporation, articles of organization, trust agreement, or  
 1975 partnership agreement.

1976        (d) Any final judgment and a copy thereof.

1977        (e) Any restitution order pursuant to s. 517.191(3), and a  
 1978 copy thereof.

1979        (f) An affidavit from the eligible person stating either  
 1980 one of the following:

1981            1. That the eligible person has made all reasonable  
 1982 searches and inquiries to ascertain whether the judgment debtor  
 1983 possesses real or personal property or other assets subject to  
 1984 being sold or applied in satisfaction of the final judgment and,  
 1985 by the eligible person's search, that the eligible person has  
 1986 not discovered any property or assets.

1987            2. That the eligible person has taken necessary action on  
 1988 the property and assets of the wrongdoers but the final judgment  
 1989 remains unsatisfied.

1990        (g) If the application is filed by the receiver, an  
 1991 affidavit from the receiver stating the amount of restitution  
 1992 owed to the eligible person on whose behalf the claim is filed;  
 1993 the amount of any money, property, or assets paid to the  
 1994 eligible person on whose behalf the claim is filed by the person  
 1995 over whom the receiver is appointed; and the amount of any  
 1996 unsatisfied portion of any eligible person's order of  
 1997 restitution.

1998        (h) The eligible person's residence or domicile at the  
 1999 time of the violation of s. 517.07 or s. 517.301 which resulted  
 2000 in the eligible person's monetary damages.

2001            (i) The amount of any unsatisfied portion of the eligible  
 2002 person's final judgment.

2003            (j) Whether an appeal or motion to vacate an arbitration  
 2004 award has been filed.

2005            (6) If the office finds that a person is eligible for  
 2006 payment from the Securities Guaranty Fund and if the person has  
 2007 complied with this section and the rules adopted under this  
 2008 section, the office must approve payment to such person from the  
 2009 fund. Within 90 days after the office's receipt of a complete  
 2010 application, each eligible person or receiver must be given  
 2011 written notice, personally or by mail, that the office intends  
 2012 to approve or deny, or has approved or denied, the application  
 2013 for payment from the Securities Guaranty Fund.

2014            (7) Upon receipt by the eligible person or receiver of  
 2015 notice of the office's decision that the eligible person's or  
 2016 receiver's application for payment from the Securities Guaranty  
 2017 Fund is approved, and before any disbursement, the eligible  
 2018 person shall assign to the office on a form prescribed by  
 2019 commission rule all right, title, and interest in the final  
 2020 judgment or order of restitution equal to the amount of such  
 2021 payment.

2022            (8) The office shall deem an application for payment from  
 2023 the Securities Guaranty Fund abandoned if the eligible person or  
 2024 receiver, or any person acting on behalf of the eligible person  
 2025 or receiver, fails to timely complete the application as

2026 prescribed by commission rule. The time period to complete an  
 2027 application must be tolled during the pendency of an appeal or  
 2028 motion to vacate an arbitration award.

2029 ~~(4) Any person who files an action that may result in the~~  
 2030 ~~disbursement of funds from the Securities Guaranty Fund pursuant~~  
 2031 ~~to the provisions of s. 517.141 shall give written notice by~~  
 2032 ~~certified mail to the office as soon as practicable after such~~  
 2033 ~~action has been filed. The failure to give such notice shall not~~  
 2034 ~~bar a payment from the Securities Guaranty Fund if all of the~~  
 2035 ~~conditions specified in subsection (3) are satisfied.~~

2036 ~~(5) The commission may adopt rules pursuant to ss.~~  
 2037 ~~120.536(1) and 120.54 specifying the procedures for complying~~  
 2038 ~~with subsections (2), (3), and (4), including rules for the form~~  
 2039 ~~of submission and guidelines for the sufficiency and content of~~  
 2040 ~~submissions of notices and claims.~~

2041 Section 13. Section 517.141, Florida Statutes, is amended  
 2042 to read:

2043 517.141 Payment from the fund.-

2044 (1) As used in this section, the term:

2045 (a) "Claimant" means a person determined eligible for  
 2046 payment under s. 517.131 that is approved by the office for  
 2047 payment from the Securities Guaranty Fund.

2048 (b) "Final judgment" includes an arbitration award  
 2049 confirmed by a court of competent jurisdiction.

2050 (c) "Specified adult" has the same meaning as in s.

2051 517.34(1).

2052 (2) A claimant is entitled to disbursement from the

2053 Securities Guaranty Fund in the amount equal to the lesser of:

2054 (a) The unsatisfied portion of the claimant's final

2055 judgment or final order of restitution, but only to the extent

2056 that the final judgment or final order of restitution reflects

2057 actual or compensatory damages, excluding postjudgment interest,

2058 costs, and attorney fees; or

2059 (b)1. The sum of \$15,000; or

2060 2. If the claimant is a specified adult or if a specified

2061 adult is a beneficial owner or beneficiary of the claimant, the

2062 sum of \$25,000 ~~Any person who meets all of the conditions~~

2063 ~~prescribed in s. 517.131 may apply to the office for payment to~~

2064 ~~be made to such person from the Securities Guaranty Fund in the~~

2065 ~~amount equal to the unsatisfied portion of such person's~~

2066 ~~judgment or \$10,000, whichever is less, but only to the extent~~

2067 ~~and amount reflected in the judgment as being actual or~~

2068 ~~compensatory damages, excluding postjudgment interest, costs,~~

2069 ~~and attorney's fees.~~

2070 (3) ~~(2)~~ Regardless of the number of claims or claimants

2071 involved, payments for claims are ~~shall be~~ limited in the

2072 aggregate to \$250,000 ~~\$100,000~~ against any one ~~dealer,~~

2073 ~~investment adviser, or associated person.~~ If the total claim

2074 filed by a receiver on behalf of multiple claimants exceeds

2075 ~~claims exceed~~ the aggregate limit of \$250,000 ~~\$100,000~~, the

2076 office must ~~shall~~ prorate the payment to each claimant based  
 2077 upon the ratio that each claimant's individual ~~the person's~~  
 2078 claim bears to the total claim ~~claims~~ filed.

2079 (4) If at any time the balance in the Securities Guaranty  
 2080 Fund is insufficient to satisfy a valid claim or portion of a  
 2081 valid claim approved by the office, the office must satisfy the  
 2082 unpaid claim or portion of the valid claim as soon as a  
 2083 sufficient amount of money has been deposited into or  
 2084 transferred to the Securities Guaranty Fund. If more than one  
 2085 unsatisfied claim is outstanding, the claims must be paid in the  
 2086 sequence in which the claims were approved by final order of the  
 2087 office, which final order is not subject to an appeal or other  
 2088 pending proceeding.

2089 (5) All payments and disbursements made from the  
 2090 Securities Guaranty Fund must be made by the Chief Financial  
 2091 Officer, or his or her designee, upon authorization by the  
 2092 office. The office shall submit such authorization within 30  
 2093 days after the approval of an eligible person for payment from  
 2094 the Securities Guaranty Fund

2095 ~~(3) No payment shall be made on any claim against any one~~  
 2096 ~~dealer, investment adviser, or associated person before the~~  
 2097 ~~expiration of 2 years from the date any claimant is found by the~~  
 2098 ~~office to be eligible for recovery pursuant to this section. If~~  
 2099 ~~during this 2-year period more than one claim is filed against~~  
 2100 ~~the same dealer, investment adviser, or associated person, or if~~



2101 ~~the office receives notice pursuant to s. 517.131(4) that an~~  
 2102 ~~action against the same dealer, investment adviser, or~~  
 2103 ~~associated person is pending, all such claims and notices of~~  
 2104 ~~pending claims received during this period against the same~~  
 2105 ~~dealer, investment adviser, or associated person may be handled~~  
 2106 ~~by the office as provided in this section. Two years after the~~  
 2107 ~~first claimant against that same dealer, investment adviser, or~~  
 2108 ~~associated person applies for payment pursuant to this section:~~

2109 ~~(a) The office shall determine those persons eligible for~~  
 2110 ~~payment or for potential payment in the event of a pending~~  
 2111 ~~action. All such persons may be entitled to receive their pro~~  
 2112 ~~rata shares of the fund as provided in this section.~~

2113 ~~(b) Those persons who meet all the conditions prescribed~~  
 2114 ~~in s. 517.131 and who have applied for payment pursuant to this~~  
 2115 ~~section will be entitled to receive their pro rata shares of the~~  
 2116 ~~total disbursement.~~

2117 ~~(c) Those persons who have filed notice with the office of~~  
 2118 ~~a pending claim pursuant to s. 517.131(4) but who are not yet~~  
 2119 ~~eligible for payment from the fund will be entitled to receive~~  
 2120 ~~their pro rata shares of the total disbursement once they have~~  
 2121 ~~complied with subsection (1). However, in the event that the~~  
 2122 ~~amounts they are eligible to receive pursuant to subsection (1)~~  
 2123 ~~are less than their pro rata shares as determined under this~~  
 2124 ~~section, any excess shall be distributed pro rata to those~~  
 2125 ~~persons entitled to disbursement under this subsection whose pro~~

2126 ~~rata shares of the total disbursement were less than the amounts~~  
 2127 ~~of their claims.~~

2128 (6)~~(4)~~ Individual claims filed by persons owning the same  
 2129 joint account, or claims arising ~~stemming~~ from any other type of  
 2130 account ~~maintained by a particular licensee~~ on which more than  
 2131 one name appears, must ~~shall~~ be treated as the claims of one  
 2132 eligible claimant with respect to payment from the Securities  
 2133 Guaranty Fund. If a claimant who has obtained a final judgment  
 2134 or final order of restitution that ~~which~~ qualifies for  
 2135 disbursement under s. 517.131 has maintained more than one  
 2136 account with the ~~dealer, investment adviser, or associated~~  
 2137 person who is the subject of the claims, for purposes of  
 2138 disbursement of the Securities Guaranty Fund, all such accounts,  
 2139 whether joint or individual, must ~~shall~~ be considered as one  
 2140 account and ~~shall~~ entitle such claimant to only one distribution  
 2141 from the fund ~~not to exceed the lesser of \$10,000 or the~~  
 2142 ~~unsatisfied portion of such claimant's judgment as provided in~~  
 2143 ~~subsection (1)~~. To the extent that a claimant obtains more than  
 2144 one final judgment or final order of restitution against a  
 2145 person ~~dealer, investment adviser, or one or more associated~~  
 2146 ~~persons~~ arising out of the same transactions, occurrences, or  
 2147 conduct or out of such ~~the dealer's, investment adviser's, or~~  
 2148 ~~associated~~ person's handling of the claimant's account, the  
 2149 final ~~such~~ judgments or final orders of restitution ~~shall~~  
 2150 be consolidated for purposes of this section and ~~shall~~ entitle

2151 the claimant to only one disbursement from the fund ~~not to~~  
 2152 ~~exceed the lesser of \$10,000 or the unsatisfied portion of such~~  
 2153 ~~claimant's judgment as provided in subsection (1).~~

2154 (7)~~(5)~~ If the final judgment or final order of restitution  
 2155 that gave rise to the claim is overturned in any appeal or in  
 2156 any collateral proceeding, the claimant must ~~shall~~ reimburse the  
 2157 Securities Guaranty Fund all amounts paid from the fund to the  
 2158 claimant on the claim. If the claimant satisfies the final  
 2159 judgment or final order of restitution ~~specified in s.~~  
 2160 ~~517.131(3)(a)~~, the claimant must ~~shall~~ reimburse the Securities  
 2161 Guaranty Fund all amounts paid from the fund to the claimant on  
 2162 the claim. Such reimbursement must ~~shall~~ be paid to the  
 2163 Department of Financial Services ~~office~~ within 60 days after the  
 2164 final resolution of the appellate or collateral proceedings or  
 2165 the satisfaction of the final judgment or order of restitution,  
 2166 with the 60-day period commencing on the date the final order or  
 2167 decision is entered in such proceedings.

2168 (8)~~(6)~~ If a claimant receives payments in excess of that  
 2169 which is permitted under this chapter, the claimant must ~~shall~~  
 2170 reimburse the Securities Guaranty Fund such excess within 60  
 2171 days after the claimant receives such excess payment or after  
 2172 the payment is determined to be in excess of that permitted by  
 2173 law, whichever is later.

2174 (9) A claimant who knowingly and willfully files or causes  
 2175 to be filed an application under s. 517.131 or documents

2176 supporting the application, any of which contain false,  
 2177 incomplete, or misleading information in any material aspect,  
 2178 forfeits all payments from the Securities Guaranty Fund and  
 2179 commits a violation of s. 517.301(1)(c).

2180 (10)-(7) The Department of Financial Services ~~office~~ may  
 2181 institute legal proceedings to enforce compliance with this  
 2182 section and with s. 517.131 to recover moneys owed to the  
 2183 Securities Guaranty Fund, and is ~~shall be~~ entitled to recover  
 2184 interest, costs, and attorney ~~attorney's~~ fees in any action  
 2185 brought pursuant to this section in which the department ~~office~~  
 2186 prevails.

2187 ~~(8) If at any time the money in the Securities Guaranty~~  
 2188 ~~Fund is insufficient to satisfy any valid claim or portion of a~~  
 2189 ~~valid claim approved by the office, the office shall satisfy~~  
 2190 ~~such unpaid claim or portion of such valid claim as soon as a~~  
 2191 ~~sufficient amount of money has been deposited in or transferred~~  
 2192 ~~to the fund. When there is more than one unsatisfied claim~~  
 2193 ~~outstanding, such claims shall be paid in the order in which the~~  
 2194 ~~claims were approved by final order of the office, which order~~  
 2195 ~~is not subject to an appeal or other pending proceeding.~~

2196 ~~(9) Upon receipt by the claimant of the payment from the~~  
 2197 ~~Securities Guaranty Fund, the claimant shall assign any~~  
 2198 ~~additional right, title, and interest in the judgment, to the~~  
 2199 ~~extent of such payment, to the office. If the provisions of s.~~  
 2200 ~~517.131(3)(c) apply, the claimant must assign to the office any~~

2201 ~~right, title, and interest in the debt to the extent of any~~  
 2202 ~~payment by the office from the Securities Guaranty Fund.~~

2203 ~~(10) All payments and disbursements made from the~~  
 2204 ~~Securities Guaranty Fund shall be made by the Chief Financial~~  
 2205 ~~Officer upon authorization signed by the director of the office,~~  
 2206 ~~or such agent as she or he may designate.~~

2207 Section 14. Section 517.191, Florida Statutes, is amended  
 2208 to read:

2209 517.191 Enforcement by the Office of Financial Regulation  
 2210 ~~Injunction to restrain violations; civil penalties; enforcement~~  
 2211 ~~by Attorney General.-~~

2212 (1) When it appears to the office, either upon complaint  
 2213 or otherwise, that a person has engaged or is about to engage in  
 2214 any act or practice constituting a violation of this chapter or  
 2215 a rule or order hereunder, the office may investigate; and  
 2216 whenever it shall believe from evidence satisfactory to it that  
 2217 any such person has engaged, is engaged, or is about to engage  
 2218 in any act or practice constituting a violation of this chapter  
 2219 or a rule or order hereunder, the office may, in addition to any  
 2220 other remedies, bring action in the name and on behalf of the  
 2221 state against such person and any other person concerned in or  
 2222 in any way participating in or about to participate in such  
 2223 practices or engaging therein or doing any act or acts in  
 2224 furtherance thereof or in violation of this chapter to enjoin  
 2225 such person or persons from continuing such fraudulent practices

2226 or engaging therein or doing any act or acts in furtherance  
 2227 thereof or in violation of this chapter. In any such court  
 2228 proceedings, the office may apply for, and on due showing be  
 2229 entitled to have issued, the court's subpoena requiring  
 2230 forthwith the appearance of any defendant and her or his  
 2231 employees, associated persons, or agents and the production of  
 2232 documents, books, and records that may appear necessary for the  
 2233 hearing of such petition, to testify or give evidence concerning  
 2234 the acts or conduct or things complained of in such application  
 2235 for injunction. In such action, the ~~equity~~ courts shall have  
 2236 jurisdiction of the subject matter, and a judgment may be  
 2237 entered awarding such injunction as may be proper.

2238 (2) In addition to all other means provided by law for the  
 2239 enforcement of any temporary restraining order, temporary  
 2240 injunction, or permanent injunction issued in any such court  
 2241 proceedings, the court shall have the power and jurisdiction,  
 2242 upon application of the office, to impound and to appoint a  
 2243 receiver or administrator for the property, assets, and business  
 2244 of the defendant, including, but not limited to, the books,  
 2245 records, documents, and papers appertaining thereto. Such  
 2246 receiver or administrator, when appointed and qualified, shall  
 2247 have all powers and duties as to custody, collection,  
 2248 administration, winding up, and liquidation of such ~~said~~  
 2249 property and business as may ~~shall from time to time~~ be  
 2250 conferred upon her or him by the court. In any such action, the

2251 court may issue orders and decrees staying all pending suits and  
 2252 enjoining any further suits affecting the receiver's or  
 2253 administrator's custody or possession of such ~~the said~~ property,  
 2254 assets, and business or, in its discretion, may with the consent  
 2255 of the presiding judge of the circuit require that all such  
 2256 suits be assigned to the circuit court judge appointing such ~~the~~  
 2257 ~~said~~ receiver or administrator.

2258 (3) In addition to, or in lieu of, any other remedies  
 2259 provided by this chapter, the office may apply to the court  
 2260 hearing the ~~this~~ matter for an order directing the defendant to  
 2261 make restitution of those sums shown by the office to have been  
 2262 obtained in violation of ~~any of the provisions of~~ this chapter.  
 2263 The office has standing to request such restitution on behalf of  
 2264 victims in cases brought by the office under this chapter,  
 2265 regardless of the appointment of an administrator or receiver  
 2266 under subsection (2) or an injunction under subsection (1).  
 2267 Further, such restitution must ~~shall~~, at the option of the  
 2268 court, be payable to the administrator or receiver appointed  
 2269 pursuant to this section or directly to the persons whose assets  
 2270 were obtained in violation of this chapter.

2271 (4) In addition to any other remedies provided by this  
 2272 chapter, the office may apply to the court hearing the matter  
 2273 for, and the court has ~~shall have~~ jurisdiction to impose, a  
 2274 civil penalty against any person found to have violated ~~any~~  
 2275 ~~provision of~~ this chapter, any rule or order adopted by the

2276 | commission or the office, or any written agreement entered into  
 2277 | with the office in an amount not to exceed any of the following:

2278 |       (a) The greater of \$20,000 ~~\$10,000~~ for a natural person or  
 2279 | \$25,000 for a business entity ~~any other person~~, or the gross  
 2280 | amount of any pecuniary loss to investors or pecuniary gain to a  
 2281 | natural person or business entity ~~such defendant~~ for each such  
 2282 | violation, other than a violation of s. 517.301, plus the  
 2283 | greater of \$50,000 for a natural person or \$250,000 for a  
 2284 | business entity ~~any other person~~, or the gross amount of any  
 2285 | pecuniary loss to investors or pecuniary gain to a natural  
 2286 | person or business entity ~~such defendant~~ for each violation of  
 2287 | s. 517.301.

2288 |       (b) Twice the amount of the civil penalty that would  
 2289 | otherwise be imposed under this subsection if a specified adult,  
 2290 | as defined in s. 517.34(1), is the victim of a violation of this  
 2291 | chapter.

2292 |  
 2293 | All civil penalties collected pursuant to this subsection must  
 2294 | ~~shall~~ be deposited into the Anti-Fraud Trust Fund. The office  
 2295 | may recover any costs and attorney fees related to its  
 2296 | investigation or enforcement of this section. Notwithstanding  
 2297 | any other law, such moneys recovered by the office must be  
 2298 | deposited into the Anti-Fraud Trust Fund.

2299 |       (5) For purposes of any action brought by the office under  
 2300 | this section, a control person who controls any person found to



2301 have violated this chapter or any rule adopted thereunder is  
 2302 jointly and severally liable with, and to the same extent as,  
 2303 the controlled person in any action brought by the office under  
 2304 this section unless the control person can establish by a  
 2305 preponderance of the evidence that he or she acted in good faith  
 2306 and did not directly or indirectly induce the act that  
 2307 constitutes the violation or cause of action.

2308 (6) For purposes of any action brought by the office under  
 2309 this section, a person who knowingly or recklessly provides  
 2310 substantial assistance to another person in violation of this  
 2311 chapter or any rule adopted thereunder is deemed to violate this  
 2312 chapter or the rule to the same extent as the person to whom  
 2313 such assistance is provided.

2314 (7) The office may issue and serve upon a person a cease  
 2315 and desist order if the office has reason to believe that the  
 2316 person violates, has violated, or is about to violate this  
 2317 chapter, any commission or office rule or order, or any written  
 2318 agreement entered into with the office.

2319 (8) If the office finds that any conduct described in  
 2320 subsection (7) presents an immediate danger to the public,  
 2321 requiring an immediate final order, the office may issue an  
 2322 emergency cease and desist order reciting with particularity the  
 2323 facts underlying such findings. The emergency cease and desist  
 2324 order is effective immediately upon service of a copy of the  
 2325 order on the respondent named in the order and remains effective

2326 for 90 days after issuance. If the office begins nonemergency  
 2327 cease and desist proceedings under subsection (7), the emergency  
 2328 cease and desist order remains effective until the conclusion of  
 2329 the proceedings under ss. 120.569 and 120.57.

2330 (9) The office may impose and collect an administrative  
 2331 fine against any person found to have violated any provision of  
 2332 this chapter, any rule or order adopted by the commission or  
 2333 office, or any written agreement entered into with the office in  
 2334 an amount not to exceed the penalties provided in subsection  
 2335 (4). All fines collected under this subsection must be deposited  
 2336 into the Anti-Fraud Trust Fund.

2337 (10) The office may bar, permanently or for a specific  
 2338 period of time, any person found to have violated this chapter,  
 2339 any rule or order adopted by the commission or office, or any  
 2340 written agreement entered into with the office from submitting  
 2341 an application or notification for a license or registration  
 2342 with the office.

2343 (11) In addition to all other means provided by law for  
 2344 enforcing ~~any of the provisions of~~ this chapter, when the  
 2345 Attorney General, upon complaint or otherwise, has reason to  
 2346 believe that a person has engaged or is engaged in any act or  
 2347 practice constituting a violation of s. 517.275 ~~or,~~ s. 517.301,  
 2348 ~~s. 517.311, or s. 517.312,~~ or any rule or order issued under  
 2349 such sections, the Attorney General may investigate and bring an  
 2350 action to enforce these provisions as provided in ss. 517.171,

2351 517.201, and 517.2015 after receiving written approval from the  
 2352 office. Such an action may be brought against such person and  
 2353 any other person in any way participating in such act or  
 2354 practice or engaging in such act or practice or doing any act in  
 2355 furtherance of such act or practice, to obtain injunctive  
 2356 relief, restitution, civil penalties, and any remedies provided  
 2357 for in this section. The Attorney General may recover any costs  
 2358 and attorney fees related to the Attorney General's  
 2359 investigation or enforcement of this section. Notwithstanding  
 2360 any other provision of law, moneys recovered by the Attorney  
 2361 General for costs, attorney fees, and civil penalties for a  
 2362 violation of s. 517.275 or, s. 517.301, ~~s. 517.311, or s.~~  
 2363 ~~517.312,~~ or any rule or order issued pursuant to such sections,  
 2364 must ~~shall~~ be deposited in the Legal Affairs Revolving Trust  
 2365 Fund. The Legal Affairs Revolving Trust Fund may be used to  
 2366 investigate and enforce this section.

2367 ~~(12)-(6)~~ This section does not limit the authority of the  
 2368 office to bring an administrative action against any person that  
 2369 is the subject of a civil action brought pursuant to this  
 2370 section or limit the authority of the office to engage in  
 2371 investigations or enforcement actions with the Attorney General.  
 2372 However, a person may not be subject to both a civil penalty  
 2373 under subsection (4) and an administrative fine under subsection  
 2374 (9) ~~s. 517.221(3)~~ as the result of the same facts.

2375 ~~(13)-(7)~~ Notwithstanding s. 95.11(4)(f), an enforcement

2376 action brought under this section based on a violation of ~~any~~  
 2377 ~~provision of~~ this chapter or any rule or order issued under this  
 2378 chapter shall be brought within 6 years after the facts giving  
 2379 rise to the cause of action were discovered or should have been  
 2380 discovered with the exercise of due diligence, but not more than  
 2381 8 years after the date such violation occurred.

2382 (14) This chapter does not limit any statutory right of  
 2383 the state to punish a person for a violation of a law.

2384 (15) When not in conflict with the Constitution or laws of  
 2385 the United States, the courts of this state have the same  
 2386 jurisdiction over civil suits instituted in connection with the  
 2387 sale or offer of sale of securities under any laws of the United  
 2388 States as the courts of this state may have with regard to  
 2389 similar cases instituted under the laws of this state.

2390 Section 15. Section 517.211, Florida Statutes, is amended  
 2391 to read:

2392 517.211 Private remedies available in cases of unlawful  
 2393 sale.-

2394 (1) Every sale made in violation of either s. 517.07 or s.  
 2395 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be  
 2396 rescinded at the election of the purchaser; however, ~~except~~ a  
 2397 sale made in violation of the provisions of s. 517.1202(3)  
 2398 relating to a renewal of a branch office notification or ~~shall~~  
 2399 ~~not be subject to this section, and a sale made in violation of~~  
 2400 the provisions of s. 517.12(12) relating to filing a change of

2401 address amendment is ~~shall~~ not be subject to this section. Each  
 2402 person making the sale and every director, officer, partner, or  
 2403 agent of or for the seller, if the director, officer, partner,  
 2404 or agent has personally participated or aided in making the  
 2405 sale, is jointly and severally liable to the purchaser in an  
 2406 action for rescission, if the purchaser still owns the security,  
 2407 or for damages, if the purchaser has sold the security. No  
 2408 purchaser otherwise entitled will have the benefit of this  
 2409 subsection who has refused or failed, within 30 days after ~~of~~  
 2410 receipt, to accept an offer made in writing by the seller, if  
 2411 the purchaser has not sold the security, to take back the  
 2412 security in question and to refund the full amount paid by the  
 2413 purchaser or, if the purchaser has sold the security, to pay the  
 2414 purchaser an amount equal to the difference between the amount  
 2415 paid for the security and the amount received by the purchaser  
 2416 on the sale of the security, together, in either case, with  
 2417 interest on the full amount paid for the security by the  
 2418 purchaser at the legal rate, pursuant to s. 55.03, for the  
 2419 period from the date of payment by the purchaser to the date of  
 2420 repayment, less the amount of any income received by the  
 2421 purchaser on the security.

2422 (2) Any person purchasing or selling a security in  
 2423 violation of s. 517.301, and every director, officer, partner,  
 2424 or agent of or for the purchaser or seller, if the director,  
 2425 officer, partner, or agent has personally participated or aided

2426 in making the sale or purchase, is jointly and severally liable  
 2427 to the person selling the security to or purchasing the security  
 2428 from such person in an action for rescission, if the plaintiff  
 2429 still owns the security, or for damages, if the plaintiff has  
 2430 sold the security.

2431 (3) For purposes of any action brought under this section,  
 2432 a control person who controls any person found to have violated  
 2433 any provision specified in subsection (1) is jointly and  
 2434 severally liable with, and to the same extent as, such  
 2435 controlled person in any action brought under this section  
 2436 unless the control person can establish by a preponderance of  
 2437 the evidence that he or she acted in good faith and did not  
 2438 directly or indirectly induce the act that constitutes the  
 2439 violation or cause of action.

2440 (4) In an action for rescission:

2441 (a) A purchaser may recover the consideration paid for the  
 2442 security or investment, plus interest thereon at the legal rate  
 2443 from the date of purchase, less the amount of any income  
 2444 received by the purchaser on the security or investment upon  
 2445 tender of the security or investment.

2446 (b) A seller may recover the security upon tender of the  
 2447 consideration paid for the security, plus interest at the legal  
 2448 rate from the date of purchase, less the amount of any income  
 2449 received by the defendant on the security.

2450 ~~(5)-(4)~~ In an action for damages brought by a purchaser of

2451 a security or investment, the plaintiff must ~~shall~~ recover an  
 2452 amount equal to the difference between:

2453 (a) The consideration paid for the security or investment,  
 2454 plus interest thereon at the legal rate from the date of  
 2455 purchase; and

2456 (b) The value of the security or investment at the time it  
 2457 was disposed of by the plaintiff, plus the amount of any income  
 2458 received on the security or investment by the plaintiff.

2459 (6)~~(5)~~ In an action for damages brought by a seller of a  
 2460 security, the plaintiff shall recover an amount equal to the  
 2461 difference between:

2462 (a) The value of the security at the time of the  
 2463 complaint, plus the amount of any income received by the  
 2464 defendant on the security; and

2465 (b) The consideration received for the security, plus  
 2466 interest at the legal rate from the date of sale.

2467 (7)~~(6)~~ In any action brought under this section, including  
 2468 an appeal, the court shall award reasonable attorney ~~attorneys'~~  
 2469 fees to the prevailing party unless the court finds that the  
 2470 award of such fees would be unjust.

2471 (8) This chapter does not limit any statutory or common-  
 2472 law right of a person to bring an action in a court for an act  
 2473 involved in the sale of securities or investments.

2474 (9) The same civil remedies provided by the laws of the  
 2475 United States for the purchasers or sellers of securities in

2476 interstate commerce also extend to purchasers or sellers of  
 2477 securities under this chapter.

2478 Section 16. Section 517.221, Florida Statutes, is  
 2479 repealed.

2480 Section 17. Section 517.241, Florida Statutes, is  
 2481 repealed.

2482 Section 18. Section 517.301, Florida Statutes, is amended  
 2483 to read:

2484 517.301 Fraudulent transactions; falsification or  
 2485 concealment of facts.—

2486 (1) It is unlawful and a violation of ~~the provisions of~~  
 2487 this chapter for a person:

2488 (a) In connection with the rendering of any investment  
 2489 advice or in connection with the offer, sale, or purchase of any  
 2490 investment or security, including any security exempted under  
 2491 ~~the provisions of~~ s. 517.051 and including any security sold in  
 2492 a transaction exempted under ~~the provisions of~~ s. 517.061, s.  
 2493 517.0611, or s. 517.0612, directly or indirectly:

- 2494 1. To employ any device, scheme, or artifice to defraud;
- 2495 2. To obtain money or property by means of any untrue  
 2496 statement of a material fact or any omission to state a material  
 2497 fact necessary in order to make the statements made, in the  
 2498 light of the circumstances under which they were made, not  
 2499 misleading; or
- 2500 3. To engage in any transaction, practice, or course of



2501 business which operates or would operate as a fraud or deceit  
 2502 upon a person.

2503 (b) By use of any means, to publish, give publicity to, or  
 2504 circulate any notice, circular, advertisement, newspaper,  
 2505 article, letter, investment service, communication, or broadcast  
 2506 that, although ~~which, though~~ not purporting to offer a security  
 2507 for sale, describes such security for a consideration received  
 2508 or to be received directly or indirectly from an issuer,  
 2509 underwriter, or dealer, or from an agent or employee of an  
 2510 issuer, underwriter, or dealer, without fully disclosing the  
 2511 receipt, whether past or prospective, of such consideration and  
 2512 the amount of the consideration.

2513 (c) In any matter within the jurisdiction of the office,  
 2514 to knowingly and willfully falsify, conceal, or cover up, by any  
 2515 trick, scheme, or device, a material fact, make any false,  
 2516 fictitious, or fraudulent statement or representation, or make  
 2517 or use any false writing or document, knowing the same to  
 2518 contain any false, fictitious, or fraudulent statement or entry.

2519 (2) For purposes of ~~ss. 517.311 and 517.312 and~~ this  
 2520 section, the term "investment" means any commitment of money or  
 2521 property principally induced by a representation that an  
 2522 economic benefit may be derived from such commitment, except  
 2523 that the term does not include a commitment of money or property  
 2524 for:

2525 (a) The purchase of a business opportunity, business

2526 enterprise, or real property through a person licensed under  
 2527 chapter 475 or registered under former chapter 498; or

2528 (b) The purchase of tangible personal property through a  
 2529 person not engaged in telephone solicitation, electronic mail,  
 2530 text messages, social media, or other electronic means where  
 2531 ~~said property is offered and sold in accordance with the~~  
 2532 ~~following conditions:~~

2533 1. ~~there are no specific representations or guarantees~~  
 2534 ~~made by the offeror or seller as to the economic benefit to be~~  
 2535 ~~derived from the purchase.~~

2536 2. ~~The tangible property is delivered to the purchaser~~  
 2537 ~~within 30 days after sale, except that such 30-day period may be~~  
 2538 ~~extended by the office if market conditions so warrant; and~~

2539 3. ~~The seller has offered the purchaser a full refund~~  
 2540 ~~policy in writing, exercisable by the purchaser within 10 days~~  
 2541 ~~of the date of delivery of such tangible personal property,~~  
 2542 ~~except that the amount of such refund may not exceed the bid~~  
 2543 ~~price in effect at the time the property is returned to the~~  
 2544 ~~seller. If the applicable sellers' market is closed at the time~~  
 2545 ~~the property is returned to the seller for a refund, the amount~~  
 2546 ~~of such refund shall be based on the bid price for such property~~  
 2547 ~~at the next opening of such market.~~

2548 (3) It is unlawful for a person in issuing or selling a  
 2549 security within this state, including a security exempted under  
 2550 s. 517.051 and including a transaction exempted under s.

2551 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such  
 2552 security or business entity has been guaranteed, sponsored,  
 2553 recommended, or approved by the state or an agency or officer of  
 2554 the state or by the United States or an agency or officer of the  
 2555 United States.

2556 (4) It is unlawful for a person registered or required to  
 2557 be registered, or subject to the notice requirements, under this  
 2558 chapter, including such persons and issuers who are subject to  
 2559 s. 517.051, s. 517.061, s. 517.0611, s. 517.0612, or s. 517.081,  
 2560 to misrepresent that such person has been sponsored,  
 2561 recommended, or approved, or that such person's abilities or  
 2562 qualifications have in any respect been approved, by the state  
 2563 or an agency or officer of the state or by the United States or  
 2564 an agency or officer of the United States.

2565 (5) It is unlawful and a violation of this chapter for a  
 2566 person in connection with the offer or sale of an investment to  
 2567 obtain money or property by means of:

2568 (a) A misrepresentation that the investment offered or  
 2569 sold is guaranteed, sponsored, recommended, or approved by the  
 2570 state or an agency or officer of the state or by the United  
 2571 States or an agency or officer of the United States; or

2572 (b) A misrepresentation that such person is sponsored,  
 2573 recommended, or approved, or that such person's abilities or  
 2574 qualifications have in any respect been examined, by the state  
 2575 or an agency or officer of the state or by the United States or

2576 an agency or officer of the United States.

2577 (6)(a) Subsection (3) or subsection (4) may not be  
 2578 construed to prohibit a statement that a person or security is  
 2579 registered or has made a notice filing under this chapter if  
 2580 such statement is required by this chapter or rules promulgated  
 2581 thereunder and is true in fact and if the effect of such  
 2582 statement is not a misrepresentation.

2583 (b) A statement that a person is registered made in  
 2584 connection with the offer or sale of a security under this  
 2585 chapter must include the following disclaimer: "Registration  
 2586 does not imply that such person has been sponsored, recommended,  
 2587 or approved by the state or an agency or officer of the state or  
 2588 by the United States or an agency or officer of the United  
 2589 States."

2590 1. If the statement of registration is made in writing,  
 2591 the disclaimer must immediately follow such statement and must  
 2592 be in the same size and style of print as the statement of  
 2593 registration.

2594 2. If the statement of registration is made orally, the  
 2595 disclaimer must be made or broadcast with the same force and  
 2596 effect as the statement of registration.

2597 (7) It is unlawful and a violation of this chapter for a  
 2598 person to directly or indirectly manage, supervise, control, or  
 2599 own, either alone or in association with others, a boiler room  
 2600 in this state which sells or offers for sale a security or

2601 investment in violation of subsection (1), subsection (3),  
 2602 subsection (4), subsection (5), or subsection (6).

2603 Section 19. Section 517.311, Florida Statutes, is  
 2604 repealed.

2605 Section 20. Section 517.312, Florida Statutes, is  
 2606 repealed.

2607 Section 21. Subsections (1), (2), and (3) of section  
 2608 517.072, Florida Statutes, are amended to read:

2609 517.072 Viatical settlement investments.—

2610 (1) The exemptions provided for by s. 517.051(6) and (11)  
 2611 ~~ss. 517.051(6), (8), and (10)~~ do not apply to a viatical  
 2612 settlement investment.

2613 (2) The offering of a viatical settlement investment is  
 2614 not an exempt transaction under s. 517.061(10), (12), (13), and  
 2615 (18) ~~s. 517.061(2), (3), (8), (11), and (18)~~, regardless of  
 2616 whether the offering otherwise complies with the conditions of  
 2617 that section, unless such offering is to a qualified  
 2618 institutional buyer.

2619 (3) The registration provisions of ss. 517.07 and 517.12  
 2620 do not apply to any of the following transactions in viatical  
 2621 settlement investments; however, such transactions in viatical  
 2622 settlement investments are subject to s. 517.301 ~~the provisions~~  
 2623 ~~of ss. 517.301, 517.311, and 517.312:~~

2624 (a) The transfer or assignment of an interest in a  
 2625 previously viaticated policy from a natural person who transfers

2626 or assigns no more than one such interest in a single calendar  
 2627 year.

2628 (b) The provision of stop-loss coverage to a viatical  
 2629 settlement provider, financing entity, or related provider  
 2630 trust, as those terms are defined in s. 626.9911, by an  
 2631 authorized or eligible insurer.

2632 (c) The transfer or assignment of a viaticated policy from  
 2633 a licensed viatical settlement provider to another licensed  
 2634 viatical settlement provider, a related provider trust, a  
 2635 financing entity, or a special purpose entity, as those terms  
 2636 are defined in s. 626.9911, or to a contingency insurer,  
 2637 provided that such transfer or assignment is not the direct or  
 2638 indirect promotion of any scheme or enterprise with the intent  
 2639 of violating or evading ~~any provision of~~ this chapter.

2640 (d) The transfer or assignment of a viaticated policy to a  
 2641 bank, trust company, savings institution, insurance company,  
 2642 dealer, investment company as defined in the Investment Company  
 2643 Act of 1940, as amended, pension or profit-sharing trust,  
 2644 qualified institutional buyer, or an accredited investor,  
 2645 provided such transfer or assignment is not for the direct or  
 2646 indirect promotion of any scheme or enterprise with the intent  
 2647 of violating or evading any provision of this chapter.

2648 (e) The transfer or assignment of a viaticated policy by a  
 2649 conservator of a viatical settlement provider appointed by a  
 2650 court of competent jurisdiction who transfers or assigns

2651 ownership of viaticated policies pursuant to that court's order.

2652 Section 22. Subsection (2), paragraph (a) of subsection  
 2653 (9), paragraph (j) of subsection (16), subsection (20), and  
 2654 paragraphs (b) and (c) of subsection (21) of section 517.12,  
 2655 Florida Statutes, are amended to read:

2656 517.12 Registration of dealers, associated persons,  
 2657 intermediaries, and investment advisers.—

2658 (2) The registration requirements of this section do not  
 2659 apply in a transaction exempted by s. 517.061(1)-(6), (8), (9),  
 2660 (12), and (13) ~~s. 517.061(1)-(10), (12), (14), and (15)~~.

2661 (9)(a) An applicant for registration shall pay an  
 2662 assessment fee of \$200, in the case of a dealer or investment  
 2663 adviser, or \$50, in the case of an associated person. An  
 2664 associated person may be assessed an additional fee to cover the  
 2665 cost for the fingerprints to be processed by the office. Such  
 2666 fee shall be determined by rule of the commission. Such fees  
 2667 become the revenue of the state, except for those assessments  
 2668 provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time  
 2669 as the Securities Guaranty Fund satisfies the statutory limits,  
 2670 and are not returnable in the event that registration is  
 2671 withdrawn or not granted.

2672 (16)

2673 (j) All fees collected under this subsection become the  
 2674 revenue of the state, except those assessments provided for  
 2675 under s. 517.131(2) ~~s. 517.131(1)~~, until the Securities Guaranty

2676 Fund has satisfied the statutory limits. Such fees are not  
 2677 returnable if a notice-filing is withdrawn.

2678 (20) The registration requirements of this section do not  
 2679 apply to any general lines insurance agent or life insurance  
 2680 agent licensed under chapter 626, with regard to ~~for~~ the sale of  
 2681 a security as defined in s. 517.021(25)(g) ~~s. 517.021(23)(g)~~, if  
 2682 the individual is directly authorized by the issuer to offer or  
 2683 sell the security on behalf of the issuer and the issuer is a  
 2684 federally chartered savings bank subject to regulation by the  
 2685 Federal Deposit Insurance Corporation. Actions under this  
 2686 subsection ~~shall~~ constitute activity under the insurance agent's  
 2687 license for purposes of ss. 626.611 and 626.621.

2688 (21)

2689 (b) Prior to the completion of any securities transaction  
 2690 described in s. 517.061(7) ~~s. 517.061(22)~~, a merger and  
 2691 acquisition broker must receive written assurances from the  
 2692 control person with the largest percentage of ownership for both  
 2693 the buyer and seller engaged in the transaction that:

2694 1. After the transaction is completed, any person who  
 2695 acquires securities or assets of the eligible privately held  
 2696 company, acting alone or in concert, will be a control person of  
 2697 the eligible privately held company or will be a control person  
 2698 for the business conducted with the assets of the eligible  
 2699 privately held company; and

2700 2. If any person is offered securities in exchange for



2701 securities or assets of the eligible privately held company,  
 2702 such person will, before becoming legally bound to complete the  
 2703 transaction, receive or be given reasonable access to the most  
 2704 recent year-end financial statements of the issuer of the  
 2705 securities offered in exchange. The most recent year-end  
 2706 financial statements shall be customarily prepared by the  
 2707 issuer's management in the normal course of operations. If the  
 2708 financial statements of the issuer are audited, reviewed, or  
 2709 compiled, the most recent year-end financial statements must  
 2710 include any related statement by the independent certified  
 2711 public accountant; a balance sheet dated not more than 120 days  
 2712 before the date of the exchange offer; and information  
 2713 pertaining to the management, business, results of operations  
 2714 for the period covered by the foregoing financial statements,  
 2715 and material loss contingencies of the issuer.

2716 (c) A merger and acquisition broker engaged in a  
 2717 transaction exempt under s. 517.061(7) ~~s. 517.061(22)~~ is exempt  
 2718 from registration under this section unless the merger and  
 2719 acquisition broker:

2720 1. Directly or indirectly, in connection with the transfer  
 2721 of ownership of an eligible privately held company, receives,  
 2722 holds, transmits, or has custody of the funds or securities to  
 2723 be exchanged by the parties to the transaction;

2724 2. Engages on behalf of an issuer in a public offering of  
 2725 any class of securities which is registered, or which is

2726 required to be registered, with the United States Securities and  
 2727 Exchange Commission under the Securities Exchange Act of 1934,  
 2728 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;  
 2729 or for which the issuer files, or is required to file, periodic  
 2730 information, documents, and reports under s. 15(d) of the  
 2731 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

2732 3. Engages on behalf of any party in a transaction  
 2733 involving a public shell company;

2734 4. Is subject to a suspension or revocation of  
 2735 registration under s. 15(b)(4) of the Securities Exchange Act of  
 2736 1934, 15 U.S.C. s. 78o(b)(4);

2737 5. Is subject to a statutory disqualification described in  
 2738 s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s.  
 2739 78c(a)(39);

2740 6. Is subject to a disqualification under the United  
 2741 States Securities and Exchange Commission Rule 506(d), 17 C.F.R.  
 2742 s. 230.506(d); or

2743 7. Is subject to a final order described in s. 15(b)(4)(H)  
 2744 of the Securities Exchange Act of 1934, 15 U.S.C. s.  
 2745 78o(b)(4)(H).

2746 Section 23. Subsection (6) of section 517.1201, Florida  
 2747 Statutes, is amended to read:

2748 517.1201 Notice filing requirements for federal covered  
 2749 advisers.—

2750 (6) All fees collected under this section become the

2751 revenue of the state, except for those assessments provided for  
 2752 under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the  
 2753 Securities Guaranty Fund satisfies the statutory limits, and are  
 2754 not returnable in the event that a notice filing is withdrawn.

2755 Section 24. Subsections (4) and (8) of section 517.1202,  
 2756 Florida Statutes, are amended to read:

2757 517.1202 Notice-filing requirements for branch offices.—

2758 (4) A branch office notice-filing under this section shall  
 2759 be summarily suspended by the office if the notice-filer fails  
 2760 to provide to the office, within 30 days after a written request  
 2761 by the office, all of the information required by this section  
 2762 and the rules adopted under this section. The summary suspension  
 2763 shall be in effect for the branch office until such time as the  
 2764 notice-filer submits the requested information to the office,  
 2765 pays a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and a  
 2766 final order is entered. At such time, the suspension shall be  
 2767 lifted. For purposes of s. 120.60(6), failure to provide all  
 2768 information required by this section and the underlying rules  
 2769 constitutes immediate and serious danger to the public health,  
 2770 safety, and welfare. If the notice-filer fails to provide all of  
 2771 the requested information within a period of 90 days, the  
 2772 notice-filing shall be revoked by the office.

2773 (8) All fees collected under this section become the  
 2774 revenue of the state, except for those assessments provided for  
 2775 under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the

2776 Securities Guaranty Fund satisfies the statutory limits, and are  
 2777 not returnable in the event that a branch office notice-filing  
 2778 is withdrawn.

2779 Section 25. Subsection (2) of section 517.302, Florida  
 2780 Statutes, is amended to read:

2781 517.302 Criminal penalties; alternative fine; Anti-Fraud  
 2782 Trust Fund; time limitation for criminal prosecution.—

2783 (2) Any person who violates s. 517.301 ~~the provisions of~~  
 2784 ~~s. 517.312(1)~~ by obtaining money or property of an aggregate  
 2785 value exceeding \$50,000 from five or more persons is guilty of a  
 2786 felony of the first degree, punishable as provided in s.  
 2787 775.082, s. 775.083, or s. 775.084.

2788 Section 26. This act shall take effect October 1, 2024.

**INSURANCE & BANKING SUBCOMMITTEE**

**PCS for HB 311 by Rep. Barnaby  
Securities**

**AMENDMENT SUMMARY  
January 18, 2024**

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**Amendment 1 by Rep. Barnaby (Line 356):** The amendment makes technical changes.

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	_____	

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

3 Representative Barnaby offered the following:

4

5 **Amendment**

6 Remove lines 356-369 and insert:

7 (a) No person shall directly or indirectly offer or sell  
8 securities, other than general obligation bonds, under this  
9 subsection if the issuer or guarantor is in default or has been  
10 in default any time after December 31, 1975, as to principal or  
11 interest:

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

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

16

PCS for HB 311 a1

Published On: 1/17/2024 6:11:22 PM

Amendment No. 1

17 | except by an offering circular containing a full and fair  
18 | disclosure as prescribed by rule of the commission.

19 |       (b) Paragraph (a) applies to a security that is an  
20 | industrial or commercial development bond if payments are





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 939 Consumer Protection

**SPONSOR(S):** Insurance & Banking Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Fortenberry	Lloyd

### SUMMARY ANALYSIS

The bill makes changes related to consumer protection, including:

- **Form 1099-K Reporting Requirements:** third-party settlement organizations, like PayPal or Apple Pay, that conduct transactions involving a payee with a Florida address must create a method for payees to identify transactions for goods and services and report that information to the Florida Department of Revenue.
- **State Agency Contracts:** prohibits a state agency from entering into a contract or agreement with an entity that advises censorship or blacklisting of news sources based on subjective criteria or political biases with the stated goal of fact-checking or removing misinformation.
- **Mobile Home Titles:** revises the criteria for retirement of a mobile home title by the Department of Highway Safety and Motor Vehicles (DHSMV) to include retiring the title when there is a recorded mortgage against the owner's mobile home and real property; also makes the retirement of mobile home titles by DHSMV mandatory rather than permissive.
- **Contracts for Roof Repairs Following Emergencies:** requires that a contractor that enters into a contract to replace or repair the roof of a residential property during a declared state of emergency include specific language in the contract that allows the property owner to cancel the contract by the earlier of ten days following execution or the official start date that the work on the roof will commence; the property owner must send notice of cancellation by certified mail or another form that provides proof of mailing.
- **Depository Institutions:** expands the definition of depository institution in commercial financing disclosure law.
- **Continuing Education Requirements for Certified Public Accountants:** requires that the certified public accountant (CPA) that prepares the audit that an insurer submits to the Office of Insurance Regulation as part of its annual report must have completed at least four hours of insurance-related continuing education during each two-year continuing education cycle.
- **Public Adjusters:** requires that public adjusters' contracts for property and casualty claims contain the license numbers of the public adjusting firms by which they are employed; establishes that restrictions on public adjuster compensation apply to coverages provided by condominium associations, cooperative associations, apartment buildings, and similar policies, including those that cover the common elements of a homeowners' association.
- **Short-term Health Insurance:** updates the disclosures that must be provided to a purchaser of a short-term plan; also requires that purchasers of short-term plans receive the required disclosures in writing or electronically, and sign them.
- **Loss Assessment Coverage:** establishes that a claim resulting from a loss assessment is considered to have occurred on the date that condominium association sends a loss assessment notice to a unit owner.
- **Fireworks Safety Standards:** updates the state standards for outdoor display of fireworks to the current edition of the National Fire Protection Association 1123, Code for Fireworks Displays.

The bill has no impact on local government revenues or expenditures or state revenues. It may have an indeterminate negative impact on state expenditures, and a positive or negative impact on the private sector.

The bill is effective on July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Form 1099-K Reporting Requirements**

##### Background

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third-party merchants.<sup>1</sup> The return is Form 1099-K, and is required to be filed for each calendar year on or before the last day of February of the year following the transactions.<sup>2</sup>

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third-party payment system (like PayPal or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of \$20,000 over more than 200 transactions.<sup>3</sup> These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires the Form 1099-K to be filed. Examples include Alabama,<sup>4</sup> Tennessee,<sup>5</sup> North Carolina,<sup>6</sup> and New York.<sup>7</sup>

Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue (DOR) electronically within 30 days of filing the federal return.<sup>8</sup> The copy can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with an address in Florida.<sup>9</sup>

##### Effect of the Bill

The bill provides that for the purposes of complying with a reporting requirement to the Florida Department of Revenue, third-party settlement organizations that conduct transactions involving a participating payee with an address in Florida to create a method for payees to identify whether their transactions are for goods and services or personal purposes. This will allow taxable transactions related to goods and services to be readily identifiable and help avoid overpayment or underpayment of taxes. The information submitted to DOR in Form 1099-K must be limited to transactions identified for goods and services.

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<sup>1</sup> 26 U.S. Code s. 6050W(e).

<sup>2</sup> <https://www.irs.gov/forms-pubs/about-form-1099-k> (last visited Jan. 15, 2024).

<sup>3</sup> <https://www.irs.gov/businesses/understanding-your-form-1099-k> (last visited Jan. 15, 2024).

<sup>4</sup> <https://www.revenue.alabama.gov/new-1099-k-filing-requirement/> (last visited Jan. 15, 2024).

<sup>5</sup> <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales-16-01.pdf> (last visited Jan. 15, 2024).

<sup>6</sup> [https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-\(1099k\)](https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k)) (last visited Jan. 15, 2024).

<sup>7</sup> [https://www.tax.ny.gov/bus/multi/reporting\\_requirements.htm](https://www.tax.ny.gov/bus/multi/reporting_requirements.htm) (last visited Jan. 15, 2024).

<sup>8</sup> s. 212.134, F.S.

<sup>9</sup> s. 212.134(1), F.S.

## **State Agency Contracts**

### **Background**

Chapter 286, F.S., contains requirements for, and prohibitions on, state agencies entering into contracts or other agreements with various private entities. It also prohibits the use of state funds for certain purposes.<sup>10</sup>

Over the past several years, a multitude of companies whose stated purpose is to rate the credibility and transparency of news sources and counter misinformation have been established. These include NewsGuard,<sup>11</sup> AdFontes Media,<sup>12</sup> and Cyabra.<sup>13</sup> Among other things, subscribers to these services may rely on them when considering where to place advertisements or in other business decision-making. There does not appear to be any current state contracts with these entities.<sup>14</sup>

### **Effect of the Bill**

The bill prohibits a state agency from entering into a contract or another agreement with an entity that advises censorship or blacklisting of news sources based on subjective criteria or political biases with the stated goal of fact-checking or removing misinformation.<sup>15</sup>

## **Mobile Home Titles**

### **Background**

Florida law contains a process by which the owner of a mobile home that is permanently affixed to real property owned by the same person may permanently retire the title to the mobile home that is issued by the Florida Department of Highway Safety and Motor Vehicles (DHSMV).<sup>16</sup> The title may be retired if the owner of the real property records the following documents in the official records of the clerk of court in the county in which the real property is located:

- Original title to the mobile home, including a description of the mobile home with the model, year, make, width, length and vehicle identification number, and a statement from any recorded lienholder on the title that the lien has been released or will be released upon retirement of the title;
- A legal description of the real property and a copy any lease agreements for that real property; and
- A sworn statement by the owner of the real property, as shown on the deed or lease, that he or she is the owner of the mobile home and that the mobile home is permanently affixed to the real property.<sup>17</sup>

A mobile home whose title has been retired shall be conveyed by deed or real estate contract and transferred with the property to which it is affixed.<sup>18</sup>

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<sup>10</sup> See, e.g., ss. 286.31 and 286.311, F.S.

<sup>11</sup> NewsGuard's website states that it "provides transparent tools to counter misinformation for readers, brands, and democracies. NewsGuard, *About NewsGuard*, <https://www.newsguardtech.com/about-newsguard/> (last visited Jan. 15, 2024).

<sup>12</sup> AdFontes Media advertises that it helps users "know the reliability and bias of the news" and is the "home of the media bias chart," a trademarked tool for evaluating the news. AdFontes Media, <https://adfontesmedia.com/> (last visited Jan. 15, 2024).

<sup>13</sup> Cyabra "uncovers threats to...[companies, products,] people and places by exposing malicious actors, disinformation, and bot networks." Cyabra, <https://cyabra.com/> (last visited Jan. 15, 2024).

<sup>14</sup> See Department of Financial Services, *My Florida Market Place Vendor Search*,

<sup>15</sup> This prohibition would apply to entities like NewsGuard and its competitors.

<sup>16</sup> S. 319.261, F.S. For a typical "stick-built" home a deed transfers title from one owner to another. However, a mobile home generally has a Certificate of Title issued by the DHSMV. See, e.g., Lee County Tax Collector, *Mobile Home Titles and Registrations*, <https://leetc.com/mobile-home-titles-and-registrations/#:~:text=Proof%20of%20ownership%20to%20a,the%20title%20has%20been%20retired.> (last visited Jan. 15, 2024).

<sup>17</sup> S. 319.261(2), F.S.

## Effect of the Bill

The bill adds an alternative to the current retirement criteria. It authorizes the DHSMV to retire the title of a mobile home by when there is a recorded mortgage against the owner's mobile home and real property. Adding this criteria may provide mobile home owners with access to more lenders that are willing to provided mortgages for mobile homes by consolidating proof of ownership into a single document, i.e., the deed, rather than the deed and a mobile home title.

The bill also makes the retirement of mobile home titles by the DHSMV mandatory rather than permissive.

## **Contracts for Roof Repairs Following Emergencies**

### Background

The Florida Office of Insurance Regulation (OIR) reported a significant increase in the number of roof damage claims, many of which include litigation.<sup>19</sup> These roof damage claims include claims made by residential property owners after being solicited to file an insurance claim that they may not otherwise have filed but for the promise of a new roof at no cost to the property owner.<sup>20</sup> As such, the Legislature limited certain insurance practices by contractors and unlicensed persons acting on their behalf.<sup>21</sup>

A contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice in the contract that the contractor is prohibited from engaging in certain acts, including the interpretation of policy provisions, adjusting a claim without being licensed as a public adjuster, or failing to provide an insured with an itemized estimate for repairs.<sup>22</sup> If the contractor fails to include the notice in the contract, the property owner may void the contract within 10 days of its execution.<sup>23</sup> However, current law does not provide any requirements regarding cancellation of a contract executed during a declared state of emergency.

### Effect of the Bill

The bill requires that a contractor that enters into a contract to replace or repair the roof of a residential property during a declared state of emergency must include specific language in the contract that allows the residential property owner to cancel the contract by the earlier of:

- Ten days following the contract execution; or
- The official start date that the work on the roof will commence.

If the contract does not contain an official start date, it may be canceled within ten days following execution.

The bill requires that the residential property owner send notice of cancellation of such contract to the address specified in the contract by certified mail, return receipt requested, or another form of mailing that provides proof of mailing.

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<sup>18</sup> S. 319.261(5), F.S.

<sup>19</sup> Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 7 (Feb. 24, 2021).

<sup>20</sup> *Id.* A "free" roof replacement maybe achieved by giving a residential propertyowner whose policyprovides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential propertyowner.

<sup>21</sup> See ch. 2021-77, Laws of Fla.

<sup>22</sup> S. 489.147, F.S.

<sup>23</sup> *Id.*

## **Depository Institutions**

### **Background**

In 2023, the Legislature enacted a definition of depository institution for commercial financing disclosure,<sup>24</sup> which defines such institutions as Florida state-chartered bank, savings banks, credit unions, or trust companies, or federal savings or thrift associations, banks, credit unions, savings bank or thrift.<sup>25</sup> This statutory definition inadvertently excluded certain types of state-chartered banks.

### **Effect of the Bill**

The bill changes the definition of depository institution in ch. 559, part XIII, F.S., to a more comprehensive definition that includes banks, credit unions, savings banks, savings and loan associations, savings or thrift associations, trust companies, or industrial loan companies doing business under the authority of the United States, Florida, or any other state, district, territory or commonwealth of the United States that is authorized to do business in Florida.

## **Continuing Education Requirements for Certified Public Accountants**

### **Background**

Every insurer authorized to do business in Florida must file an annual financial statement with OIR on or before March 1, and quarterly financial statements on March 31, June 30, and September 30.<sup>26</sup> Such statements must conform with the requirements established by the National Association of Insurance Commissioners, which OIR adopts by rule.<sup>27</sup> As part of the annual statement, all authorized insurers must have an annual audit conducted by an independent certified public accountant (CPA) and must file an audited financial report by June 1 each year.<sup>28</sup>

All CPAs licensed in Florida are required to complete 80 hours of continuing education during the two years prior to the conclusion of each license-renewal cycle.<sup>29</sup> However, there are no requirements regarding the completion of any continuing education related to audits of insurance companies.

### **Effect of the Bill**

The bill requires that the CPA that prepares the audit that an insurer submits to OIR as part of its annual report must have completed at least four hours of insurance-related continuing education during each two-year continuing education cycle.

## **Public Adjusters**

### **Background**

Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.<sup>30</sup> In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.<sup>31</sup>

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<sup>24</sup> The commercial financing disclosure law is ch. 559, part XIII, F.S.

<sup>25</sup> S. 559.9611, F.S.

<sup>26</sup> S. 624.424(1), F.S.

<sup>27</sup> S. 624.424(1), F.S., and R. [69O-137](#), F.A.C.

<sup>28</sup> S. 624.424(8), F.S.

<sup>29</sup> S. 473.312, F.S. CPAs are licensed under ch. 473, F.S., and must renew their licenses every two years.

<sup>30</sup> S. 626.854, F.S. Public adjusters are regulated under ch. 626, part VI, F.S.

<sup>31</sup> *See id.*

Public adjusters' contracts relating to property and casualty claims must contain the full name, permanent business address, phone number, email address, and license number of the public adjuster; and the full name of the public adjusting firm for whom the public adjuster works.<sup>32</sup> However, such contracts are not required to contain the license number of the public adjusting firm.

Current law allows the following payments or commissions payable to a public adjuster:

- One percent of the amount of the insurance claim payments or settlements that an insurer pays to an insured for any coverage under the policy where the claim payment or insurer's agreement to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written agreement to pay is provided by the latter of:
  - Fourteen days after the date of loss; or
  - Ten days after the date that the public adjusting contract is signed.
- No fees or commission when the payment or agreement to pay by the insurer to the insured occurs before the date that the public adjusting contract is signed.<sup>33</sup>

### Effect of the Bill

The bill requires that public adjusters' contracts relating to property and casualty claims contain the license numbers of the public adjusting firms by which they are employed.

The bill also establishes that restrictions on public adjusters' compensation apply to coverages provided by condominium associations, cooperative associations, apartment buildings, and similar policies, including those that cover the common elements of a homeowners' association.

### **Short-term Health Insurance (short-term plans)**

#### Background

Short-term plans are a health insurance product purchased only for limited time periods, usually under one year, during periods of transition, such as unemployment.<sup>34</sup> Beginning in 2016, federal rules related to the Patient Protection and Affordable Care Act (PPACA) limited short-term health plans to no more than three months.<sup>35</sup> In 2018, the Trump administration adopted a rule that allows short-term health plans to be issued for a period of up to 12 months.<sup>36</sup> The new rule also allows the plans to be renewed upon expiration, up to a total coverage period of 36 months. Short-term plans are not subject to the following PPACA requirements:

- Coverage of essential health benefits.
- Prohibition on pre-existing conditions.<sup>37</sup>
- Guaranteed issue of coverage.

As with Association Health Plans (AHPs), the authority to regulate short-term plans remains with the state. In response to the 2018 Department of Labor rules on AHPs and short-term health plans, the Legislature passed SB 322 (2019).<sup>38</sup> The law allows employers from disparate trades to participate in a single AHP, if they are located in the state, and allows AHPs to include out-of-state employers who share a trade or purpose, consistent with the revised federal rules.<sup>39</sup> Following the federal rule for short term plans, the law allows them to be issued for up to 12 months, renewable for a total coverage period

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<sup>32</sup> S. 626.8796(2), F.S.

<sup>33</sup> S. 626.854(11), F.S.

<sup>34</sup> See s. 627.6426, F.S.; Florida Department of Financial Services, *Short-term Limited Duration Insurance*, <https://www.myfloridacfo.com/division/consumers/consumerprotections/stdipolicies> (last visited Jan. 15, 2024).

<sup>35</sup> National Association of Insurance Commissioners, *Short-term Limited-duration Health Plans*, [https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20\(81%20FR%2075316,replacement%20for%20traditional%20health%20coverag](https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20(81%20FR%2075316,replacement%20for%20traditional%20health%20coverag) e. (last visited Jan. 15, 2024).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Ch. 2019-129, Laws of Fla.

<sup>39</sup> *Id.*

of 36 months.<sup>40</sup> In practice, this change allows individuals to purchase short-term health insurance during longer periods of transition. Both changes increase the availability of lower-cost alternatives to comprehensive coverage.

All short-term plans must include disclosures to the purchaser explaining that the plan is not required to comply with certain federal requirements and may exclude certain coverage.<sup>41</sup> However, the law does not specify the method by which these disclosures must be provided.

### Effect of the Bill

The bill updates the disclosures that must be provided to a purchaser of a short-term plan to include the following additional items:

- The duration of the plan, including any waiting period;
- Any essential health benefits that the plan does not provide;<sup>42</sup>
- The content of coverage; and
- Any exclusions of preexisting conditions.

The bill also requires that purchasers of short-term plans receive the required disclosures in writing or electronically, and sign them.

### Loss Assessment Coverage

#### Background

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.<sup>43</sup>

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made because of the same direct loss to the condominium property.<sup>44</sup> The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence that gave rise to the loss.<sup>45</sup> This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.<sup>46</sup>

### Effect of the Bill

The bill establishes that a claim resulting from a loss assessment is considered to have occurred on the date a notice of loss assessment is sent by a condominium association to a unit owner. Establishing a date of loss for such claims will help insurers determine whether a loss assessment claim has been timely made.

### Fireworks Safety Standards

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<sup>41</sup> S. 627.6426(2), F.S.

<sup>42</sup> Essential health benefits can be found in 42 U.S.C. § 18022(b).

<sup>43</sup> The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 13, 2024).

<sup>44</sup> S. 627.714(1), F.S.

<sup>45</sup> S. 627.714(2), F.S.

<sup>46</sup> *Id.*

## Background

Florida law establishes the requirements for the outdoor display of fireworks in the state. At present, such display of fireworks is controlled by the 1995 edition of the National Fire Protection Association 1123, Code for Fireworks Displays (Code).<sup>47</sup>

## Effect of the Bill

The bill updates the outdoor fireworks safety standards in Florida to the 2018 Code, which is the most current edition of the code.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 212.134, F.S., relating to information returns relation to payment-card and third-party network transactions.

**Section 2.** Creates s. 286.312, F.S. relating to prohibited use of state funds; censorship or blacklisting of news sources.

**Section 3.** Amends s. 319.261, F.S., relating to real property transactions; retiring title to mobile home.

**Section 4.** Amends s. 489.147, F.S., relating to prohibited property insurance practices.

**Section 5.** Amends s. 559.9611, F.S., relating to definitions.

**Section 6.** Amends s. 624.424, F.S., relating to annual statement and other information.

**Section 7.** Amends s. 626.854, F.S., relating to “public adjuster” defined; prohibitions.

**Section 8.** Amends s. 626.8796, F.S., relating to public adjuster contracts; disclosure statement; fraud statement.

**Section 9.** Amends s. 627.6426, F.S., relating to short-term health insurance.

**Section 10.** Amends s. 627.70132, F.S., relating to notice of property insurance claims.

**Section 11.** Amends s. 791.012, F.S., relating to minimum fireworks safety standards.

**Section 12.** 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:

The bill may have an indeterminate negative impact on state expenditures if state agencies are required to update systems or hire additional staff to implement the statutory changes made by the bill.

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<sup>47</sup> S. 791.012, F.S. The Code cited in this statute has not been updated since this statute was first enacted in 1996.



B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive impact on those condominium associations, cooperative associations, apartment communities, and homeowners associations that contract for the services of public adjusters because they may not have to pay as much compensation to the public adjusters for services rendered. Correspondingly, the bill may have an indeterminate negative impact on public adjusters.

D. FISCAL COMMENTS:

None.

### 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:

The use of the word advise in section 2 of the bill regarding limitations on state contracting is confusing. It is unclear whether an agency is prohibited from entering a contract with an entity that advises others on censorship and blacklisting, or is prohibited only from entering into a contract with an entity for such services to be provided to the agency. The way the language is written, it is possible that an agency could enter into a contract with such an entity for another service besides censorship and blacklisting. An amendment may clarify the intent.

The censorship or blacklisting of news materials could have first amendment implications. Additionally, there could be invalid delegation of legislative authority because the interpretation of censorship and blacklisting would be left up to the contracting state agency without any guidelines or rulemaking authority.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Section 2 (Lines 97-102):** The use of the word advise in section 2 of the bill regarding limitations on state contracting is confusing. It is unclear whether an agency is prohibited from entering a contract with an entity that advises others on censorship and blacklisting, or is prohibited only from entering into a contract with an entity for such services to be provided to the agency. The way the language is written, it is possible that an agency could enter into a contract with such an entity for another service besides censorship and blacklisting. An amendment may clarify the intent.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**



26 | the content of certain public adjuster contracts;  
 27 | amending s. 627.6426, F.S.; revising the disclosure  
 28 | requirements of contracts for short-term health  
 29 | insurance; amending s. 627.70132, F.S.; providing that  
 30 | claims resulting from certain loss assessments are  
 31 | considered to have occurred on a specified date;  
 32 | amending s. 791.012, F.S.; updating the source of the  
 33 | code for outdoor display of fireworks; providing an  
 34 | effective date.

35 |

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

37 |

38 | Section 1. Section 212.134, Florida Statutes, is amended  
 39 | to read:

40 | 212.134 Information returns relating to payment-card and  
 41 | third-party network transactions.—

42 | (1) For purposes of this section, the term:

43 | (a) "Participating payee" has the same meaning as in s.  
 44 | 6050W of the Internal Revenue Code.

45 | (b) "Return" or "information return" means IRS Form 1099-K  
 46 | required under s. 6050W of the Internal Revenue Code.

47 | (c) "Third party network transaction" has the same meaning  
 48 | as in s. 6050W of the Internal Revenue Code.

49 | (d) "Third party settlement organization" has the same  
 50 | meaning as in s. 6050W of the Internal Revenue Code.

51        (2) For each year in which a payment settlement entity, an  
52 electronic payment facilitator, or other third party contracted  
53 with the payment settlement entity to make payments to settle  
54 reportable payment transactions on behalf of the payment  
55 settlement entity must file a return pursuant to s. 6050W of the  
56 Internal Revenue Code, for participating payees with an address  
57 in this state, the entity, the facilitator, or the third party  
58 must submit the information in the return to the department by  
59 the 30th day after filing the federal return. The format of the  
60 information returns required must be either a copy of such  
61 information returns or a copy of such information returns  
62 related to participating payees with an address in the state.  
63 For purposes of this subsection, the term "payment settlement  
64 entity" has the same meaning as provided in s. 6050W of the  
65 Internal Revenue Code.

66        (3)~~(2)~~ All reports of returns submitted to the department  
67 under this section must be in an electronic format.

68        (4)~~(3)~~ Any payment settlement entity, facilitator, or  
69 third party failing to file the information return required,  
70 filing an incomplete information return, or not filing an  
71 information return within the time prescribed is subject to a  
72 penalty of \$1,000 for each failure, if the failure is for not  
73 more than 30 days, with an additional \$1,000 for each month or  
74 fraction of a month during which each failure continues. The  
75 total amount of penalty imposed on a reporting entity may not

76 exceed \$10,000 annually.

77 ~~(5)~~(4) The executive director or his or her designee may  
 78 waive the penalty if he or she determines that the failure to  
 79 timely file an information return was due to reasonable cause  
 80 and not due to willful negligence, willful neglect, or fraud.

81 (6) All third party settlement organizations that conduct  
 82 transactions involving a participating payee with an address in  
 83 this state shall create a mechanism for participating payees to  
 84 identify whether a participating payee's transaction is for  
 85 goods and services or is personal. The mechanism must clearly  
 86 indicate the participating payee's requirement to indicate the  
 87 appropriate transaction type. The participating payee is  
 88 responsible for indicating the appropriate transaction type. All  
 89 third party settlement organizations shall maintain records that  
 90 clearly identify whether a transaction, as designated by the  
 91 participating payee, is a transaction for goods and services or  
 92 is personal. The information in the return submitted to the  
 93 department under subsection (2) for such entities must be  
 94 limited to transactions for goods and services.

95 Section 2. Section 286.312, Florida Statutes, is created  
 96 to read:

97 286.312 Prohibited use of state funds; censorship or  
 98 blacklisting of news sources.—An agency may not enter into a  
 99 contract or other agreement with an entity whose function is to  
 100 advise the censorship or blacklisting of news sources based on

101 subjective criteria or political biases under the stated goal of  
 102 fact-checking or removing misinformation.

103 Section 3. Subsection (2) of section 319.261, Florida  
 104 Statutes, is amended to read:

105 319.261 Real property transactions; retiring title to  
 106 mobile home.—

107 (2) The title to the mobile home shall ~~may~~ be retired by  
 108 the department if the owner of the real property records the  
 109 following documents in the official records of the clerk of  
 110 court in the county in which the real property is located:

111 (a)1. The original title to the mobile home which includes  
 112 ~~shall include~~ a description of the mobile home, including model  
 113 year, make, width, length, and vehicle identification number,  
 114 and a statement by any recorded lienholder on the title that the  
 115 security interest in the home has been released~~;~~ or that such  
 116 security interest will be released upon retirement of the title  
 117 as set forth in this section;~~;~~

118 2.~~(b)~~ The legal description of the real property, and in  
 119 the case of a leasehold interest, a copy of the lease agreement;  
 120 and~~;~~

121 3.~~(e)~~ A sworn statement by the owner of the real property,  
 122 as shown on the real property deed or lease, that he or she is  
 123 the owner of the mobile home and that the home is permanently  
 124 affixed to the real property in accordance with state law; or

125 (b) A mortgage against the owner's mobile home and real

126 property.

127 Section 4. Subsection (6) is added to section 489.147,  
 128 Florida Statutes, to read:

129 489.147 Prohibited property insurance practices; contract  
 130 requirements.—

131 (6) (a) An insured or claimant may cancel a contract to  
 132 replace or repair a roof without penalty or obligation until 10  
 133 days following the execution of the contract or until the  
 134 official start date, whichever comes first, if the contract was  
 135 entered into based on events that are the subject of a  
 136 declaration of a state of emergency by the Governor. For the  
 137 purposes of this subsection, the official state date is the date  
 138 on which the work on the roof will be commenced.

139 (b) A contractor executing during a declaration of a state  
 140 of emergency a contract to replace or repair a roof of a  
 141 residential property must include in the contract the following  
 142 language in bold type of not less than 18 points immediately  
 143 before the space reserved for the signature of the residential  
 144 property owner:

145  
 146 "You, the residential property owner, may cancel this contract  
 147 without penalty or obligation until 10 days following the  
 148 execution of the contract or until the official start date,  
 149 whichever comes first, because this contract was entered into  
 150 during a declaration of a state of emergency by the Governor. It



151 is the responsibility of your contractor to include an official  
 152 start date clause in your contract. This clause must state the  
 153 official start date and the work that will be commenced on that  
 154 date. If there is no official start date clause in the contract,  
 155 the contract may be voided within 10 days following the  
 156 execution of the contract."

157  
 158 (b) The residential property owner must send the notice of  
 159 cancellation by certified mail, return receipt requested, or  
 160 other form of mailing that provides proof thereof, at the  
 161 address specified in the contract.

162 Section 5. Subsection (9) of section 559.9611, Florida  
 163 Statutes, is amended to read:

164 559.9611 Definitions.—As used in this part, the term:

165 (9) "Depository institution" means a bank, credit union,  
 166 savings bank, savings and loan association, savings or thrift  
 167 association, trust company, or industrial loan company doing  
 168 business under the authority of, or in accordance with, a  
 169 license, certificate, or charter issued by the United States,  
 170 this state, or any other state, district, territory, or  
 171 commonwealth of the United States which is authorized to  
 172 transact business in this state ~~Florida state-chartered bank,~~  
 173 ~~savings bank, credit union, or trust company, or a federal~~  
 174 ~~savings or thrift association, bank, credit union, savings bank,~~  
 175 ~~or thrift.~~

176 Section 6. Paragraph (d) of subsection (8) of section  
 177 624.424, Florida Statutes, is amended to read:

178 624.424 Annual statement and other information.—

179 (8)

180 (d) The certified public accountant that prepares the  
 181 audit must be licensed to practice pursuant to chapter 473 and  
 182 must have completed at least 4 hours of insurance-related  
 183 continuing education during each two-year continuing education  
 184 cycle. An insurer may not use the same accountant or partner of  
 185 an accounting firm responsible for preparing the report required  
 186 by this subsection for more than 5 consecutive years. Following  
 187 this period, the insurer may not use such accountant or partner  
 188 for a period of 5 years, but may use another accountant or  
 189 partner of the same firm. An insurer may request the office to  
 190 waive this prohibition based upon an unusual hardship to the  
 191 insurer and a determination that the accountant is exercising  
 192 independent judgment that is not unduly influenced by the  
 193 insurer considering such factors as the number of partners,  
 194 expertise of the partners or the number of insurance clients of  
 195 the accounting firm; the premium volume of the insurer; and the  
 196 number of jurisdictions in which the insurer transacts business.

197 Section 7. Subsection (19) of section 626.854, Florida  
 198 Statutes, is amended, and subsections (5) through (18) are  
 199 republished, to read:

200 626.854 "Public adjuster" defined; prohibitions.—The

201 Legislature finds that it is necessary for the protection of the  
 202 public to regulate public insurance adjusters and to prevent the  
 203 unauthorized practice of law.

204 (5) A public adjuster may not directly or indirectly  
 205 through any other person or entity solicit an insured or  
 206 claimant by any means except on Monday through Saturday of each  
 207 week and only between the hours of 8 a.m. and 8 p.m. on those  
 208 days.

209 (6) When entering a contract for adjuster services after  
 210 July 1, 2023, a public adjuster:

211 (a) May not collect a fee for services on payments made to  
 212 a named insured unless they have a written contract with the  
 213 named insured, or the named insured's legal representative.

214 (b) May not contract for services to be provided by a  
 215 third party on behalf of the named insured or in pursuit of  
 216 settlement of the named insured's claim, if the cost of those  
 217 services is to be borne by the named insured, unless the named  
 218 insured agrees in writing to procure these services and such  
 219 agreement is entered into subsequent to the date of the contract  
 220 for public adjusting services.

221 (c) If a public adjuster contracts with a third-party  
 222 service provider to assist with the settlement of the named  
 223 insured's claim, without first obtaining the insured's written  
 224 consent, payment of the third party's fees must be made by the  
 225 public adjuster and may not be charged back to the named

226 | insured.

227 |       (d) If a public adjuster represents anyone other than the  
 228 | named insured in a claim, the public adjuster fees shall be paid  
 229 | by the third party and may not be charged back to the named  
 230 | insured.

231 |       (7) An insured or claimant may cancel a public adjuster's  
 232 | contract to adjust a claim without penalty or obligation within  
 233 | 10 days after the date on which the contract is executed. If the  
 234 | contract was entered into based on events that are the subject  
 235 | of a declaration of a state of emergency by the Governor, an  
 236 | insured or claimant may cancel the public adjuster's contract to  
 237 | adjust a claim without penalty or obligation within 30 days  
 238 | after the date of loss or 10 days after the date on which the  
 239 | contract is executed, whichever is longer. The public adjuster's  
 240 | contract must contain the following language in minimum 18-point  
 241 | bold type immediately before the space reserved in the contract  
 242 | for the signature of the insured or claimant:

243 |       "You, the insured, may cancel this contract for any reason  
 244 | without penalty or obligation to you within 10 days after the  
 245 | date of this contract. If this contract was entered into based  
 246 | on events that are the subject of a declaration of a state of  
 247 | emergency by the Governor, you may cancel this contract for any  
 248 | reason without penalty or obligation to you within 30 days after  
 249 | the date of loss or 10 days after the date on which the contract  
 250 | is executed, whichever is longer. You may also cancel the

251 contract without penalty or obligation to you if I, as your  
 252 public adjuster, fail to provide you and your insurer a copy of  
 253 a written estimate within 60 days of the execution of the  
 254 contract, unless the failure to provide the estimate within 60  
 255 days is caused by factors beyond my control, in accordance with  
 256 s. 627.70131(5)(a)2., Florida Statutes. The 60-day cancellation  
 257 period for failure to provide a written estimate shall cease on  
 258 the date I have provided you with the written estimate."

259 The notice of cancellation shall be provided to ...(name of  
 260 public adjuster)..., submitted in writing and sent by certified  
 261 mail, return receipt requested, or other form of mailing that  
 262 provides proof thereof, at the address specified in the  
 263 contract.

264 (8) It is an unfair and deceptive insurance trade practice  
 265 pursuant to s. 626.9541 for a public adjuster or any other  
 266 person to circulate or disseminate any advertisement,  
 267 announcement, or statement containing any assertion,  
 268 representation, or statement with respect to the business of  
 269 insurance which is untrue, deceptive, or misleading.

270 (a) The following statements, made in any public  
 271 adjuster's advertisement or solicitation, are considered  
 272 deceptive or misleading:

273 1. A statement or representation that invites an insured  
 274 policyholder to submit a claim when the policyholder does not  
 275 have covered damage to insured property.

276           2. A statement or representation that invites an insured  
 277 policyholder to submit a claim by offering monetary or other  
 278 valuable inducement.

279           3. A statement or representation that invites an insured  
 280 policyholder to submit a claim by stating that there is "no  
 281 risk" to the policyholder by submitting such claim.

282           4. A statement or representation, or use of a logo or  
 283 shield, that implies or could mistakenly be construed to imply  
 284 that the solicitation was issued or distributed by a  
 285 governmental agency or is sanctioned or endorsed by a  
 286 governmental agency.

287           (b) For purposes of this paragraph, the term "written  
 288 advertisement" includes only newspapers, magazines, flyers, and  
 289 bulk mailers. The following disclaimer, which is not required to  
 290 be printed on standard size business cards, must be added in  
 291 bold print and capital letters in typeface no smaller than the  
 292 typeface of the body of the text to all written advertisements  
 293 by a public adjuster:

294 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM  
 295 FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED  
 296 WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS  
 297 ADVERTISEMENT."

298           (9) A public adjuster, a public adjuster apprentice, or  
 299 any person or entity acting on behalf of a public adjuster or  
 300 public adjuster apprentice may not give or offer to give a

301 monetary loan or advance to a client or prospective client.

302 (10) A public adjuster, public adjuster apprentice, or any  
 303 individual or entity acting on behalf of a public adjuster or  
 304 public adjuster apprentice may not give or offer to give,  
 305 directly or indirectly, any article of merchandise having a  
 306 value in excess of \$25 to any individual for the purpose of  
 307 advertising or as an inducement to entering into a contract with  
 308 a public adjuster.

309 (11) (a) If a public adjuster enters into a contract with  
 310 an insured or claimant to reopen a claim or file a supplemental  
 311 claim that seeks additional payments for a claim that has been  
 312 previously paid in part or in full or settled by the insurer,  
 313 the public adjuster may not charge, agree to, or accept from any  
 314 source compensation, payment, commission, fee, or any other  
 315 thing of value based on a previous settlement or previous claim  
 316 payments by the insurer for the same cause of loss. The charge,  
 317 compensation, payment, commission, fee, or any other thing of  
 318 value must be based only on the claim payments or settlements  
 319 paid to the insured, exclusive of attorney fees and costs,  
 320 obtained through the work of the public adjuster after entering  
 321 into the contract with the insured or claimant. Compensation for  
 322 the reopened or supplemental claim may not exceed 20 percent of  
 323 the reopened or supplemental claim payment. In no event shall  
 324 the contracts described in this paragraph exceed the limitations  
 325 in paragraph (b).

326 (b) A public adjuster may not charge, agree to, or accept  
 327 from any source compensation, payment, commission, fee, or any  
 328 other thing of value in excess of:

329 1. Ten percent of the amount of insurance claim payments  
 330 or settlements, exclusive of attorney fees and costs, paid to  
 331 the insured by the insurer for claims based on events that are  
 332 the subject of a declaration of a state of emergency by the  
 333 Governor. This provision applies to claims made during the year  
 334 after the declaration of emergency. After that year, the  
 335 limitations in subparagraph 2. apply.

336 2. Twenty percent of the amount of insurance claim  
 337 payments or settlements, exclusive of attorney fees and costs,  
 338 paid to the insured by the insurer for claims that are not based  
 339 on events that are the subject of a declaration of a state of  
 340 emergency by the Governor.

341 3. One percent of the amount of insurance claim payments  
 342 or settlements, paid to the insured by the insurer for any  
 343 coverage part of the policy where the claim payment or written  
 344 agreement by the insurer to pay is equal to or greater than the  
 345 policy limit for that part of the policy, if the payment or  
 346 written commitment to pay is provided within 14 days after the  
 347 date of loss or within 10 days after the date on which the  
 348 public adjusting contract is executed, whichever is later.

349 4. Zero percent of the amount of insurance claim payments  
 350 or settlements, paid to the insured by the insurer for any



351 coverage part of the policy where the claim payment or written  
 352 agreement by the insurer to pay occurs before the date on which  
 353 the public adjusting contract is executed.

354 (c) Insurance claim payments made by the insurer do not  
 355 include policy deductibles, and public adjuster compensation may  
 356 not be based on the deductible portion of a claim.

357 (d) Public adjuster compensation may not be based on  
 358 amounts attributable to additional living expenses, unless such  
 359 compensation is affirmatively agreed to in a separate agreement  
 360 that includes a disclosure in substantially the following form:  
 361 "I agree to retain and compensate the public adjuster for  
 362 adjusting my additional living expenses and securing payment  
 363 from my insurer for amounts attributable to additional living  
 364 expenses payable under the policy issued on my (home/mobile  
 365 home/condominium unit)."

366 (e) Public adjuster rate of compensation may not be  
 367 increased based solely on the fact that the claim is litigated.

368 (f) Any maneuver, shift, or device through which the  
 369 limits on compensation set forth in this subsection are exceeded  
 370 is a violation of this chapter punishable as provided under s.  
 371 626.8698.

372 (12) (a) Each public adjuster must provide to the claimant  
 373 or insured a written estimate of the loss to assist in the  
 374 submission of a proof of loss or any other claim for payment of  
 375 insurance proceeds within 60 days after the date of the

376 contract. The written estimate must include an itemized, per-  
 377 unit estimate of the repairs, including itemized information on  
 378 equipment, materials, labor, and supplies, in accordance with  
 379 accepted industry standards. The public adjuster shall retain  
 380 such written estimate for at least 5 years and shall make the  
 381 estimate available to the claimant or insured, the insurer, and  
 382 the department upon request.

383 (b) An insured may cancel the contract with no additional  
 384 penalties or fees charged by the public adjuster if such an  
 385 estimate is not provided within 60 days after executing the  
 386 contract, subject to the cancellation notice requirement in this  
 387 section, unless the failure to provide the estimate within 60  
 388 days is caused by factors beyond the control of the public  
 389 adjuster. The cancellation period shall cease on the date the  
 390 public adjuster provides the written estimate to the insured.

391 (13) A public adjuster, public adjuster apprentice, or any  
 392 person acting on behalf of a public adjuster or apprentice may  
 393 not accept referrals of business from any person with whom the  
 394 public adjuster conducts business if there is any form or manner  
 395 of agreement to compensate the person, directly or indirectly,  
 396 for referring business to the public adjuster. A public adjuster  
 397 may not compensate any person, except for another public  
 398 adjuster, directly or indirectly, for the principal purpose of  
 399 referring business to the public adjuster.

400 (14) A company employee adjuster, independent adjuster,

401 attorney, investigator, or other persons acting on behalf of an  
 402 insurer that needs access to an insured or claimant or to the  
 403 insured property that is the subject of a claim must provide at  
 404 least 48 hours' notice to the insured or claimant, public  
 405 adjuster, or legal representative before scheduling a meeting  
 406 with the claimant or an onsite inspection of the insured  
 407 property. The insured or claimant may deny access to the  
 408 property if the notice has not been provided. The insured or  
 409 claimant may waive the 48-hour notice.

410 (15) The public adjuster must ensure that prompt notice is  
 411 given of the claim to the insurer, the public adjuster's  
 412 contract is provided to the insurer, the property is available  
 413 for inspection of the loss or damage by the insurer, and the  
 414 insurer is given an opportunity to interview the insured  
 415 directly about the loss and claim. The insurer must be allowed  
 416 to obtain necessary information to investigate and respond to  
 417 the claim.

418 (a) The insurer may not exclude the public adjuster from  
 419 its in-person meetings with the insured. The insurer shall meet  
 420 or communicate with the public adjuster in an effort to reach  
 421 agreement as to the scope of the covered loss under the  
 422 insurance policy. The public adjuster shall meet or communicate  
 423 with the insurer in an effort to reach agreement as to the scope  
 424 of the covered loss under the insurance policy. This section  
 425 does not impair the terms and conditions of the insurance policy

426 | in effect at the time the claim is filed.

427 |       (b) A public adjuster may not restrict or prevent an  
 428 | insurer, company employee adjuster, independent adjuster,  
 429 | attorney, investigator, or other person acting on behalf of the  
 430 | insurer from having reasonable access at reasonable times to any  
 431 | insured or claimant or to the insured property that is the  
 432 | subject of a claim.

433 |       (c) A public adjuster may not act or fail to reasonably  
 434 | act in any manner that obstructs or prevents an insurer or  
 435 | insurer's adjuster from timely conducting an inspection of any  
 436 | part of the insured property for which there is a claim for loss  
 437 | or damage. The public adjuster representing the insureds may be  
 438 | present for the insurer's inspection, but if the unavailability  
 439 | of the public adjuster otherwise delays the insurer's timely  
 440 | inspection of the property, the public adjuster or the insureds  
 441 | must allow the insurer to have access to the property without  
 442 | the participation or presence of the public adjuster or insureds  
 443 | in order to facilitate the insurer's prompt inspection of the  
 444 | loss or damage.

445 |       (16) A licensed contractor under part I of chapter 489, or  
 446 | a subcontractor of such licensee, may not advertise, solicit,  
 447 | offer to handle, handle, or perform public adjuster services as  
 448 | provided in subsection (1) unless licensed and compliant as a  
 449 | public adjuster under this chapter. The prohibition against  
 450 | solicitation does not preclude a contractor from suggesting or

451 otherwise recommending to a consumer that the consumer consider  
452 contacting his or her insurer to determine if the proposed  
453 repair is covered under the consumer's insurance policy, except  
454 as it relates to solicitation prohibited in s. 489.147. In  
455 addition, the contractor may discuss or explain a bid for  
456 construction or repair of covered property with the residential  
457 property owner who has suffered loss or damage covered by a  
458 property insurance policy, or the insurer of such property, if  
459 the contractor is doing so for the usual and customary fees  
460 applicable to the work to be performed as stated in the contract  
461 between the contractor and the insured.

462 (17) A public adjuster shall not acquire any interest in  
463 salvaged property, except with the written consent and  
464 permission of the insured through a signed affidavit.

465 (18) A public adjuster, a public adjuster apprentice, or a  
466 person acting on behalf of an adjuster or apprentice may not  
467 enter into a contract or accept a power of attorney that vests  
468 in the public adjuster, the public adjuster apprentice, or the  
469 person acting on behalf of the adjuster or apprentice the  
470 effective authority to choose the persons or entities that will  
471 perform repair work in a property insurance claim or provide  
472 goods or services that will require the insured or third-party  
473 claimant to expend funds in excess of those payable to the  
474 public adjuster under the terms of the contract for adjusting  
475 services.

476 (19) Subsections (5)-(18) apply only to residential  
 477 property insurance policies and condominium unit owner policies  
 478 as described in s. 718.111(11), except that subsection (11) also  
 479 applies to coverages provided by condominium association,  
 480 cooperative association, apartment building, and similar  
 481 policies, including policies covering the common elements of a  
 482 homeowners' association.

483 Section 8. Subsection (2) of section 626.8796, Florida  
 484 Statutes, is amended to read:

485 626.8796 Public adjuster contracts; disclosure statement;  
 486 fraud statement.-

487 (2) A public adjuster contract relating to a property and  
 488 casualty claim must contain the full name, permanent business  
 489 address, phone number, e-mail address, and license number of the  
 490 public adjuster; the full name and license number of the public  
 491 adjusting firm; and the insured's full name, street address,  
 492 phone number, and e-mail address, together with a brief  
 493 description of the loss. The contract must state the percentage  
 494 of compensation for the public adjuster's services in minimum  
 495 18-point bold type before the space reserved in the contract for  
 496 the signature of the insured; the type of claim, including an  
 497 emergency claim, nonemergency claim, or supplemental claim; the  
 498 initials of the named insured on each page that does not contain  
 499 the insured's signature; the signatures of the public adjuster  
 500 and all named insureds; and the signature date. If all of the

501 named insureds' signatures are not available, the public  
502 adjuster must submit an affidavit signed by the available named  
503 insureds attesting that they have authority to enter into the  
504 contract and settle all claim issues on behalf of the named  
505 insureds. An unaltered copy of the executed contract must be  
506 remitted to the insured at the time of execution and to the  
507 insurer, or the insurer's representative within 7 days after  
508 execution. A public adjusting firm that adjusts claims primarily  
509 for commercial entities with operations in more than one state  
510 and that does not directly or indirectly perform adjusting  
511 services for insurers or individual homeowners is deemed to  
512 comply with the requirements of this subsection if, at the time  
513 a proof of loss is submitted, the public adjusting firm remits  
514 to the insurer an affidavit signed by the public adjuster or  
515 public adjuster apprentice that identifies:

516 (a) The full name, permanent business address, phone  
517 number, e-mail address, and license number of the public  
518 adjuster or public adjuster apprentice.

519 (b) The full name of the public adjusting firm.

520 (c) The insured's full name, street address, phone number,  
521 and e-mail address, together with a brief description of the  
522 loss.

523 (d) An attestation that the compensation for public  
524 adjusting services will not exceed the limitations provided by  
525 law.

526 (e) The type of claim, including an emergency claim,  
 527 nonemergency claim, or supplemental claim.

528 Section 9. Section 627.6426, Florida Statutes, is amended  
 529 to read:

530 627.6426 Short-term health insurance.—

531 (1) For purposes of this part, the term "short-term health  
 532 insurance" means health insurance coverage provided by an issuer  
 533 with an expiration date specified in the contract that is less  
 534 than 12 months after the original effective date of the contract  
 535 and, taking into account renewals or extensions, has a duration  
 536 not to exceed 36 months in total.

537 (2) All contracts for short-term health insurance entered  
 538 into by an issuer and an individual seeking coverage shall  
 539 include the following written disclosures signed by the  
 540 purchaser at the time of purchase disclosure:

541 (a) The following statement:

542  
 543 "This coverage is not required to comply with certain federal  
 544 market requirements for health insurance, principally those  
 545 contained in the Patient Protection and Affordable Care Act. Be  
 546 sure to check your policy carefully to make sure you are aware  
 547 of any exclusions or limitations regarding coverage of  
 548 preexisting conditions or health benefits (such as  
 549 hospitalization, emergency services, maternity care, preventive  
 550 care, prescription drugs, and mental health and substance use



551 disorder services). Your policy might also have lifetime and/or  
 552 annual dollar limits on health benefits. If this coverage  
 553 expires or you lose eligibility for this coverage, you might  
 554 have to wait until an open enrollment period to get other health  
 555 insurance coverage."

556 (b) The following information:

557 1. The duration of the contract, including any waiting  
 558 period.

559 2. Any essential health benefit under 42 U.S.C. s.  
 560 18022(b) that the contract does not provide.

561 3. The content of coverage.

562 4. Any exclusion of preexisting conditions.

563 (3) These disclosures must be printed in no less than 12-  
 564 point type and in a color that is readable. A copy of the signed  
 565 disclosures must be maintained by the issuer for a period of 5  
 566 years after the date of purchase.

567 (4) Disclosures provided by electronic means must meet the  
 568 requirements of subsection (2).

569 Section 10. Subsection (4) of section 627.70132, Florida  
 570 Statutes, is renumbered as subsection (5), and a new subsection  
 571 (4) is added to that section to read:

572 627.70132 Notice of property insurance claim.—

573 (4) A claim resulting from loss assessment as described in  
 574 s. 627.714 is considered to have occurred on the date of the  
 575 notice of loss assessment sent by a unit owner's condominium

576 association.

577 Section 11. Section 791.012, Florida Statutes, is amended  
578 to read:

579 791.012 Minimum fireworks safety standards.—The outdoor  
580 display of fireworks in this state shall be governed by the  
581 National Fire Protection Association (NFPA) 1123, Code for  
582 Fireworks Display, 2018 ~~1995~~ Edition, ~~approved by the American~~  
583 ~~National Standards Institute~~. Any state, county, or municipal  
584 law, rule, or ordinance may provide for more stringent  
585 regulations for the outdoor display of fireworks, but in no  
586 event may any such law, rule, or ordinance provide for less  
587 stringent regulations for the outdoor display of fireworks. The  
588 division shall promulgate rules to carry out the provisions of  
589 this section. The Code for Fireworks Display shall not govern  
590 the display of any fireworks on private, residential property  
591 and shall not govern the display of those items included under  
592 s. 791.01(4)(b) and (c) and authorized for sale thereunder

593 Section 12. This act shall take effect July 1, 2024.